



# **Practising certificates: Solicitors outside the Irish jurisdiction**

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## **What an Irish practising certificate entitles the holder to do**

An Irish practising certificate entitles a solicitor practising in Ireland to provide legal services as defined by, and subject to the provisions of, the Solicitors Acts 1954-2015 and the rules and regulations made thereunder.

Reference to the practice of a solicitor in this Guidance Note is to include reference to practice permitted under the Establishment Directive (Directive 98/5/EC) and the Services Directive (Directive 77/249/EC).

An Irish practising certificate can be used, whether for the purposes of the Establishment Directive or the Services Directive or for the purposes of registration in a non-EU jurisdiction (subject to the regulatory system in that jurisdiction), as evidence of entitlement to practise in Ireland subject to the Solicitors Acts 1954-2015 and the rules and regulations made thereunder.

A practising certificate does not entitle a solicitor to practise outside the jurisdictions that are permitted by Irish and EU law.

Any practice carried out in accordance with the Establishment Directive requires registration as a Registered European Lawyer ("REL") and is therefore carried out under those provisions in the host Member State and not under the Irish practising certificate.

The Solicitors Acts 1954-2015 and the rules and regulations made thereunder provide for solicitors practising within the Irish jurisdiction. There is no provision of the Solicitors Acts (or in any rules or regulations made thereunder) for Irish practising certificates to be used to provide legal services outside Ireland and within the EU save under the Services Directive. There is no provision of the Solicitors Acts (or in any rules or regulations made thereunder) providing the Society with power to permit and regulate practice outside Ireland save as set out in the Directives.

Practice outside the EU is dependent on the law of the relevant jurisdiction where the practice is carried out.

The Law Society has identified four categories of Irish-qualified solicitor (i.e. whose home Member State is Ireland) that practise law outside Ireland and is outlining its views in respect of each category of solicitor.

### *(a) Registered European Lawyers*

An Irish practising certificate issued to a solicitor (who became first entitled in Ireland to practise as a solicitor) may be used as evidence from the home Member State (i.e. Ireland) of registration with the Law Society for the purposes of registration as an REL in an EU host Member State under the Establishment Directive.

Under Article 3(2) of the Establishment Directive, the competent authority in the host Member State shall register the lawyer on presentation of a "certificate attesting to his/her registration with the competent authority in the home Member State". The practising certificate may be used for the purposes of Article 3(2) of the Establishment Directive.

However, once the solicitor is registered as an REL within their host Member State within the meaning of the Establishment Directive, any practice carried out by that solicitor is carried

out under their registration as an REL with the host Member State and not pursuant to their Irish practising certificate. The explanation for this is as follows.

The Establishment Directive is premised, *inter alia*, on the basis that each individual Member State is responsible for the regulation of lawyers practising within their own Member State, including lawyers from other Member States who, as RELs, are permitted to practise under their home State title, subject to the rules and regulations of that host Member State. The home Member State retains some residual regulatory jurisdiction.

An REL is obliged to register with the competent regulatory authority in the host Member State (Article 3), must practise under their home Member State title in the host Member State (Article 4), may give advice in respect of the law of their home Member State, EU law, international law, and the law of the host Member State, subject to certain exceptions (Article 5), must comply with the professional conduct rules in the host Member State (Article 6), is required to take out professional indemnity insurance in accordance with the host Member State's requirements (unless the REL has already obtained equivalent cover in the home Member State that would cover practice in the host Member State (Article 6)) and the REL is subject primarily to the disciplinary rules in force in the host Member State (Article 7).

Therefore, any practice carried out by an REL, which would include the provision of advice on the home Member State law (i.e. on Irish law) in the host Member State, is carried out pursuant to their registration in the host Member State and not via the Irish practising certificate.

*(b) Solicitors providing legal services in another EU Member State who are not RELs*

An Irish-qualified practising solicitor can provide legal services in another EU Member State on a "fly in fly out" basis under the Services Directive. Solicitors practising other than in accordance with the Services Directive in another EU Member State who are not RELs are not permitted to provide legal services under their Irish practising certificate.

*(c) Solicitors based in a non-EU jurisdiction who are registered in that jurisdiction*

The ability of an Irish-qualified solicitor to practise in a non-EU jurisdiction is a matter for the regulatory regime of that jurisdiction.

Insofar as evidence is required by the competent authority for the regulation of lawyers in such a jurisdiction that an Irish-qualified solicitor is entitled to practise as a solicitor in Ireland for, or as part of, an application to practise in that jurisdiction, an Irish practising certificate may be used as evidence of a solicitor's entitlement to practise in Ireland.

However, once the solicitor is registered with the competent regulatory authority in that jurisdiction any practice carried out by them is carried out in accordance with their registration in that jurisdiction and not pursuant to an Irish practising certificate.

*(d) Solicitors based in a non-EU jurisdiction who are not registered in that jurisdiction*

Solicitors in this category are not entitled to provide legal services pursuant to their Irish practising certificate.

## **Practice before EU Courts**

Any practice before the EU Courts is governed by EU Law. Article 19 of Statute of the Court of Justice of the European Union provides that:

*“...only a lawyer authorised to practice before a Court of a Member State or of another State which is a party to the Agreement on the European Economic Area may represent or assist a party before the Court”.*

Pursuant to Title IV, Chapter 1, Article 119 of the Rules of Procedure of the Court of Justice entitled “Representation of the Parties” provides as follows:

1. A party may be represented only by his agent or lawyer.
2. Agents and lawyers must lodge at the Registry an official document or an authority to act issued by the party whom they represent.
3. The lawyer acting for a party must also lodge at the Registry a certificate that he is authorised to practice before a Court of a Member State or of another State which is a party to the EEA Agreement.
4. If those documents are not lodged, the Registrar shall prescribe a reasonable time limit within which the party concerned is to produce them. If the applicant fails to produce the required document within the time limit prescribed, the Court shall after hearing the Judge-rapporteur and the Advocate General decide whether that non-compliance with that procedural requirement renders the application or written pleading formally inadmissible.

An Irish practising certificate is the usual form of evidence required by the EU Courts for Irish-qualified solicitors based in Ireland.

In the event that an REL (where Ireland is the home Member State) is seeking to appear before the EU Courts the REL should use their host Member State registration as this is the location from which the REL is actually practising before the host Member State courts.

The Directives provide specific rules in relation to certain categories of legal services, including litigation/court representation, that are primarily determined by the host Member State rules. There are circumstances where it will be appropriate for the REL to seek guidance from their host Member State Bar or from the EU Courts.

## **Professional indemnity insurance**

The fact that a solicitor may have professional indemnity insurance in place from a qualifying insurer that complies with the Minimum Terms and Conditions as provided for in the Solicitors Professional Indemnity Insurance Regulations 2018 and in addition covers the solicitor for services provided outside the jurisdiction does not alter the status or legal effect of an Irish practising certificate. As stated above, an Irish practising certificate entitles a solicitor practising in Ireland to provide legal services as defined by, and subject to the provisions of the Solicitors Acts 1954-2015 and the rules and regulations made thereunder.

If a solicitor with an Irish practising certificate wishes to provide legal services in Ireland, that solicitor must have professional indemnity insurance cover in place in accordance with the Solicitors Professional Indemnity Insurance Regulations 2018.