

GUIDELINES ON THE IMPLEMENTATION OF THE ESTABLISHMENT DIRECTIVE (98/5/EC OF 16TH FEBRUARY 1998) ISSUED BY THE CCBE FOR BARS AND LAW SOCIETIES IN THE EUROPEAN UNION

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CO-ORDINATION OF THE GUIDELINES ADOPTED DURING THE PLENARY SESSION OF APRIL 24TH AND 25TH 1998 AND OF THE FURTHER GUIDELINES ADOPTED DURING THE STANDING COMMITTEES OF OCTOBER 6TH 1999, SEPTEMBER 8TH 2000, JANUARY 26TH 2001 & OCTOBER 12TH 2001.

1. Scope of application of the Directive*

- 1.1 There are two conditions which must be satisfied before a lawyer is entitled to take advantage of the Establishment Directive: first, the lawyer must have acquired one of the titles listed in Article 1.2(a) of the Directive; and second, the lawyer must be a citizen of one of the Member States of the European Union.
- 1.2 'Avocats stagiaires' or trainee lawyers do not fall within the scope of the provisions of the Directive.
- 1.3 Lawyers who are seconded from one firm or branch of a firm within one Member State to another firm or branch of a firm within a second Member State in order to be trained or to further their personal development shall not be considered as falling within the provisions of the Directive.

2. Professional experience*

Where there are rules in a host Member State which require that the number of years of experience of a lawyer within its own jurisdiction have to be taken into account, then the number of years of experience which an EU lawyer established in that jurisdiction has spent in another Member State practising as a lawyer shall count towards the number of years required in the host Member State. This does not apply to periods of training or experience within the home jurisdiction required in accordance with the rules of the home Member State to qualify for admission to registration with the home Bar.

3. Registration

3.1. Registration fee

All lawyers registering under Article 3 of the Directive shall pay a registration fee or fees (which term includes either a one-off or a regular payment) to the relevant competent authority (as defined under Article 1.2(f) of the Directive), and to such other authorities as may be required under local rules. Such fee or fees may be equivalent to, but not higher than, the fee or fees charged to lawyers enrolled in the host Member State. Such fee or fees may be lower than the fee or fees charged to lawyers enrolled in the host Member State, for instance in the following circumstances:

- (a) if the registration fee covers work (such as that reserved to host state lawyers under Article 5.2 of the Directive) which the lawyer registering under article 3 of the Directive will not be entitled to carry out under the Directive; or
- (b) if the fee covers items already paid elsewhere by the registering lawyer, such as indemnity insurance or social security contributions.

A lawyer registering under Article 3 of the Directive who does not pay the fee requested by the relevant competent authority shall be considered to be guilty of unprofessional conduct, and the

relevant competent authority may report the matter to the lawyer's home bar for further consideration, and may itself bring disciplinary proceedings against the lawyer under Article 7 of the directive.

3.2. Documents which could be requested for registration*****

So far as possible, the following documents only should be requested by a bar or law society on a request for registration:

- (a) a completed application form for the registration;
- (b) a certificate of attestation from the home bar or law society;
- (c) evidence of existing professional indemnity insurance.

In any case, the requested documents for such an application should not exceed those which would be requested from a lawyer transferring from one bar to another bar within the host Member State.

An authenticated translation of the requested documents, into an official language of the host bar, may be requested by the host bar or law society.

3.3. Registration Form

The attached model registration form has been published by the CCBE for use by competent authorities within the EU for registrations under Article 3 of the Directive.

3.4. Certificate of Attestation

Where a lawyer registering under Article 3 of the Directive has more than one home jurisdiction, the relevant competent authority is entitled to ask for a certificate of attestation under Article 3.2 of the Directive from each of the competent authorities with which that lawyer is registered in a Member State.

A certificate of attestation under Article 3.2 of the Directive shall mention all disciplinary proceedings (as defined under section 7 below) which have been commenced in the home member state against the lawyer applying for registration under Article 3 of the Directive, or in which a finding has been made against the lawyer.

4. Practice under home professional title/guidelines on notepaper*

In order to inform clients and other lawyers, EU bars and law societies are encouraged to ensure that, in addition to the provisions of Article 4 of the Directive, lawyers practising under their home title in another Member State also put on their notepaper the following information:

- (a) a statement attesting to their registration with the competent body in the host state (written in the host language); and
- (b) a statement of their registration with the home bar in the home state (translated into the host language).

5. Disciplinary Proceedings

For the purposes of:

- (a) any declaration to be made in the model registration form in section 4 above; or
- (b) any declaration to be made by the relevant competent authority in the home Member State in a certificate of attestation under Article 3.2 of the Directive;

disciplinary proceedings shall be defined as having commenced when formal proceedings have started before the court, tribunal or other body which has jurisdiction in the home member state to take disciplinary actions against, and impose sanctions upon, the lawyer registering under Article 3 of the Directive. The mere receipt of a complaint against the lawyer is not considered for these purposes to be "disciplinary proceedings".

6. Double Discipline

A lawyer registered under Article 3 of the Directive is subject to regulation not only by his or her home bar but also, in accordance with Article 6 of the Directive, by the host bar where he or she is registered. This, in the case of professional misconduct, may lead to discipline both by the host bar and by the home bar in respect of the same misconduct, although it is recognised that the disciplinary sanction accorded by each competent authority in such a case may be different, or be of a different severity, according to circumstances.

7. Professional liability insurance*

The bodies responsible in each Member State for arranging and/or providing professional indemnity insurance as mentioned in Article 6.3 of the Directive shall liaise with corresponding bodies in other Member States to ensure that, so far as possible, insurance arrangements made by a lawyer in one Member State are respected and recognised in another Member State both before and after integration under Article 10 of the Directive, to avoid problems relating to double premiums and double insurance.

8. Like treatment as a lawyer of the host Member State*

The definition of "activity in the host Member State in the law of that state", which appears in Article 10.1 and Article 10.3 of the Directive, shall be interpreted as though there is included in both those places the phrase "including Community law" (even though such phrase does not appear in Article 10.3), so that the practice of Community law shall be able to be taken into account in both Article 10.1 and Article 10.3.

9. Co-operation between competent authorities

- 9.1 As envisaged under Article 13 of the Directive, co-operation between competent authorities in home and host Member States is of the utmost importance for the efficient working of the Directive, and the attached model registration form contains a declaration for the applicant lawyer to sign to the effect that such free exchange can take place in his or her case. Bars and law societies are encouraged (where their ethical rules do not already contain such a measure) to adopt provisions whereby it becomes a duty on their members who practise in another Member State to allow for such a free exchange of information between home and host competent authorities.
- 9.2* The provisions of Article 7.2 to 7.4 and of Article 13 of the Directive (relating to liaison between disciplinary bodies in Member States) shall apply so far as possible not only to the position of a registered lawyer practising under home title in another Member State under Article 2 of the Directive, but also to that same lawyer once integrated into the host title of the Member State under Article 10 of the Directive.

10. Three Years Activity under Article 10 of the Directive - Transitional Provision**

In order for a period to qualify towards the three years of activity under Article 10 of the Directive, it will be sufficient for the lawyer who has registered under Article 3 of the Directive to have pursued the appropriate activity (as defined in Article 10) for a period before the implementation of the Directive under Article 16 of the Directive, if and so far as the rules of that Member State provided for practice as referred to in Article 10.1 and Article 10.3 of the Directive. Lawyers already pursuing such an activity in that Member State before the implementation of the Directive in that member State will be able to take periods already accrued into account for the purpose of Article 10 of the Directive.

For the purpose of harmonisation of treatment of EU lawyers practising in Member States other than their home Member State before the implementation of the Directive, all Member States (unless they already have such measures in force) are encouraged to introduce measures as soon as possible, even before the implementation of the Directive, which will permit such lawyers to accumulate qualifying periods of activity in other Member States as described in the paragraph above.

11. Difficulties in Interpretation of the Directive

The CCBE will provide a service to competent authorities in attempting to resolve difficulties in interpreting provisions of the Directive, to ensure that, so far as possible, there is a uniform interpretation of the Directive around the EU. Accordingly, competent authorities are encouraged to alert the CCBE to any such difficulties. The CCBE will also offer an advisory service, which will be voluntary and non-binding and offered only where requested by parties, for the resolution of disputes between parties under provisions of the Directive.

12. Designation of Competent Authorities

Although Member States will in due course designate competent authorities within the meaning of the Directive under Article 14, a provisional list of bars, law societies and other admitting and disciplinary bodies for lawyers around the European Union is attached for the use of bars and law societies during the implementation period.

13. Continuing education***

In order to avoid the multiple application of continuing professional education schemes, where a lawyer is established under the Directive in a Member State other than that in which he or she is qualified, the lawyer shall be subject to the continuing professional education rules of the host State bar, except where the home State bar has rules which oblige the lawyer to continue home State professional education wherever he or she is based. In addition, the bars and law societies of all Member States are encouraged to develop flexible continuing professional education rules which will permit migrant lawyers to satisfy them by undertaking continuing professional education not only in host state law but also in home state law.

14 Compulsory pensions and social security schemes****

In order so far as possible to avoid double payment of pension, social security and health scheme payments by EU lawyers practising under their home title in another Member State, EU bars and law societies are encouraged to permit where possible migrant EU lawyers to continue paying into such schemes in their home state, without the necessity of their also contributing to any schemes in the host State, provided that they are able to provide evidence of such home state payments to the appropriate authorities in the host State.

The United Kingdom Delegation voted against the version of Clause 12 above, and requested, in accordance with the CCBE's constitution, that its preferred version be appended to the guidelines, as below:

12. Three Years Activity under Article 10 of the Directive - Transitional Provision

Host State competent authorities may wish, as a matter of practice, and in so far as compatible with existing host State law, to allow lawyers who already have been pursuing a relevant activity in the host State, before the coming into force of the Directive, to have such periods of activity taken into account for the purpose of acquiring the rights under Article 10 of the Directive.

For the purpose of harmonisation of treatment of EU lawyers practising in Member States other than their home Member State before the implementation of the Directive, all Member States (unless they already have such measures in force) are encouraged to introduce measures as soon as possible, even before the implementation of the Directive, which will permit such lawyers to accumulate qualifying periods of activity in other Member States as described in the paragraph above.

- *** Further Guideline adopted during the Standing Committee of September 8th 2000
- **** Further Guideline adopted during the Standing Committee of January 26th 2001
- ***** Further Guideline adopted during the Standing Committee of October 12th 2001

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^{*} Further guidelines adopted during the Standing Committee of October 6th 1999

^{**} Clause 12 - Version of the United Kingdom Delegation to the CCBE

Application for Registration as a lawyer established under the European Establishment Directive 98/5/EC of 16th February 1998.

Personal Details

Surname		Date of birth
Form of address		Place of birth
(for exampleMr/Mr	rs/Miss/Ms/Dr/Prof)	
Sex N	м F	Nationality
First Names		
Current Practising Details Please use a separate sheet to give details of additional address If more than one firm, please give full details, using a separate sheet if necessary.		
Professional title in State	home Member	
Firm's (or organisa	tion's) name	
Principal address o home Member Stat	f firm (or organisation) in the	Address to which correspondence should be sent (if different)
Principal address of country (the host M	f firm (or organisation) in this Iember State)	Address to which correspondence should be sent (if different)
Current status*	Sole Principal	Consultant
	Partner	* Other
	Assistant	
* Please tick annr	onrigte hox	* If other please give details

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Details of home jurisdiction

Name and address of the Law Society, Bar, Chamber and/or Court within who	se jurisdiction you are admitted.		
If there is more than one, please give the name and address for each. Use a co	ontinuation sheet if necessary.		
1 2			
Date of Admission Date of Admiss	sion		
Have you completed your training?	Yes No		
Are you currently entitled to practise as a member of the legal profession(s) to which you belong ?*	Yes No		
Is the certificate of attestation from your home jurisdiction and any other jurisdiction attached ?	Yes No		
Are you currently covered by professional indemnity insurance? If yes, please provide details, including conditions and extent of cover, on a separate sheet of paper.	Yes No		
Previous Application			
Have you previously made an application for registration under the Establishn	nent Directive :		
In our jurisdiction?	Yes No		
In another jurisdiction?	Yes No		
If yes, which one(s)			

If you have answered « yes » to either you must give full details overleaf., including details of acceptances/refusals elsewhere.

Material events
Have formal proceedings alleging professional misconduct by you been started before a court or disciplinary tribunal although there has been no decision yet?
Have you ever been struck off or suspended from practice as a result of disciplinary proceedings ?
Have you suffered from any other disciplinary sanctions?
Are there any material events relating to your fitness to practise which have occured since your last application (if any) for registration (e.g. bankruptcy)?
* If you answered yes to any of the above questions, please give full details (use a separate sheet if necessary).
Fee Calculation
Please make cheques payable to
Fees must be made in(Currency)
Please return the form with fees to :
Declaration
I declare that the information supplied on this form is complete and correct at the date of the application. I agree to tell the
Name :

* This includes, for example, holding a current practising certificate if that is required for practice in that jurisdiction. If

you have answered « no », give details under the Material events section on page 7.

Certificate of Attestation Article 3 of the Lawyers' Establishment Directive

Icompetent authority in the home Member state]	[authorised person on behalf of the relevant
Hereby certify that	[name of applicant]
Of [name and address of applicant's firm]	
Is registred as	[professional title in home Member State]
with	[the relevant competent authority in the home
and is authorised to practise as a	[professional title in home Member
DISCIPLINARY RECORD	
Completed proceeding	
Date Nature of offence	Sanction
Please say whether disciplinary proceedings can be considered of a certain period of time, and, if so, please give details below.	as spent within your Member State e.g. after the passage
Pending proceedings [please describe]	
Signed	Date Member State]
Status of signatory	
Address of signatory in the home Member State	

	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
AUSTRIA	RECHTSANWALTSKAMMER	DISZIPLINARRAT
Rechtsanwalt	9 Bar Associations, one for each federal region.	Panel of lawyers elected as disciplinary judges at each regional
		bar.
BELGIUM	ORDRES DES AVOCATS	ORDRES DES AVOCATS
Avocat, Advocaat,	28 Local Bars and the Bar at the Supreme	
Rechtsanwalt	Court.	
DENMARK	<u>JUSTITSMINISTERIET</u>	<u>ADVOKATNÆVNET</u>
Advokat	Civilkontoret	Kronprinsessegade 28
	Slotsholmsgade 10	DK 1306 Copenhagen K
	DK 1216 Copenhagen K	Tel.: 0045 33969798
	Tel.: 0045 33923340	Fax: 0045 33321831
	Fax: 0045 33933510	Section of the ADVOKATSAMFUNDET (The Danish Bar and
	Once granted a practice certificate, the advokat automatically	Law Society)
	becomes a member of the Danish Bar and Law Society	
FINLAND	SUOMEN ASIANAJAJALIITTO	SUOMEN ASIANAJAJALIITTO
Asianajaja, Advocat	(Finnish Bar Association)	(Finnish Bar Association)
	Simonkatu 12B20	
	FIN-100 Helsinki	
	Tel.: 358 9 6866120	
	Fax: 358 9 68661299	
FRANCE	Local Bar Association	Local Bar Association
Avocat		
GERMANY	LANDESJUSTIZVERWALTUNG	RECHTSANWALTSKAMMER
Rechtsanwalt	Minister of Justice of the respective Länder	(29 local bars)
	In the admission process the regional bars	

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	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
GREECE	63 LOCAL BAR ASSOCIATIONS	LOCAL BAR ASSOCIATIONS
Dikigoros		
ICELAND	MINISTER OF JUSTICE	DET ÏSLANDSKE ADVOKATSAMFUND
Advokat	Who grants permission to practise law in Iceland having	The Boars of the Icelandic Bar Association.
	sought opinion from the Board of the Icelandic Bar	Alfamyri 9
	Association. Lawyers receiving permission to practise law	108 Reykjavik
	automatically become a member of the Icelandic Bar	Tel.: 354 568 5620
	Association, membership of which is compulsory.	Fax: 354 568 7057
IRELAND	THE LAW SOCIETY OF IRELAND	THE LAW SOCIETY OF IRELAND
Solicitors	Blackhall Place	
	Dublin 7	
	Ireland	
	Tel.: (01) 67 24 800	
	Fax: (01) 67 24 801	
	e-mail: lawschool@lawsociety.ie	
	THE HONORABLE SOCIETY OF KINGS INNS	THE BAR COUNCIL OF IRELAND
Barristers	Kings Inns	P.O. Box 4460
	Henrietta street	158-159 Church Street
	Dublin 1	Dublin 7
	Tel.: (01) 87 44 840	Tel.: (01) 81 75 000
	Fax: (01) 87 26 048	Fax: (01) 81 75 150
		e-mail: barcouncil@lawlibrary.ie

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	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
ITALY	COUNCILS OF THE BARS (ORDINE)	COUNCILS OF THE BARS
Avvocato	159 local professional bodies placed in each Tribunal.	
		CONSIGLIO NATIONALE FORENSE
		Via Arenula n.71
		00186 ROIVIA
		Tel.: 0039 6 6876870
		Fax: 0039 6 6876871
		Is the judge of appeal of the disciplinary decision, and it is
		formed by representatives of each of the 26 Courts of Appeal.
LUXEMBOURG	There are two bar associations covering different areas:	Preliminary investigation: <u>BÂTONNIER</u> (head of the Bar).
Avocat		
	ORDRE DES AVOCATS À LA COUR SUPÉRIEURE DE	Decision: <u>COUNCIL OF THE ORDER OF ADVOCATES</u> ,
	JUSTICE DE Luxembourg	and <u>DISCIPLINARY</u> <u>AND</u> <u>ADMINISTRATIVE COUNCIL</u>
	(The Order of Advocates at the Superior Court of Justice of	(composed by three advocates).
	Luxembourg)	
	Palais de Justice	Appeal: 1 st instance <u>DISCIPLINARY AND</u>
	Boite Postale 361	ADMINISTRATIVE COÜNCIL OF APPEAL
	L-2013	(composed of two Judges of the Court of Appeal and one
	Tel.: 352224850	advocate); 2nd instance
	Fax: 352 461008	COUR DE CASSATION.
	ORDRE DES AVOCATS DE DIEKIRCH	
	(The Order of Advocates at the Superior Court of Justice of	
	Diekirch)	
	Court House	
	Palais de Justice	
	O BOX 66, 2-9201 Diekirch	
	Tel.: 803214	

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	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
THE NETHERANDS	DISTRICT COURTS	RAAD VAN DISCIPLINE
Advocaat	LOCAL BARS	HOF VAN DISCIPLINE
		Both independent disciplinary committees.
NORWAY	TILSYNSRADET FOR ADVOKATVIRKSOMHET	DEN NORSKE ADVOKATFORENING
Advokat	(Supervisory Council for Advocate Affairs, Minister of Justice)	
	Râdhusgt 23	Kristian Augusts gate 9
	P.O. Box 720 Sentrum	0164 Oslo
	0106 Oslo	Tel.: 22035050
	Norway	Fax: 22 115325
	Tel.: 47 22007500	The local disciplinary committees of the Bar Association are
	Fax: 47 22007520	the first disciplinary instance.
		THE DISCIPLINARY COMMITTEE
		Appointed by the Government as 2 nd instance.
		TILSYNSRADET
		FORAD VOKATVIRKSOMHET
PORTUGAL		
Advogado		
SPAIN	ILUSTRES COLEGIOS DE ABOGADOS	ILUSTRES COLEGIOS DE ABOGADOS
Abogado, advocat,	83 Local Bar Associations	
avogado, abokatu		

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	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
SWEDEN	SVERIGES ADVOKATSAMFUND	SVERIGES ADVOKATSAMFUND
Advokat	(Swedish Bar Association)	(Swedish Bar Association)
	Laboratoriegatan 4	
	Box 27321	
	SE-102 54 Stockholm	
	Sweden	
	Tel.: 46 8 459 03 00	
	Fax: 46 8 660 07 79	
UNITED		
KINGDOM		
England and	LAW SOCIETY OF ENGLAND AND WALES	OFFICE FOR THE SUPERVISION OF SOLICITORS
Wales	113 Chancery Lane	Victoria Court
Solicitors	LONDON	Dormer Place
	WC2A 1PL	ROYAL LEAMINGTON SPA
	Tel.:207 242 1222	Wanvickshire
	Fax: 207 831 03 44	CV32 5AE
		Tel.: 1926 820082
		Fax: 1926 431435
		SOLICITORS DISCIPLINARY TRIBUNAL
		Third Floor, Gate House
		1, Farringdon Street
		London EC4M 7NS
		Tel.: 207 329 4808
		Fax: 207 329 4833
		Independent of the Law Society

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	PROFESSIONAL BODIES	PROFESSIONAL BODIES	
	<i>ADMISSION</i>	DISCIPLINE	
England and Wales	THE GENERAL COUNCIL OF THE BAR	THE GENERAL COUNCIL OF THE BAR	
Barristers	3 Bedford Row		
	London	THE DISCIPLINARY COUNCIL OF THE BAR	
	WC2A 1PL		
	Tel 207 242 0082	THE DISCIPLINARY TRIBUNAL OF THE FOUR INNS OF	
	Fax 207 831 9217	COURT	
	The 4 INNS OF COURT: the Honourable Society of Gray's		
	Inn, the Honourable Society of Lincon's Inn, the Honourable	THE INNS OF COURT	
	Society of the Middle Temple, the Honourable Society of the		
	Inner Temple.		
	Barristers must be members of one of the four Inns of Court		
	and called to the Bar by at Inn.		
	It is likely, but not yet formally decided, that migrant lawyers		
	wishing to practise on the same basis as barristers will also be		
	required to be members of the Inns.		

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	<i>ADMISSION</i>	DISCIPLINE
Scotland	THE LAW SOCIETY OF SCOTLAND	THE LAW SOCIETY OF SCOTLAND
Solicitors	26 Drumsheugh Gardens	
	Edinburgh EH3 7YR	THE SOLICITORS DISCIPLINE TRIBUNAL
	Tel.:131 226 7411	22 Rutland Square,
	Fax: 131 2252934	Edinburgh,
		EH1 21313
		Tel.:131 229 5860
		Fax: 131 229 0255
		Contact: Clerk to the Tribunal, John M. Barton.
Scotland	THE FACULTY OF ADVOCATES	The <u>DEAN</u> and the <u>DISCIPLINARY</u>
Advocates	Advocates Library,	TRIBUNAL of THE FACULTY OF
	Parliament House,	ADVOCATES.
	Edinburgh, EHI IRQ	
	THE COURT OF SESSION	
	Parliament House,	
	Parliament Square,	
	Edinburgh, EHI IRQ	
	Tel.: 131 2265071	
	Fax: 131 2253642	

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	PROFESSIONAL BODIES	
	ADMISSION	DISCIPLINE
Northern Ireland	THE LAW SOCIETY OF NORTHERN IRELAND	THE LAW SOCIETY OF NORTHERN IRELAND
Solicitors	Law Society House	Receives and investigate the complaints
	98 Victoria Street	
	BELFAST BT1 3JZ	THE SOLICITORS' DISCIPLINARY TRIBUNAL
	Tel.: 1232 231614	It consists of solicitors and lay persons appointed by the Lord
	Fax: 1232 232606	Chief Justice. The majority of references are made by The Law
		Society but applicants may refer a complaint
		directly.
		Tribunal Secretary: Miss Jane Crilly of Francis Crilly,
		Solicitors
		24 Antrim Road
		Belfast BT15 2AA
		Tel.: 01232 755722
		Fax: 01232 352490
Northern Ireland	THE EXECUTIVE COUNCIL OF THE INN OF COURT	THE GENERAL COUNCIL OF THE BAR OF
Barristers	OF NORTHERN IRELAND	NORTHERN IRELAND
	(Brendan Garland - Chief Executive)	(Brendan Garland - Chief Executive)
	Bar Library	Bar Library
	Royal Court of Justice	
	Chester Street	
	BELFAST BTI 3SP	
	Tel.: 1232 241523	
	Fax: 1232 231850	

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