



STATUTORY INSTRUMENTS.

S.I. No. 587 of 2016

THE EUROPEAN COMMUNITIES (LAWYERS' ESTABLISHMENT)
REGULATIONS 2003 (QUALIFYING CERTIFICATE) REGULATIONS
2016

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The Law Society of Ireland, in exercise of the powers conferred on them by the European Communities (Lawyers' Establishment) Regulations 2003 (S.I. No.732 of 2003, S.I. No.752 of 2004, S.I. No.96 of 2008 and S.I. No. 46 of 2015) hereby make the following Regulations:

Citation and commencement

1. (a) These Regulations may be cited as The European Communities (Lawyers' Establishment) Regulations 2003 (Qualifying Certificate) Regulations 2016.
- (b) These Regulations are intended to give effect to the Lawyers' Establishment Directive as provided for in the 2003 Regulations.
- (c) These Regulations shall come into operation on 1 January 2017.

Definitions

2. (a) In these Regulations, unless the context otherwise requires:

“Act of 1954” means the Solicitors Act 1954 [No.36 of 1954];

“Act of 1960” means the Solicitors (Amendment) Act 1960 [No.37 of 1960];

“Act of 1994” means the Solicitors (Amendment) Act 1994 [No.27 of 1994];

“applicant registered lawyer” means a registered lawyer required to comply with Regulation 3(a);

“application” means the application delivered to the Registrar by an applicant registered lawyer for a qualifying certificate for the practice year, pursuant to Regulation 4 of these Regulations;

“application fee” means the registration fee, the contribution to the Compensation Fund and the contribution to the Solicitors Mutual Defence Fund Limited, paid to the Society by an applicant registered lawyer on delivery to the Registrar of his or her application;

“Compensation Fund” means the fund maintained by the Society pursuant to Sections 21 and 22 (as substituted, respectively, by Sections 29 and 30 of the Act of 1994) of the Act of 1960;

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 9th December, 2016.*

“duly completed application” means an application which has been completed by the applicant registered lawyer in accordance with the instructions set out therein, and the Guidelines, and which is accompanied by the full payment of the application fee;

“EFT payment form” means the form made available by the Society to applicants who wish to pay the application fee by electronic funds transfer;

“Guidelines” means guidelines in respect of qualifying certificate applications as may be published by the Society from time to time;

“Law Directory” means the directory of registered lawyers and firms published by the Society each year;

“lawyer” means any person who is an Irish citizen or a national of a member state and who is authorised to pursue his or her professional activities in a member state under any of the professional titles specified in the Schedule to the 2003 Regulations.

“Lawyers’ Establishment Directive” means Directive 98/5/EC of the European Parliament and of the Council of 16 February 1998 to facilitate practice of the profession of lawyer on a permanent basis in a member state other than that in which the qualification was obtained and includes—

- (i) a measure which is in force by virtue of the Agreement between the European Community and its member states, of the one part, and the Swiss Confederation, of the other, on the free movement of persons done at Luxembourg on 21 June 1999; and
- (ii) the Decision of the EEA Joint Committee No. 85/2002 of 25 June 2002 amending Annex VII (Mutual Recognition of Professional Qualifications) to the EEA Agreement and having an effect corresponding to that of the Directive;

“legal services” means services of a legal or financial nature and includes any part of such services, and for the avoidance of doubt, includes (without limitation):-

- (i) any investment business services or investment advice provided by a firm;
- (ii) acting as personal representative or trustee;
- (iii) acting as notary public;
- (iv) acting as a commissioner for oaths;
- (v) acting as liquidator or receiver;
- (vi) acting as company secretary;

- (vii) acting as director of any body corporate owned by the principals of a firm that provides trustee, nominee, administration or other services,
- (viii) acting as arbitrator or mediator; and
- (ix) acting on a pro bono basis.

“member state” means:

- (i) a contracting party (other than the State) to the EEA Agreement [being the Agreement on the European Economic Area signed in Oporto on 2 May 2002, as adjusted by the Protocol to that Agreement done at Brussels on 17 March 1993] or,
- (ii) the Swiss Confederation,

and, where appropriate, means more than one member state;

“practice year” means the calendar year ending on 31 December in any given year;

“qualifying certificate” means a certificate issued by the Registrar to a lawyer in accordance with Regulation 8 of the 2003 Regulations certifying that the lawyer is qualified to pursue the professional activities of a solicitor;

“Register of Registered Lawyers” means the register established under Regulation 7 of the 2003 Regulations;

“registered lawyer” means a lawyer in respect of whom a registration certificate is in force;

“Registrar” means the registrar of solicitors for the time being appointed pursuant to Section 8 of the Act of 1954;

“registration certificate” means a certificate issued by the Society to a lawyer in accordance with Regulation 6 of the 2003 Regulations;

“Registration Fee” means the fee payable by a registered lawyer admitted to the Register of Registered Lawyers for three years or more on 1 January in any given year or the fee payable by a registered lawyer admitted to the Register of Registered Lawyers for less than three years on 1 January in any given year;

“Regulation of Practice Committee” means the committee to whom functions of the Society pursuant to Part V of the Act of 1954, as amended and extended by Part VI of the Act of 1994, have been delegated by the Council of the Society;

“relevant date” means 1 February each year;

“relevant form” means the form of application for a qualifying certificate;

“Society” means the Law Society of Ireland, as the competent authority provided for in Regulation 4 of the 2003 Regulations;

“2003 Regulations” means the European Communities (Lawyers’ Establishment) Regulations 2003 (S.I. No.732 of 2003) as amended by the European Communities (Lawyers’ Establishment) (Amendment) Regulations 2004 (S.I. No.752 of 2004, S.I. No.96 of 2008 and S.I. No.46 of 2015).

- (b) Other words and phrases in these Regulations shall have the meanings assigned to them by the Solicitors Acts 1954 to 2011 or the Lawyers’ Establishment Directive or the 2003 Regulations where the context so permits.
- (c) The Interpretation Act 2005 applies to the interpretation of these Regulations as it applies to the interpretation of an Act of the Oireachtas.

Requirement to hold a qualifying certificate

3. (a) Every registered lawyer (other than a registered lawyer in the full-time service of the State or a registered lawyer solely engaging in conveyancing services for a non-registered lawyer employer) who practises, or is deemed to practise, in the State shall be required to hold a qualifying certificate.
- (b) For the purposes of Regulation 3(a), a registered lawyer shall be deemed to practise as a registered lawyer if he or she engages in the provision of legal services.
- (c) A registered lawyer employed by a firm or non-registered lawyer employer and engaged in the provision of legal services shall be required to hold a qualifying certificate in accordance with Regulation 3(a) irrespective of any designations or titles assigned to that registered lawyer by the firm.
- (d) Every registered lawyer employed by a firm or non-registered lawyer employer is personally responsible for ensuring that he or she complies with Regulation 3(a). A claim by a registered lawyer that he or she relied on his or her firm or non-registered lawyer employer to apply for a qualifying certificate shall not be a defence to a failure to comply with Regulation 3(a).
- (e) A qualifying certificate shall be the property of the registered lawyer, regardless of who has paid the application fee.
- (f) It shall be an offence and professional misconduct on the part of a registered lawyer who fails to comply with Regulation 3(a). Where a registered lawyer fails to comply with Regulation 3(a) the Society may take any one or more of the following actions:
 - (i) refer the matter to the Solicitors Disciplinary Tribunal;
 - (ii) make an application to the High Court;
 - (iii) report the matter to An Garda Síochána; and

(iv) any other action deemed appropriate by the Society.

Application for qualifying certificate

4. (a) An applicant registered lawyer shall, on or before the relevant date:

- (i) deliver or cause to be delivered, a hard copy duly completed application to the Register at the Society's premises at George's Court, George's Lane, Dublin 7; or
- (ii) submit or cause to be submitted to the Registrar, a duly completed application in electronic form and in such format as may be amended by the Society from time to time

which application shall include a relevant form duly completed in accordance with the instructions set out therein and full payment of the application fee.

(b) The Registrar shall, on receipt of an application pursuant to Regulation 4(a) of this Regulation and on the Registrar being of the opinion that there is or are no appropriate and reasonable ground or grounds for not doing so, cause to be issued to the applicant registered lawyer concerned a qualifying certificate which shall be dated either—

- (i) 1 January in the relevant year, where issued during the period beginning on 1 January in that year and ending on the relevant date, or
- (ii) the date on which it is issued, where issued after the relevant date.

(c) Applications which are:

- (i) not completed in accordance with the instructions set out therein;
- (ii) not fully completed; or
- (iii) submitted without full payment of the application fee;

shall be deemed incomplete and shall be returned to the applicant by the Society.

(d) Qualifying certificates shall only be issued following receipt by the Society of a duly completed application, full payment of the application fee and responses (which are deemed to be reasonably satisfactory) to any query raised thereon by the Society.

(e) Qualifying certificates shall be dated the date on which the Society receives the duly completed application, full payment of the application fee or a response which is deemed to be reasonably satisfactory to any outstanding queries, whichever is the later, if received after the relevant date.

- (f) Only one qualifying certificate shall be issued to each registered lawyer in any practice year.
- (g) If a registered lawyer's qualifying certificate is dated after the relevant date and that registered lawyer has provided legal services in that calendar year before the date of the qualifying certificate, an application shall be made by that registered lawyer to the President of the High Court to have his or her qualifying certificate backdated to 1 January of that year, or the date on which the registered lawyer commenced providing legal services. Pursuant to the provisions of Section 25(2)(b) of the Solicitors (Amendment) Act 1960 the Society shall be entitled to seek the costs associated with the application form from each registered lawyer who applies to have his or her qualifying certificate backdated in accordance with this Regulation 4(g), such costs to be measured by the President of the High Court.
- (h) Only those registered lawyers who have submitted a duly completed application with full payment of fees due to the Society with no outstanding queries raised thereon, and whose qualifying certificate issues by the 16 February shall be included in the Law Directory in respect of that year.
- (i) An applicant registered lawyer shall provide written notice to the Society before the relevant date where that registered lawyer held a qualifying certificate in respect of the previous practice year but does not intend to practise for all or part of the current practice year and such notice must include the following details:
 - (i) a statement that the applicant registered lawyer has ceased practise or intends to cease practise during the current practice year; or
 - (ii) a statement that the applicant registered lawyer will not be practising in the current practice year for any reason, including unemployment, career break, change of career, emigration, sick leave or maternity leave; or
 - (iii) a statement that the applicant registered lawyer will not be providing legal services and will not be applying for a qualifying certificate until after the relevant date for any reason, including unemployment, career break, sick leave and maternity leave; and
 - (iv) a current correspondence address and email address by which the Society may contact the applicant registered lawyer, where necessary.
- (j) An applicant registered lawyer shall immediately notify the Society in writing if there is any change in his or her practising status during the practice year.

- (k) An applicant registered lawyer shall provide written notice to the Society, in accordance with the provisions of Section 81 of the Act of 1954, if that registered lawyer has changed firms or non-solicitor employer during the practice year and must include in such notice the date of leaving the former firm, the date of joining the current firm and the name and address of the current firm.
- (l) An applicant registered lawyer is required to complete an application in accordance with the Guidelines.

Where confirmation is required as to content of an application

- 5. (a) The Registrar, at any time following delivery to the Registrar by an applicant registered lawyer of an application (whether or not a qualifying certificate has been issued by the Registrar to the applicant registered lawyer pursuant to Regulation 4(b) of this Regulation), may, where the Registrar deems it appropriate and reasonable to do so, require the applicant registered lawyer to confirm in writing to the Society the accuracy of all or any specified part or parts of the application.
- (b) Where, on receipt by the Society of a confirmation in writing from an applicant registered lawyer required by the Registrar pursuant to clause (a) of this Regulation, the Registrar deems it appropriate and reasonable to do so, the Registrar may require the applicant registered lawyer to attend before a meeting of the Regulation of Practice Committee to further confirm the accuracy of all or any specified part or parts of the application.

Misconduct of knowingly furnishing false and misleading information

6. An applicant registered lawyer who, in an application delivered to the Registrar, knowingly furnishes information that is false or misleading in a material respect shall be guilty of misconduct.

Registration Fee, contribution to Compensation Fund and contribution for Solicitors Mutual Defence Fund

- 7. (a) As and from the coming into operation of these Regulations, the Registration Fee together with the contribution to the Compensation Fund and the contribution for the Solicitors Mutual Defence Fund Limited and other fees specified by Schedule 1 of these Regulations, shall be paid to the Society by an applicant registered lawyer on delivery to the Registrar of his or her application.
- (b) The application fee shall be paid by the registered lawyer to the Society either by cheque, draft or by electronic funds transfer.
- (c) A registered lawyer who intends to pay the application fee by electronic funds transfer shall complete and return the EFT payment form with the application and failure to do so shall result in the application

being returned to the applicant registered lawyer as incomplete, notwithstanding that the application fee may have been received by the Society.

- (d) A registered lawyer paying the application fee by electronic funds transfer shall include in the EFT payment form an identifiable specific reference, such as the firm or company name, the applicant registered lawyer's name or the applicant registered lawyer's number. Failure to include such a reference will result in the application being returned to the applicant registered lawyer as incomplete, notwithstanding that the application fee may have been received by the Society.
- (e) The Society shall not be responsible for any delay in processing applications where payment has been made by an applicant registered lawyer to an incorrect bank account of the Society. An applicant registered lawyer who pays the application fee by electronic funds transfer shall ensure that the application fee is paid to the bank account provided in the EFT payment form.
- (f) A registered lawyer shall not be required to pay a membership subscription fee where that registered lawyer has been admitted to the Register of Registered Lawyers for a period of at least fifty years as of 1 January in that year.
- (g) Where a registered lawyer who is admitted to the Register of Registered Lawyers during the course of a practice year applies for his or her first qualifying certificate during that practice year, the application fee shall be based on the number of full calendar months remaining in that practice year following the month of his or her admission to the Register of Registered Lawyers. That registered lawyer's membership subscription fee in respect of that practice year (or part thereof) shall be at the reduced rate of twenty euro (€20).
- (h) The registered lawyer who commences practice during the practice year on a date arising after the relevant date shall calculate the application fee based on the number of full calendar months, or any part thereof, remaining in the practice year including the calendar month in which the application for a qualifying certificate is made.
- (i) The Society may, in its absolute discretion, issue a refund of the application fee to a registered lawyer who had made an application to the Society requesting same. In order for a registered lawyer to be eligible to make an application for a refund of the application fee to the Society, he or she shall:
 - (i) notify the Society in writing immediately upon ceasing to practise; and
 - (ii) submit a fully completed qualifying certificate surrender form, to be completed by the registered lawyer who is surrendering his

or her qualifying certificate, together with the original qualifying certificate for the current practice year; and

- (iii) make the application for a refund in the same practice year in which the registered lawyer ceased to practise.

Fee for copy of entry on File A or File B

8. The fee payable to the Society by a person who applies to the Registrar, pursuant to Section 17 of the Act of 1960, for a copy of an entry on File A or File B shall be as specified by Schedule 1 of these Regulations.

Collection and use of Personal data

9. (a) The Society shall be entitled to collect and maintain personal data (“Personal Data”) relating to each registered lawyer, including but not limited to:

- (i) name,
- (ii) practice address,
- (iii) personal correspondence address,
- (iv) telephone and fax number(s),
- (v) email address,
- (vi) academic qualifications, and
- (vii) information concerning a registered lawyer arising from the carrying out by the Society by its regulatory functions under the Solicitors Acts 1954 to 2011 and regulations made thereunder, including sensitive Personal Data such as health records or information relating to the commission or alleged commission of a criminal offence.

(b) The Personal Data relating to a registered lawyer maintained by the Society may be used by the Society for administration, management, marketing, promotion of the solicitors profession and professional development purposes and in pursuance of the Society’s regulatory functions. Personal Data relating to any disciplinary processes pending or not yet dismissed against a registered lawyer may be provided by the Society to the Judicial Appointments Advisory Board (“JAAB”), in respect of a registered lawyer who is being considered for appointment to judicial office by the JAAB.

Issue of duplicate qualifying certificate

10. Where a registered lawyer to whom a qualifying certificate for the practice year has been issued pursuant to Regulation 4(b) of these Regulations, certifies to the Registrar that his or her qualifying certificate has been inadvertently destroyed, lost or mislaid, such registered lawyer may apply to the Society for a

duplicate original of such qualifying certificate on duly discharging the fee specified by Schedule 1 of these Regulations and on duly undertaking to the Registrar that, in the event of the qualifying certificate as originally issued being subsequently found in the course of the practice year, that same qualifying certificate would forthwith be returned to the Registrar.

Where conditions attached to qualifying certificate

11. (a) Where a qualifying certificate for the practice year is caused to be issued by the Registrar to a registered lawyer subject to a specified condition or conditions, the qualifying certificate shall be endorsed with the words (adapted as appropriate): “Issued subject to [a] specified condition[s] as annexed” and the Registrar at the same time shall cause to be issued to the registered lawyer concerned a separate document (deemed to be part of the qualifying certificate) headed with the Society’s crest and title and with the words (adapted as appropriate): “Annexe to qualifying certificate of [name of registered lawyer] of [a] specified condition[s] attached thereto and applicable as and from [date of commencement of applicability of the specified condition or conditions]” and setting out the text of each specified condition.

(b) Where the Society gives a direction pursuant to Section 59 of the Act of 1994 that the qualifying certificate already issued to a registered lawyer for the practice year should, from a date that is 21 days after the date of receipt by the registered lawyer concerned of notification in writing by the Society of the giving of such direction, have effect subject to a specified condition or conditions, the registered lawyer shall (subject to the provisions of the said Section 59 of the Act of 1994 as to the registered lawyer’s right of appeal to the High Court), within such period of 21 days, surrender his or her current qualifying certificate, and the Society shall, as soon as possible, reissue the qualifying certificate endorsed with the words (adapted as appropriate): “Issued subject to [a] specified condition[s] as annexed” and the Registrar at the same time shall cause to be issued to the registered lawyer concerned a separate document (deemed to be part of the qualifying certificate) headed with the Society’s crest and title and with the words (adapted as appropriate): “Annexe to qualifying certificate of [name of registered lawyer] of [a] specified condition[s] attached thereto and applicable as and from [date of commencement of applicability of the specified condition or conditions]” and setting out the text of each specified condition.

(c) Where a qualifying certificate issued or reissued to a registered lawyer for the practice year is subject to a specified condition or conditions as referred to in clause (a) or (b) of this Regulation 11:

(i) the registered lawyer concerned shall comply with the specified condition or each of the specified conditions, as the case may be, and shall ensure that he or she does not provide legal services to any client of the registered lawyer in breach of such specified

condition or conditions, whether or not any such client is made aware of such specified condition or conditions, and

- (ii) the registered lawyer concerned, in any display by him or her of his or her qualifying certificate, shall display with equal prominence adjacent thereto, the annexe thereto setting out the specified condition or conditions to which his or her qualifying certificate is subject.

Signed on behalf of the Law Society of Ireland pursuant to Section 79 of the Solicitors Act 1954.

Dated this 6th day of December 2016.

STUART GILHOOLY,
President of the Law Society of Ireland.

SCHEDULE 1

within referred to

	EURO
(a) Registration Fee for the practice year ending on 31 December 2017 payable to the Society on application for a qualifying certificate by an applicant registered lawyer admitted to the Register of Registered Lawyers for three years or more on 1 January 2017:	€1,425.00
(b) Registration Fee for the practice year ending on 31 December 2017 payable to the Society on application for a qualifying certificate by an applicant registered lawyer originally admitted to the Register of Registered Lawyers for less than three years on 1 January 2017:	€1,115.00
(c) Contribution to the Compensation Fund for the practice year ending on 31 December 2017 payable to the Society on application for a qualifying certificate by an applicant registered lawyer:	€760.00
(d) Contribution for the Solicitors Mutual Defence Fund Limited for the practice year ending on 31 December 2017 payable to the Society on application for a qualifying certificate by an applicant registered lawyer:	€200.00
(e) Fee payable to the Society on each application, pursuant to Section 17 of the Solicitors (Amendment) Act 1960, for a copy of an entry on File A or File B:	€100.00
(f) Fee payable to the Society on each application, pursuant to Regulation 10 of these Regulations, for the issue of a duplicate original qualifying certificate for the practice year.	€50.00

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
Le ceannach díreach ó
FOILSEACHÁIN RIALTAIS,
52 FAICHE STIABHNA, BAILE ÁTHA CLIATH 2
(Teil: 01 - 6476834 nó 1890 213434; Fax: 01 - 6476843)
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