



Lawyers and Conveyancers Act (Lawyers: Practice Rules) (Practice on Own Account) Amendment Regulations 2012

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 20th day of August 2012

Present:

His Excellency the Governor-General in Council

Pursuant to sections 94(i) and 108 of the Lawyers and Conveyancers Act 2006, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Lawyers and Conveyancers Act (Lawyers: Practice Rules) (Practice on Own Account) Amendment Regulations 2012.

2 Commencement

These regulations come into force on 1 October 2012.

3 Principal regulations

These regulations amend the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 (the **principal regulations**).

4 Regulation 3 amended (Interpretation)

In regulation 3(1), insert in their appropriate alphabetical order:

“**legal experience** means all or any of the following:

- “(a) legal work for a lawyer in sole practice, a partnership of lawyers, or an incorporated law firm:
- “(b) legal work as a barrister sole in practice on his or her own account (in the case only of an application by a lawyer to, or for leave of the High Court to, commence practice on his or her own account as a barrister and solicitor):
- “(c) legal work as an employee of any of the State services (as defined in section 2 of the State Sector Act 1988):
- “(d) legal work as an employee of a local authority (as defined in section 5(1) of the Local Government Act 2002):

- “(e) legal work as an employee of a company or other body (whether incorporated or unincorporated):
 - “(f) work as a member of the legal academic staff (whether or not as an employee) of a university:
 - “(g) work as a member of Parliament (within the meaning of section 27 of the Electoral Act 1993)
- “**required minimum amount of recent legal experience**, for a lawyer, means legal experience of the lawyer that—
- “(a) occurs in at least 3 (successive or separated) years in the 5 years immediately before the date of his or her commencing practice on his or her own account; and
 - “(b) counts only up to a maximum per week of 40 hours (and so excludes all his or her legal experience, if any, after the 40th hour in any week); and
 - “(c) is, in total, 4830 hours
- “**required subjects**, for a lawyer intending to practise on his or her own account in a particular way, means the subjects that (in the Law Society’s view) he or she must know about to be able to do so in accordance with the requirements of—
- “(a) the Act (including, without limitation, section 30); and
 - “(b) all regulations, and all practice rules, made under the Act (including, without limitation, practice rules made under section 94(i) (either alone or with section 108), and regulations made under section 115(g))”.

5 Regulation 5 amended (Application for practising certificate)

In regulation 5(4)(c), replace “fixed” with “imposed”.

6 Regulations 12 to 15 replaced

Replace regulations 12 to 15 with:

“12 Criteria to practise on own account

- “(1) For the purposes of section 30(1)(a) of the Act, subclauses (3) to (6) set out the requirements and other criteria that must be met before a lawyer who applies to do so on or after 1 October 2012 may commence practice on his or her own account.
- “(2) Those requirements and other criteria apply, without limitation, to a lawyer who before 1 October 2012 commenced prac-

tice on his or her own account as a barrister sole, and who on or after 1 October 2012 applies to practise on his or her own account as a barrister and solicitor.

- “(3) The lawyer must have had at least the required minimum amount of recent legal experience in New Zealand.
- “(4) During the 2 years immediately before the date of commencing practice on his or her own account, the lawyer must have completed, and passed all mandatory assessments in, a course that, when the lawyer began it, was approved by the Law Society as providing adequate instruction and assessment on the required subjects (which may be or include all or any of business management, professional conduct and client care, and trust account management and lawyers’ or, as the case may require, incorporated firms’, obligations in relation to trust accounts).
- “(5) The lawyer must have satisfied the Law Society that he or she is a suitable person to practise on his or her own account as a barrister and solicitor or as a barrister sole (as the case may be), having regard to all relevant considerations, including, without limitation,—
- “(a) the nature and extent of his or her experience practising in law, whether in or outside New Zealand; and
- “(b) if he or she intends to practise as a barrister and solicitor, how (whether in sole practice, as a partner in a firm, or otherwise) he or she intends to practise on his or her own account; and
- “(c) if he or she intends to practise as a barrister, how (whether with or without other barristers, employees, or both, or otherwise) he or she intends to practise on his or her own account; and
- “(d) the areas of law in which he or she intends to practise.
- “(6) The lawyer must have paid any levy imposed by the Council of the Law Society under section 74(1) of the Act and payable by the lawyer under section 74(2) of the Act in respect of his or her intended practice on his or her own account.

“12A Exception to legal experience requirement

- “(1) This regulation applies to an application to commence practice on his or her own account made by a lawyer who does not meet the requirement in regulation 12(3).

“(2) If satisfied that special circumstances apply, the Law Society may treat the application as if the lawyer met that requirement.

“**13 High Court’s leave to practise on own account**

“(1) For the purposes of section 30(1)(b) of the Act, subclauses (3) to (6) set out the grounds on which the High Court may grant a lawyer who applies for it on or after 1 October 2012 leave to practise on his or her own account.

“(2) Those grounds apply, without limitation, to a lawyer who before 1 October 2012 commenced practice on his or her own account as a barrister sole, and who on or after 1 October 2012 applies to the High Court for leave to practise on his or her own account as a barrister and solicitor.

“(3) The lawyer must either—

“(a) have had at least the required minimum amount of recent legal experience in New Zealand; or

“(b) have satisfied the Law Society that he or she is a suitable person to practise on his or her own account as a barrister and solicitor or as a barrister sole (as the case may be), having regard to all relevant considerations, including, without limitation, those in regulation 12(5)(a) to (d).

“(4) During the 2 years immediately before the date of commencing practice on his or her own account, the lawyer must have completed, and passed all mandatory assessments in, a course that, when the lawyer began it, was approved by the Law Society as providing adequate instruction and assessment on the required subjects (which may be or include all or any of business management, professional conduct and client care, and trust account management and lawyers’ or, as the case may require, incorporated firms’ obligations in relation to trust accounts).

“(5) The lawyer must have satisfied the High Court that he or she is a suitable person to practise on his or her own account as a barrister and solicitor or as a barrister sole (as the case may be), having regard to all relevant considerations, including, without limitation,—

“(a) the nature and extent of his or her experience practising in law, whether in or outside New Zealand; and

- “(b) if he or she intends to practise as a barrister and solicitor, how (whether in sole practice, as a partner in a firm, or otherwise) he or she intends to practise on his or her own account; and
 - “(c) if he or she intends to practise as a barrister, how (whether with or without other barristers, employees, or both, or otherwise) he or she intends to practise on his or her own account; and
 - “(d) the areas of law in which he or she intends to practise.
- “(6) The lawyer must have paid any levy imposed by the Council of the Law Society under section 74(1) of the Act and payable by the lawyer under section 74(2) of the Act in respect of his or her intended practice on his or her own account.
- “(7) If a lawyer applies to the High Court for leave to practise on his or her own account (whether as a barrister and solicitor, or as a barrister sole),—
- “(a) a copy of the application must be served on the Law Society; and
 - “(b) the Law Society is entitled to be heard on the application.

“13A High Court’s power to impose conditions on leave

These regulations do not limit or affect the High Court’s power under section 30(5) of the Act, when granting a lawyer leave to practise on his or her own account, to impose such conditions (if any) as it thinks proper.

“14 Applications based on courses before 1 October 2012

If the course referred to in regulation 12(4) or 13(4) was begun by the lawyer before 1 October 2012,—

- “(a) it is approved for the purposes of that regulation if, when begun, it provided for the purposes of regulation 12(1)(b) (as in force before 1 October 2012) adequate (in the Law Society’s view) instruction and examination on the duties of lawyers under the Act, and any regulations and rules made under it, that relate to the receipt and handling of client money and the operation of lawyers’ trust accounts; and
- “(b) ‘2 years’ in that regulation must be read as ‘3 years’.

“15 Special rules for legal profession in Australia

- “(1) Despite regulation 12, a person is to be treated as satisfying the requirements and other criteria set out in that regulation if he or she satisfies the Council of the Law Society that he or she is entitled to practise as a member of the legal profession, in 1 or more Australian jurisdictions, in a manner that is equivalent to, or materially the same as, practising on one’s own account in New Zealand as a barrister and solicitor, or as a barrister sole, as the case may be.
- “(2) Despite regulation 13(1) to (3), the High Court may grant a person leave to practise on his or her own account as a barrister and solicitor, or as a barrister sole, if the person satisfies the court that he or she is entitled to practise as a member of the legal profession, in 1 or more Australian jurisdictions, in a manner that is equivalent to, or materially the same as, practising on one’s own account in New Zealand as a barrister and solicitor, or as a barrister sole, as the case may be.
- “(3) However, subclauses (4) to (6) of regulation 13 apply when an application is made to the High Court for leave to be granted in accordance with subclause (2) of this regulation.”

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 October 2012, are made under the Lawyers and Conveyancers Act 2006. They amend the criteria or grounds (as the case may be) that the Lawyers and Conveyancers Act (Lawyers: Practice Rules) Regulations 2008 prescribe or set out for a lawyer to practise on his or her own account (whether

in sole practice, as a partner in a firm, or otherwise) as a barrister and solicitor or as a barrister sole. The key changes are—

- the experience, training, and suitable person criteria or grounds (as the case may be) are generally made the same for practice on one's own account as a barrister sole as they are for practice on one's own account as a barrister and solicitor:
- new definitions of legal experience, and of the required minimum amount of recent legal experience, recognising more clearly and consistently the required minimum amount of recent full-time or part-time qualifying experience:
- drafting improvements are made to the special rules for members of the legal profession in Australia.

The required minimum amount of recent legal experience has several key elements. The legal experience must occur in at least 3 (successive or separated) years in the 5 years immediately before the date of commencing practice on one's own account. All legal experience after the 40th hour in any week, if any, is excluded. The required total of 4830 hours can be achieved, for example, by sustaining an average of 35 hours for each of the 46 working weeks of 3 years.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 August 2012.
These regulations are administered by the Ministry of Justice.
