

# Guidance

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## Guidance note on the impact on exempt European lawyers of the Government's Statutory Instrument on the basis of a 'no deal' EU exit scenario

Updated 25 November 2019 (Date first published: 10 December 2018)

### Status

This Guidance does not form part of the SRA Standards and Regulations. It is intended to explain some of the implications of a 'no-deal' EU exit on exempt European lawyers and firms they are involved in, should this happen.

### Who is this guidance for?

Exempt European lawyers (EELs), law firms and other interested parties.

### Purpose of this guidance

In response to the [Technical Notice](#) published by the government and the [statutory instrument \(SI\)](#) this guidance sets out the potential impact on EELs and law firms of a 'no deal' EU exit and future options.

This guidance is not intended to provide definitive answers on the impact of EU exit on legal services, as this will depend on the outcome of the negotiations between the UK government and the EU.

### General

On 12 October 2018 the Government published a Technical Notice setting out its approach regarding the impact of a 'no deal' EU exit scenario on EU lawyers practising in the UK. The Government has made the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019, to come into force on exit day.

The Government has taken steps to prepare for all potential outcomes, including preparing for a no deal scenario.

We will continue to work cooperatively with the Government and interested parties to make sure that whatever the outcome of the negotiations, any changes are implemented as effectively and smoothly as possible both for the profession and the people who use the services of European lawyers.

This note is published in response to the Technical Notice and the SI to explain the impact of the changes to EELs in the event of a no deal EU Exit.

### The current position

Our previous regulations specifically provided that a special category of European lawyers could be managers or owners of

law firms we regulate: exempt European lawyers (EELs). These provisions reflected the statutory provisions of section 9(A)(6)(c) of the Administration of Justice Act 1985 and section 111 of the Legal Services Act 2007. Our new standards and regulations no longer refer to exempt European lawyers. European lawyers who satisfy the requirements set out in the statutory provisions referred to will continue to be able to be managers and owners of law firms we regulate as recognised bodies.

These provisions relate mainly to EEA/EU lawyers based entirely in offices outside of England and Wales.

## Impact of a 'no deal' EU exit on EELs.

In the event of a no deal exit, the SI deletes these statutory provisions<sup>1</sup> from the end of the transitional period **1** 31 December 2020. This means that from that date, EELs can no longer be owners or managers of recognised bodies unless they are Scottish or Northern Irish lawyers. They will become unauthorised persons which will make the law firm in which they work a licensable body, that is an Alternative Business Structure.

There are presently about 1900 EELs in this situation who mostly have connections in City and International law firms we regulate. We want to make the transition from our current arrangements as smooth as possible in the event of a no deal exit from the EU. This guidance sets out answers to some common FAQs that EELs may have.

## Questions and answers

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### Q1. What are exempt European lawyers?

We defined EELs (in the SRA previous SRA Glossary) as: [More](#)

'a member of an Establishment Directive profession:

registered with the BSB; or

based entirely at an office or offices outside England and Wales, who is not a lawyer of England and Wales (whether entitled to practise as such or not).'

EELs are not defined in the new SRA glossary. However, in accordance with the statutory provisions referred to above, EELs may be managers or owners of recognised bodies, if approved as such by the SRA in accordance with Part 4 of the Authorisation of Firms Rules .

### Q2. Will EELs still be able to be managers or owners of recognised bodies after a 'no deal' exit from the EU?

No, [More](#)

not after the end of the transitional period unless you are a UK qualified lawyer.<sup>2</sup> The statutory provisions which allow EELs to be managers and owners of recognised bodies will be repealed at the end of the transitional period - that is on 31 December 2020. This will mean that EELs will no longer be able to be managers or owners of a recognised body from that date. If they remain as managers, the firm will become a licensable body - that is, it will have to become an ABS.

However, Registered Foreign lawyers (RFLs) can be managers or owners of recognised bodies (subject to SRA approval). Therefore, if you are an EEL and become an RFL, you will be able to continue to be a manager or owner of a recognised body after 31 December 2020.

### Q3. I am an EEL and an owner or manager of a recognised body, should I apply to become an RFL?

Unless you are UK qualified lawyer, if you are an owner or manager of a recognised body and wish to continue to be after 31 December 2020, you will need to become an RFL. [More](#)

In the event of a 'no deal' exit from the EU, we are planning to automatically passport all EELs who are owners or managers of recognised bodies authorised by us to become RFLs at the end of the transitional period unless they notify us that they do not wish to become an RFL. This should minimise the regulatory burden on EELs and help make the transition as smooth as possible. There will be no fee for this process.

We will work out the detail around this once we know that we will be leaving the EU without a deal, but as a minimum we will contact all EELs through their authorised body to notify them of our proposed course of action. We will also make clear the regulatory impact that becoming an RFL will have on them **■** but see below for a brief summary of the position.

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### Q4. I am an EEL, if I become an RFL what additional responsibilities will I have?

An RFL has limited additional practising rights and is subject to the same rules of conduct as solicitors. We can take disciplinary proceedings against RFLs. [More](#)

RFLs must renew their registration on 31 October each year and pay the prescribed fee.

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### Q5. I am an EEL and an owner or manager of a recognised body and I do not want to become an RFL, what other options do I have?

If you are an EEL owner or manager of a recognised body and you do not want to become an RFL, by the end of the transitional period (unless you are an UK qualified lawyer), you will have to cease being an owner or manager. [More](#)

Alternatively, the firm in which you are an owner or manager will need to apply to change its authorisation from a recognised body to a licensed body. We will set up a process whereby we will ask you to notify us of the position so that we can contact you nearer the end of the transitional period to explain in detail the process you will need to follow.

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### Q6. I am COLP of a recognised body which has EEL owners or managers. What do I need to do?

You will need to make sure that all EELs either confirm that they will become RFLs or cease to act as owners or managers by the end of the transitional period. [More](#)

Alternatively, your firm will need to apply to become a licensed body prior to then. Section 18(3) LSA will apply with the effect that your authorisation will continue after the end of that period for 90 days if your firm is a recognised body that has non-authorised owners or managers.

However, you will be in breach of the SRA's Standards and Regulations and, in particular, Rule 1.1 of the SRA Authorisation of Firms Rules as your firm will no longer satisfy the eligibility requirements to be a recognised body. Therefore, it is important that you take steps to comply before the end of the transitional period.

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### Q7. I am a COLP. In July 2019 we are planning to promote to a partner one of our EU lawyers based in our Paris office. Can we still do this after exit day?

Yes - there is nothing in the SI that seems to prevent this up to the end of the transition period; 31 December 2020. [More](#)

EU lawyers who meet the statutory requirements referred to above can therefore continue to become owners and managers of recognised bodies after exit day. They should be aware, however, that under our present proposals, they will be passported to RFL status at the end of the transitional period - i.e. 31 December 2020.

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## Further help

If you require any further assistance, please contact the [Professional Ethics helpline](#).

### NOTES

1. For the detail, see the changes proposed by paragraphs 8(2) and (4) and 13(2) and (4) of the Schedule to the SI
2. For the purposes of this guidance this means an advocate or solicitor in Scotland or a member of the Bar of Northern Ireland or a solicitor of the Court of Judicature of Northern Ireland

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