



Department
for Business
Innovation & Skills

**PROVISION OF SERVICES
REGULATIONS 2009: NATIONAL
APPLICABILITY OF LICENCES**

Consultation

FEBRUARY 2013

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A short consultation on proposed changes to the implementing legislation for the EU Services Directive to allow for national applicability of licences

1. The EU Services Directive 2006/123/EC (“the Directive”) was introduced principally to make it easier for service providers to sell their services anywhere in Europe, whether by establishing premises or operating temporarily across national borders. Most service sectors are covered, including, for example, accountants, builders, vets, travel agents, hairdressers and business consultants. There are also some important exceptions including, for example, financial and healthcare services. EU Member States were required to implement the Directive by 28 December 2009. In the UK the Directive was brought into force by the Provision of Services Regulations 2009 (S.I. 2009/2999) (‘the Regulations’). By agreement with the devolved administrations, the Regulations apply throughout the UK. BIS has been principally responsible for the implementation process in the UK and worked closely with other Government Departments, the devolved administrations, local authorities, regulators and others in tasks such as screening legislation for compliance with the Directive.

1.1 However, recently the European Commission has expressed its concern over a potential violation by the UK of the Directive in the area of national applicability of authorisations, or licences to provide services. Article 10(4) of the Directive specifies that a licence granted by a competent authority (including a local authority) should be effective nationwide unless there are good reasons otherwise. It states that a licence

“shall enable the provider to have access to the service activity, or to exercise that activity, throughout the national territory, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a certain part of the territory is justified by an overriding reason relating to the public interest..”

1.2 The Commission is concerned that the Regulations allow for ‘[an] exception for cases where the functions of the competent authority relate only to one country within the UK. For those cases, the authorisation granted is only valid for that particular part of the UK and nationwide validity cannot be ensured. There is no mechanism for recognition of authorisations delivered by another devolved administration.’

1.3 The Commission refers to Regulations 15(5) and 15(6), which implement Article 10(4). These Regulations state as follows:

(5) An authorisation granted by a competent authority under an authorisation scheme must enable the provider of the service to have access to the service activity, or to exercise that

activity, throughout the United Kingdom, including by means of setting up agencies, subsidiaries, branches or offices, except where an authorisation for each individual establishment or a limitation of the authorisation to a particular part or area of the United Kingdom is justified by an overriding reason relating to the public interest.

(6) In the case of a competent authority whose functions relate only to part of the United Kingdom, references in paragraph (5) to the United Kingdom are to that part of the United Kingdom.

1.4 The Commission's concern is that Regulation 15(6) means that there is no presumption that a licence issued by a competent authority whose functions relate only to part of the UK (such as England, or Scotland) will apply throughout the UK, and that this breaches Article 10(4) of the Directive. The Government believes that the Commission's concerns regarding this issue may be justified. As a result we are consulting on a proposal to amend the Services Regulations 2009 throughout the UK. The aim of the amendments, outlined in more detail below, will be to require that licences apply and are recognised nationwide (including licences issued by competent authorities whose functions relate to only part of the UK), unless there are good policy reasons otherwise.

Issued: 08/02/2013

Respond by: 08/03/2013

1.5 Enquiries to: Magdalena Zulli, Department for Business, Innovation and Skills, 3rd Floor Orchard 1, 1 Victoria Street, Westminster, London SW1H 0ET, 0207 215 2024, magdalena.zulli@bis.gsi.gov.uk

1.6 This consultation is relevant to: UK and EU businesses, local and competent authorities in England, Wales, Scotland and Northern Ireland.

2. The Consultation

2.1 The UK is a strong and vocal supporter of the Services Directive.

2.2 Services account for around 70% of both EU output and EU employment, yet account for relatively low shares of intra-EU trade (24%) and investment. The aim of the EU Services Directive is to help open up the internal market in services further. It is expected to increase services output in the UK, and so to increase employment opportunities and trade.

2.3 The Government's principal objective in reforming the Provision of Services Regulations 2009 is to ensure that the legal requirements set out in the EU Services Directive are met. The EU Commission has stated that it applies a 'zero tolerance' policy regarding breaches of "the unconditional obligations imposed by the Services Directive." Failing to comply with the Directive could result in the Commission imposing significant fines on the UK. The Localism Act (2011) allows for the possibility for all or some of a fine, to be reclaimed from an offending authority, although the Government's aim is of course to avoid any fines.

2.4 In addition, ensuring that the Regulations meet the requirements of the Directive will help to facilitate the provision of services throughout the UK, which will benefit UK based service businesses.

2.5 In drawing up the partial impact assessment to accompany this consultation, it has not been possible to quantify the likely cost saving to business or the number of businesses affected, as insufficient evidence is available.

Q1. Has the need to apply for an additional licence to open up an identical business elsewhere in the UK caused you to reconsider or defer expanding into new areas?

Q2. Please give an indication of costs incurred when applying for any additional licence to operate an identical business in other areas? As far as possible please distinguish between monetary costs and time/resources spent in meeting administrative requirements. If costs vary between competent authorities, please provide a range.

2.6 To achieve compliance with the Directive, the Government is therefore consulting on a proposal to amend the Regulations as regards national applicability of licences. This would result in a requirement that, when issuing 'personal' licences (that is, those that do not relate to specific premises), authorities issue licences that are legally valid throughout the UK instead of only being valid in their own area, with exceptions where there is a good policy reason. Regulation 15(5) already requires this, but the exception to that principle in Regulation 15(6) would be removed. Licences granted by authorities predicated on an inspection of specific premises, and/or relating to specific premises, would be unaffected.

2.7 There may be cases where the remit of the licensing authority is constrained by legislation to a specific territorial area (e.g. an English county), or a part of the UK (e.g. Scotland) and the relevant authority simply does not have the legal power to issue licences that apply nationwide. To address this we also propose to introduce a requirement that licensing authorities must recognise an equivalent licence granted by another authority, whether within the same part of the UK (for instance where both the authorities are English counties) or where they are located

in different parts, for example England and Scotland. The Regulations do not contain such a recognition requirement at present.

2.8 The Government does not believe it will be possible for the UK to achieve full compliance with the Services Directive without amending the Regulations.

2.9 There are already plans in place to carry out a minor technical amendment to the Regulations shortly in order to reflect the transfer of responsibility for providing the Point of Single Contact (or PSC) to the Government Digital Service's new website. The Government therefore proposes to use that legislative vehicle to make the necessary changes in respect of national applicability of authorisations.

Scope

2.10 These changes will affect what might be regarded as 'fit and proper person' or 'personal' licences. Where licences are predicated on an inspection of specific premises, or relate only to such premises, these clearly cannot have national applicability.

Initial concerns raised by competent and local authorities

2.11 Initial contacts with authorities have raised questions about how the proposals would operate in practice from an enforcement point of view. For instance, where complaints are made or enforcement is required under a licence issued in one part of the UK in relation to activities in another part, authorities have asked which licensing authority would be responsible. Questions have also focused on cases where there are differing local licence requirements (so that the licences are partly but not exactly equivalent) and how these requirements would be applied to licensees operating locally under licences issued elsewhere.

How does a competent authority know who is operating in their area when there is no national database?

2.13 When a service provider wants to operate in another area beyond the area controlled by the issuing licensing authority, they will be required register with the relevant authority in that area. This will allow the authority to know who is operating in their area, allow the authority to check the validity of the existing licence and allow the service provider to be informed of any additional local requirements with which they will have to comply in order to operate in the area.

2.14 It should be noted that this is a 'Registration' not an 'Authorisation' scheme.

What about complaints against a service provider who is licensed by another authority?

2.16 In these cases the general principle would be that the original licensing authority remains responsible for investigating complaints, regardless of where in UK the service was provided. This is broadly analogous with established arrangements where a consumer buys a service across national borders. For example, a consumer living in England may buy a service (whether electronically or in person) from a provider licensed by the relevant Scottish authority. This should be disclosed to the consumer prior to sale. Any complaints would be made to the licensing authority, in this case in Scotland. BIS is currently considering whether this solution will

require extension to the legal powers of competent authorities whose powers currently extend to only part of the UK.

Q3. Do you have any views on the extension to legal powers of competent authorities in the above circumstances? If so, please provide details.

What about when the scope of the licence differs between areas?

2.18 It is foreseeable, particularly in areas such as social care, that the services that a licence holder is permitted to perform differ between authorities (for example, between Scotland and England). In these cases, the registering competent authority should, during the registration process, explain to the licensee what activities the licensee may carry out in the registering authority's area, and how any additional requirements can be met. Until these are fully addressed and a new licence (or extension to the existing licence) granted allowing full access to the profession in the relevant area, the licence holder will only be permitted to operate within the parameters of their existing licence conditions as determined by the issuing competent authority.

Q4. Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.

The legal position of the UK

2.19 The UK is not unique within the EU in having devolved administrations. Many EU member states have federal structures or devolved regions. Examples of the former are Germany and Austria, with Italy and Spain being the latter.

2.20 These semi-autonomous regions have the power to enact their own legislation in certain areas and EU legislation foresees this. In fact, harmonising the various rules and regulations it is often the driving force behind EU legislation.

2.21 The common factor of all the various systems throughout other EU member states is that whatever the structure of the country, their legislation is underpinned by a common legal system. That is not the case in the UK where there are three distinct systems covering England and Wales, Scotland and Northern Ireland. This is further complicated by disparities between the education and social care systems in these areas. The consequence of this is that, often, licensing and registration systems are different, reflecting the systems they are designed to serve. This makes the national applicability of licences more difficult.

2.22 Article 10(4) of the Services Directive specifies that a licence granted by a competent authority (including a local authority) should be effective nationwide unless there are good reasons otherwise.

2.23 There may be valid reasons why national validity of a licence is impractical e.g. a licence to practice as a solicitor in England and Wales should not be legally valid in Scotland because the two legal systems are radically different. These instances will have to be notified to the EU Commission. In other cases, the 'default' position will be national applicability.

Q5. Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.

How the Government will take decisions

2.24 In order to avoid infraction and to make use of a suitable legislative vehicle schedule for the springtime of 2013, we will need to take decisions in early 2013.

2.25 Given that 'no change' is not a viable option, the need to act promptly so as to avoid an infraction case, and the fact that these proposals are not expected to be controversial, this consultation will run for **4 weeks**.

3. How to respond

- 3.1 When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation form and, where applicable, how the views of members were assembled.
- 3.2 You can reply to this Consultation online at <https://www.surveymonkey.com/s/M7VL2V8>
- 3.3 The Consultation Response form is available electronically at <https://www.gov.uk/government/consultations/provision-of-services-regulations-2009-national-applicability-of-licences-consultation> (until the consultation closes). The form can be submitted online/by email or by letter or fax to:
- Magdalena Zulli
Europe, Trade and International Directorate
Department for Business, Innovation and Skills
3rd Floor Orchard 1
1 Victoria Street
London
SW1H 0ET
Tel: 020 7215 2024
Fax: 020 7215 2234
Email: magdalena.zulli@bis.gsi.gov.uk
- 3.4 A list of those organisations and individuals consulted is in Annex 2. We would welcome suggestions of others who may wish to be involved in this consultation process.
- 3.5 You may make printed copies of this document without seeking permission.
- 3.6 Other versions of the document in Braille, other languages or audio recording are available on request.

4. Confidentiality & Data Protection

- 4.1 Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 4.2 In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5. Help with queries

5.1 Questions about the policy issues raised in the document can be addressed to:

Duncan Lawson
Europe Trade and International Directorate
Department for Business, Innovation and Skills
3rd Floor Orchard 1
1 Victoria Street
Westminster
London
SW1H 0ET
Tel: 020 7215 5465
Email: duncan.lawson@bis.gsi.gov.uk

The consultation principles are in Annex 1.

6. Consultation questions

Q1. Has the need to apply for an additional licence to open up an identical business elsewhere in the UK caused you to reconsider or defer expanding into new areas?

Q2. Please give an indication of costs incurred when applying for any additional licence to operate an identical business in other areas? As far as possible please distinguish between monetary costs and time/resources spent in meeting administrative requirements. If costs vary between competent authorities, please provide a range.

Q3. Do you have any views on the extension of legal powers to competent authorities in the above circumstances? If so, please provide details.

Q4. Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.

Q5. Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.

6.1 Please also read the impact assessment which is attached in Annex 3.

7. What happens next?

- 7.1 Following the close of the consultation period, the Government will publish all of the responses received, unless specifically notified otherwise (see data protection section above for full details).
- 7.2 The Government will, within 3 months of the close of the consultation, publish the consultation response. This response will take the form of decisions made in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken. This document will be published on the BIS website with paper copies available on request.

Annex 1: Consultation principles

The principles that Government departments and other public bodies should adopt for engaging stakeholders when developing policy and legislation are set out in the consultation principles.

<http://www.cabinetoffice.gov.uk/sites/default/files/resources/Consultation-Principles.pdf>

Comments or complaints on the conduct of this consultation

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

John Conway,
BIS Consultation Co-ordinator,
1 Victoria Street,
London
SW1H 0ET

Telephone John on 020 7215 6402
or e-mail to: john.conway@bis.gsi.gov.uk

However if you wish to comment on the specific policy proposals you should contact the policy lead (see section 6).

Annex 2: List of Individuals/Organisations consulted

AAALA

ABE

Aberdeen City Council

Aberdeenshire Council

ACCA

Adur and Worthing Councils

Allerdale Borough Council

Amber Valley Borough Council

Angus Council

Animal Health

Animal Health and Welfare, Scottish Government

Antrim Borough Council

Architects Registration Board

Ards Borough Council

Argyll & Bute Council

Armagh City & District Council

Arun District Council

Ashfield District Council

Ashford Borough Council

ASPD

Association of Law Costs Draftsmen

Aylesbury Vale District Council

Babergh District Council

Ballymena Borough Council

Ballymoney Borough Council
Banbridge District Council
Bar Standards Board
Barnet London Borough Council
Barnsley Council
Barrow Borough Council
Basildon Borough Council
Basingstoke and Deane Borough Council
Bassetlaw District Council
Bath & North East Somerset Council
Bedford Borough Council
Belfast City Council
Belfast Health and Social Care Trust
BESCA
Birmingham City Council
BL Authority
Blaby District Council
Blackburn with Darwen Borough Council
Blackpool Council
Blaenau Gwent County Borough Council
Bolsover District Council
Bolton Council
Borough Council of King's Lynn and West Norfolk
Borough Council of Wellingborough
Boston Borough Council

Bournemouth Borough Council

Bracknell Forest Council

Bradford Metropolitan District Council

Braintree District Council

BRE

Breckland Council

Brent Council

Brentwood Borough Council

Bridgend County Borough Council

Brighton & Hove City Council

Bristol City Council

British Waterways Board

Broadland District Council

Bromsgrove District Council

Broxbourne Borough Council

Broxtowe Borough Council

Buckinghamshire County Council

Burnley Borough Council

Bury Council

CADW

Caerphilly County Borough Council

Calderdale Council

Cambridge City Council

Cambridgeshire County Council

Cannock Chase Council

Canterbury City Council

CARB

Care and Social Services Inspectorate Wales

Care Commission

Care Inspectorate

Care Quality Commission

Carlisle City Council

Carmarthenshire County Council

Carrickfergus Borough Council

Castle Point Borough Council

Castlereagh Borough Council

CCEA

CEFAS

Central Bedfordshire Council

Ceredigion County Council

Charnwood Borough Council

Chelmsford City Council

Cheltenham Borough Council

Cherwell District Council

Cheshire East Council

Cheshire West & Chester Council

Chesterfield Borough Council

Chichester City Council

Chiltern District Council

Chorley Borough Council

Christchurch City Council
CIAT
CIBSE
City and County of Cardiff
City and County of Swansea
City & Guilds
City of London Corporation
City of York Council
Civil Aviation Authority
Clackmannanshire Council
CLAE
Claims Management Regulation
Colchester Borough Council
Coleraine Borough Council
Companies House
Construction Industry Council
Conwy County Borough Council
Cookstown District Council
Copeland Borough Council
Corby Borough Council
Cornwall Council
Cotswold District
Council for Licenced Conveyancers
Council of the Isles of Scilly
Countryside Council for Wales

Coventry City Council
Craigavon Borough Council
Craven District Council
Crawley Borough Council
Crothers, Amanda (Northern Irish Government)
Cumbria County Council
Dacorum Borough Council
DARD
Darlington Borough Council
Dartford Borough Council
Daventry District Council
DCALNI
DCELLS
DCLG
DCMS
DCSF
Denbighshire County Council
DENI
Derby City Council
Derbyshire County Council
Derbyshire Dales District Council
Derry City Council
DETI NI
Devon County Council
DfE

DFPNI

DOENI

Doncaster City Council

Dorset County Council

Dover District Council

Down District Council

Driving Standards Agency

Dudley Metropolitan Borough Council

Dumfries & Galloway Council

Dundee City Council

Dungannon and South Tyrone Borough

Durham County Council

DVLA

East Ayrshire Council

East Cambridgeshire District Council

East Devon District Council

East Dorset District Council

East Dunbartonshire Council

East Hampshire District Council

East Herts District Council

East Lindsey District Council

East Lothian Council

East Northamptonshire Council

East Renfrewshire Council

East Riding of Yorkshire Council

East Staffordshire Borough Council

East Sussex County Council

Eastbourne Borough Council

Eastleigh Borough Council

ECMK Ltd

Eden District Council

Edinburgh City Council

Elmbridge Borough Council

Elmhurst

Environment Agency

Epping Forest District Council

Epsom and Ewell Borough Council

Erewash Borough Council

Essex County Council

Exeter City Council

Faculty of Advocates

Falkirk Council

Fareham Borough Council

Farriers Registration Council

Fenland District Council

Fermanagh District Council

Fife Council

Flintshire County Council

Food Standards Agency

Forest Heath District Council

Forest of Dean District Council
Fylde Borough Council
Gas Safe Register
Gateshead Council
Gedling Borough Council
Glasgow City Council
Gloucester City Council
Gloucestershire County Council
Gosport Borough Council
Gravesham Borough Council
Great Yarmouth
Greater London Authority
Greenwich London Borough Council
Guildford Borough Council
Gwynedd Council
H&VCA Ltd
Halton Borough Council
Hambleton District Council
Hampshire County Council
Harborough District Council
Haringey Council
Harlow District Council
Harrogate Borough Council
Hart District Council
Hartlepool Borough Council

Hastings Borough Council
Havant Borough Council
Herefordshire Council
Hertfordshire County Council
Hertsmere Borough Council
High Peak Borough Council
Highland Council
Hinckley and Bosworth Borough Council
Historic Scotland
Home Office
Horsham District Council
HSE
Huntingdonshire District Council
Hyndburn Borough Council
ICAEW
ICAS
Information Commissioner's office
Insolvency Service
Institute of Actuaries
Institute of Legal Executives
Inverclyde Council
Institute of Licensing
IPA
Ipswich Borough Council
Isle of Anglesey County Council

Isle of Wight Council

Kent County Council

Kettering Borough Council

Kingston Royal Borough Council

Kingston upon Hull City Council

Kirklees Council

Knauf

Knowsley Metropolitan Borough Council

Lambeth London Borough Council

Lancashire County Council

Lancaster City Council

Larne Borough Council

Law Society of Northern Ireland

Law Society of Scotland

Leeds City Council

Leicester City Council

Leicestershire County Council

Lewes District Council

Lewisham London Borough Council

Lichfield City Council

Limavady Borough Council

Lincoln City Council

Lincolnshire County Council

Lisburn City Council

Liverpool City Council

Local Government Association

London Borough of Barking and Dagenham Council

London Borough of Bexley Council

London Borough of Bromley Council

London Borough of Camden Council

London Borough of Croydon Council

London Borough of Ealing Council

London Borough of Enfield Council

London Borough of Hackney Council

London Borough of Hammersmith and Fulham Council

London Borough of Harrow Council

London Borough of Havering Council

London Borough of Hillingdon Council

London Borough of Hounslow Council

London Borough of Islington Council

London Borough of Redbridge Council

London Borough of Southwark Council

London Borough of Sutton Council

London Borough of Tower Hamlets Council

Luton Borough Council

Magherafelt District Council

Maidstone Borough Council

Maldon District Council

Malvern Hills District Council

Manchester City Council

Mansfield District Council

Marine Management Organisation

Marine Scotland

McConnell, Andrew (Scottish Government)

Medway Council

Melton Borough Council

Mendip District Council

Merthyr Tydfil County Borough Council

Merton Council

Mid Devon District Council

Mid Suffolk District Council

Mid Sussex District Council

Middlesbrough Council

Midlothian Council

Milton Keynes Council

Mole Valley District Council

Monmouthshire County Council

Moyle District Council

NALEO

NAPIT

NARIC

National Energy Services Ltd

National Proficiency Tests Council

Natural England

Neath Port Talbot County Borough Council

New Forest District Council

Newark and Sherwood District Council

Newcastle upon Tyne City Council

Newcastle-under-Lyme Borough Council

Newham London Borough Council

Newport City Council

Newry & Mourne District Council

Newtownabbey Borough Council

NIAUR

Norfolk County Council

North Ayrshire Council

North Devon Council

North Dorset District Council

North Down Borough Council

North East Derbyshire District Council

North East Lincolnshire Council

North Hertfordshire District Council

North Kesteven District Council

North Lanarkshire Council

North Lincolnshire Council

North Norfolk District Council

North Somerset Council

North Tyneside Council

North Warwickshire Borough Council

North West Leicestershire District Council

North Yorkshire County Council

Northampton Borough Council

Northamptonshire County Council

Northern Health and Social Care Trust

Northern Ireland Environment Agency

Northern Ireland Housing Executive

Northern Ireland Tourist Board

Northgate

Northumberland County Council

Norwich City Council

Nottingham City Council

Nottinghamshire County Council

Nuneaton and Bedworth Borough Council

Oadby and Wigston Borough Council

Office of Fair Trading

Office of the Registrar of Independent Schools

Ofgem

Ofqual

Ofsted

Ofwat

Oldham Council

Omagh District Council

Orkney Islands Council

Oxford City Council

Oxfordshire County Council

Pembrokeshire County Council

Pendle Borough Council

Perth & Kinross Council

Peterborough City Council

Plymouth City Council

Poole Borough Council

Portsmouth City Council

Postcomm

Powys County Council

Preston City Council

Purbeck District Council

Quidos

Reading Borough Council

Redcar and Cleveland Borough Council

Redditch Borough Council

Reigate and Banstead Borough Council

Rhondda Cynon Taf County Borough Council

Ribble Valley Borough Council

Richmond upon Thames London Borough Council

Richmondshire District Council

RICS

Rochdale Metropolitan Borough Council

Rochford District Council

Rossendale Borough Council

Rother District Council

Rotherham Metropolitan Borough Council

Royal Borough of Kensington and Chelsea Council

Royal College of Veterinary Surgeons

RQIA

Rugby Borough Council

Runnymede Borough Council

Rushcliffe Borough Council

Rushmoor Borough Council

Rutland County Council

Ryedale District Council

Salford City Council

Sandwell Metropolitan Borough Council

Scarborough Borough Council

Scotland Office

Scottish Borders Council

Scottish Building Standards

Scottish Environment Protection Agency

Scottish Ministers

Scottish Natural Heritage

Sedgemoor District Council

Sefton Metropolitan Borough Council

Selby District Council

Sevenoaks District Council

Sheffield City Council

Shepway District Council

Shetland Islands Council

Shropshire County Council

Slough Borough Council

Solicitors Regulation Authority

Solihull Metropolitan Borough Council

Somerset County Council

South Ayrshire Council

South Bucks District Council

South Cambridgeshire District Council

South Derbyshire District Council

South Eastern Health and Social Care Trust

South Gloucestershire Council

South Hams District Council

South Holland District Council

South Kesteven District Council

South Lakeland District Council

South Lanarkshire Council

South Norfolk District Council

South Northamptonshire Council

South Oxfordshire District Council

South Ribble Borough Council

South Somerset District Council

South Staffordshire Council

South Tyneside Council

Southampton City Council

Southend-on-Sea Borough Council
Southern Health and Social Care Trust
Spelthorne Borough Council
SQA
St Albans City and District Council
St Edmundsbury Borough Council
St Helens Metropolitan Council
Stafford Borough Council
Staffordshire County Council
Staffordshire Moorlands District Council
Stevenage Borough Council
Stirling Council
Stockport Metropolitan Borough Council
Stockton-on-Tees Borough Council
Stoke-on-Trent City Council
Strabane District Council
Stratford-on-Avon District Council
Streetworks Qualification Register
Stroma
Stroud District Council
Suffolk Coastal District Council
Suffolk County Council
Sunderland City Council
Surrey County Council
Surrey Heath Borough Council

Surveyors Ombudsman Service
Swale Borough Council
Swindon Borough Council
Tameside Metropolitan Borough Council
Tamworth Borough Council
Tandridge District Council
Taunton Deane Borough Council
Teignbridge District Council
Telford and the Wrekin Council
Tenants Services Authority
Tendring District Council
Test CA BusinessLink
Test Valley Borough Council
Tewkesbury Borough Council
Thanet District Council
The Approvals Team
The Moray Council
The Property Ombudsman Limited
Three Rivers District Council
Thurrock Council
Tonbridge and Malling Borough Council
Torbay Borough Council
Torfaen County Borough Council
Torrington District Council
Trafford Council

Tunbridge Wells Borough Council
Uttlesford District Council
Vale of Glamorgan Council
Vale of White Horse District Council
VOSA
Wakefield Metropolitan Borough Council
Walsall Metropolitan Borough Council
Waltham Forest London Borough Council
Wandsworth Borough Council
Warrington Borough Council
Warwick District Council
Warwickshire County Council
Watford Borough Council
Watkins, James (Welsh Government)
Waveney District Council
Waverley Borough Council
Wealden District Council
Welwyn Hatfield Borough Council
West Berkshire District Council
West Devon County Council
West Dorset District Council
West Dunbartonshire Council
West Lancashire Borough Council
West Lindsey District Council
West Lothian Council

West Oxfordshire District Council

West Somerset District Council

West Sussex County Council

Western Health and Social Care Trust

Western Isles Council

Westminster City Council

Weymouth and Portland Borough Council

Wigan Council

Wiltshire County Council

Winchester City Council

Windsor and Maidenhead Royal Borough Council

Wirral Borough Council

Woking Borough Council

Wokingham Borough Council

Wolverhampton City Council

Worcester City Council

Worcestershire County Council

Wrexham County Borough Council

Wychavon District Council

Wycombe District Council

Wyre Borough Council

Wyre Forest District Council

Annex 3: Impact Assessment of the consultation

Regulatory Triage Assessment	
Title of regulatory proposal	Amendment to Provision of Services Regulations 2009
Lead Department/Agency	BIS
Expected date of implementation	Q1 2013 SNR 6
Origin	EU
Date	29/01/2013
Lead Departmental Contact	Elizabeth Anastasi
Departmental Triage Assessment	Deregulation (fast track)

Rationale for intervention and intended effects

The European Commission has indicated that the UK may be in breach of part of the Services Directive 2006. The intention therefore is to amend the Provision of Services Regulations 2009 to ensure compliance with the Directive. The main licences under scope for this change are those that relate to authorising 'fit-and-proper-persons' – those where the obligations fall on the individual rather than premises, such as lawyers or doctors. The Services Directive specifies that a licence granted by a competent authority (including a local authority) should be effective nationwide unless there are good reasons otherwise. Competent authority in this context refers to the sub-national bodies that are responsible for authorising these licences.

In particular, the Commission has highlighted that individuals or businesses that require these licences and who wish to operate in different locations within the UK, may be required

to apply for the same licence under multiple competent authorities. At present, authorisation for these licences from one competent authority may only relate to one nation within the UK (England, Wales, Scotland or Northern Ireland), rather than, once issued, being automatically recognised nationwide. There is currently no mechanism for recognition of authorisations delivered by another devolved administration. This also could apply to mutual recognition of authorisations between local authorities as well as with Devolved Administrations.

The change in regulations will formalise the process of mutual recognition of authorisations between competent authorities within the UK and hence remove potentially significant unnecessary administrative burden for both individuals and businesses.

The intended impact of the change is to further streamline and reduce the administrative burden on individuals and businesses who require these licences and who want to operate within the boundaries of multiple competent authorities within the UK.

Viable policy options (including alternatives to regulation)

'Do nothing': given that the UK could well be infracted by the European Union for non-compliance of the Services Directive 2006, 'do nothing' is not considered to be a viable option.

'Amendment of regulations': In this instance, amendment to the Provision of Services Regulations 2009 to enable mutual recognition of relevant authorisations to take place (by competent authorities in both local authorities and devolved administrations) is considered to be the only ('do minimum') option.

Initial assessment of business impact

The main affected parties from this change in the regulations are expected to be:

- individuals and businesses, who are expected to benefit from the change through a reduction in administrative burden; and
- competent authorities (primarily local authorities and devolved administrations), for whom the impact should be neutral (covered in more detail below).

At present, it is unclear the extent of individuals and/or businesses that might be affected by this change and the scale of the cost savings that could be incurred. However, a number of questions are being proposed within the consultation to help elicit the necessary information. Following the consultation, the final Impact Assessment for this proposed change in regulation will incorporate any new evidence received.

The following discussion highlights the broad areas for consideration when assessing the potential impact on affected groups.

Range of impact

At present it is not possible to form a view about the range of the impact – it is not clear how many individuals or businesses seeking the types of licences considered here are affected by the change. Not all individuals or businesses may wish to operate across a wide geographical area - businesses may be single site only, or may chose to only operate branches within the boundaries of one competent authority.

Potential costs to individuals or businesses:

There are expected to be no additional (one-off or ongoing, monetised or non-monetised) costs for individuals or businesses from this amendment. As highlighted above, this change is deregulatory and should remove administrative burden from those looking to operate across a wide geographical area.

Potential benefits to individuals or businesses:

The main source of benefit is expected to come from the avoided costs associated with the reduction in administrative costs of gaining authorisation from multiple competence authorities. Once an individual or business has gained the required licence from one competent authority, there should be no further costs incurred for the duration of the licence or the activity covered.

The main calculation for this benefit would be the number of individuals or businesses affected (i.e. those that want to operate within the boundaries of multiple competent authorities) multiplied by the cost of applying for licences (direct in terms of fees, and indirect in terms of, for example, resource required).

This calculation would potentially be affected by variation in the cost of the licence that is being applied for and the number of geographical areas concerned (i.e. the number of competent authorities individuals or businesses choose to apply to).

Information on both costs and numbers affected are being sought as part of the consultation exercise, where respondents have been asked to distinguish between the potential costs attached to different types of licences (as far as possible) and whether there may be a disproportionate benefit for SMEs.

There is also a broader potential indirect benefit through the reduction of barriers to competition in each geographical market. By reducing the administrative burden to operate within each additional area, businesses may chose to operate across a wider geographical location, hence increasing competitive pressure on incumbents.

Impact on competent authorities

A number of assumptions must underpin the assessment of the impact on competent authorities:

- 1) Competent Authorities must not make a profit from the services that they provide – as such revenues must only cover the costs of providing the service in question;
- 2) The provision of licence-issuing services is demand led – i.e. that this activity of the competent authorities is staffed according to expected demand.

The removal of this regulatory burden is therefore expected to have a neutral impact on competent authorities as the reduction of demand for issuing of licences will be matched by an equal amount of resources required.

One-in, One-out status

This proposal is likely to be out-of-scope for One-in, One-out, as this is this ensuring minimum regulatory compliance with an EU Directive.

Rationale for Triage rating

As highlighted above, an amendment to the regulations is required in order for the UK to remain compliant with EU Directives. Further, the measure is deregulatory and should simplify procedures for individuals/businesses looking to operate across multiple jurisdictions. As such the gross cost for business falls under the threshold required for a more comprehensive assessment.

The consultation will also provide greater detail on the potential cost savings (benefits) to businesses that might be achievable. On completion of the consultation, a providing that further information has been forthcoming, the section above regarding potential costs and benefits will be revised.

Departmental signoff (SCS): Peter Stephens (ETID)
February 2013

Date: 1

Economist signoff (senior analyst): Michael Williams (ETID)
Date: 31st January 2013

Annex 4: consultation response form

Please note that this response form is also available as a fully interactive online version at <https://www.surveymonkey.com/s/M7VL2V8>

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 08/03/2013

Name:

Organisation (if applicable):

Address:

Please return completed forms to:

Magdalena Zulli, Department for Business, Innovation and Skills, Europe Trade and International Directorate, 3rd Floor Orchard 1, 1 Victoria Street, Westminster, London SW1H 0ET

Telephone: 020 7215 2024

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Please indicate which of the options listed below best describes you as a respondent.

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local Government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe)

Question 1

Has the need to apply for an additional licence to open up an identical business elsewhere in the UK caused you to reconsider or defer expanding into new areas?

Comments:

Question 2

Please give an indication of costs incurred when applying for any additional licence to operate an identical business in other areas? As far as possible please distinguish between monetary costs and time/resources spent in meeting administrative requirements. If costs vary between competent authorities, please provide a range.

Comments:

Question 3

Do you have any views on the extension to legal powers of competent authorities in the above circumstances? If so, please provide details.

Comments:

Question 4

Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.

Comments:

Question 5

Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.

Comments

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

Thank you for taking the time to let us have your views on this consultation. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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