



Department  
for Business  
Innovation & Skills

**UK GOVERNMENT  
CONSULTATION RESPONSE**

**On proposed changes to the  
implementing legislation for  
the EU Services Directive to  
allow for the national  
applicability of licences**

AUGUST 2013

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# Executive Summary

As detailed in the original consultation (BIS/13/571), the EU Commission has expressed concern over a potential violation by the UK of the EU Directive on Services in the Internal Market (2006/123/EC) (“the Directive”). The Commission’s concern relates to the national applicability of authorisations, or licences to provide services.

Article 10(4) of the Directive requires that a licence granted by a competent authority (including a local authority) shall 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.”

The Directive was implemented in the UK by the Provision of Services Regulations 2009 (S.I. 2009/2999) (“the Regulations”). Regulations 15(5) and 15(6) 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."

The Commission’s concern is 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.’* Specifically, the Commission has pointed out that, under Regulation 15(6), there is no presumption that a licence issued by a competent authority whose functions relate only to one part of the UK (such as England, Wales, Scotland or Northern Ireland), will apply throughout the UK. In the Commission’s view this breaches Article 10(4) of the Directive, which does not contain an exception for this situation.

On the basis that the Commission’s concerns may be justified, the Government consulted on a proposal to amend the Services Regulations 2009 throughout the UK. The proposal

for consultation was that all licences issued by competent authorities should apply and be recognised nationwide unless there were good policy reasons otherwise.

Having considered the responses received, the Government has reflected on the scope of the changes necessary to address the Commission's concerns. We have concluded that it will be appropriate to do so by implementing a form of mutual recognition, under which all licences issued by competent authorities whose functions relate either to the entire UK or to at least one of the four parts of it listed above, shall be valid throughout the UK. There will be important exceptions on the grounds of overriding public interest in appropriate cases. In line with the vast majority of responses, it will not be practicable to extend the mutual recognition principle to smaller parts of the UK (e.g. between District Councils in England), and in any case we do not understand the Commission's concerns as encompassing this issue.

This will allow local competent authorities the flexibility to introduce licensing conditions which reflect particular local conditions. It will also allow the UK to address the EU Commission's) concerns pragmatically without over-implementing or gold-plating which may potentially cause significant operational difficulties for authorities and costs for business.

# Summary of Responses

1. The consultation received 63 responses. Of these, 26 responses contained detailed comments on some or all of the consultation questions while 9 responses were 'nil' responses.
2. The respondents included local government bodies (making up around 50% of the respondents), central government bodies, regulators as well as medium and large business representatives.
3. Below is a breakdown of the responses to each of the questions, a summary of the comments and submissions, and the Government responses.
4. **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?**

|            | Yes | No/Not applicable | Total |
|------------|-----|-------------------|-------|
| Number     | 1   | 53                | 54    |
| Percentage | 1   | 99                | 100   |

## Commentary

5. One respondent stated that legal professions in Scotland, such as solicitors, may have been impeded but that the nature of the different law and legal systems makes the existing intra-UK agreements, which are based on statute (the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 and the Admission as a Solicitor (Scotland) Regulations 2001), necessary and unavoidable. Given this level of response, it does not appear that the current licensing arrangements were causing any great difficulty to domestic service providers.
6. **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.**

## Commentary

7. The vast majority of respondents provided a nil/not applicable response to this question. One respondent estimated the costs to range between £150 and £250 for applicants and between approximately £50 and £200 for councils.
8. The lack of responses may reflect the fact that the current licensing regime does not appear to cause undue problems and that the real effect of the planned changes is likely to be small.

**9. 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.**

|            | Yes | No/Skipped question | Total |
|------------|-----|---------------------|-------|
| Number     | 34  | 20                  | 54    |
| Percentage | 63  | 37                  | 100   |

Commentary

10. Most respondents expressed a negative view on the extension to legal powers of competent authorities. Many expressed concerns regarding how the proposals would work in practice within the independent and different legal systems which exist in England/Wales, Scotland and Northern Ireland. Other issues raised included the negative effect the proposals would have on local democracy, concerns over the proposal that the consideration of complaints should reside with the original licensing body and concerns over the potential further burdens the proposals will place on local authorities which may, in turn, be passed onto business.

11. One respondent welcomed the proposals as benefiting small mobile business and helping to promote fair competition.

**12. Question 4: Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.**

|            | Yes | No/Skipped question | Total |
|------------|-----|---------------------|-------|
| Number     | 36  | 18                  | 54    |
| Percentage | 67  | 33                  | 100   |

Commentary

13. A considerable number of respondents expressed their concern that the proposed approach to national could potentially lead to licence applicants targeting authorities with either the cheapest scheme, or more significantly, the easiest criteria/assessment of suitability (classified as a race to the bottom). Other respondents expressed the opinion that the proposals needed to be supported by the creation of a national database. A number of respondents also referred to the lack of national standards and guidelines/uniformity and that this could cause difficulties when implementing the proposed changes.

14. Some respondents re-emphasised the problematic aspect of the different legal systems across the UK.

15. The creation of unintended costs for local and/or competent authorities was mentioned by some respondents. One respondent claimed that significant costs would be associated with a change to their regime, including the revision of a £150 million Service Concession Agreement.

**16. Question 5: Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.**

Commentary

17. The following personal licences were most frequently mentioned:

- Licences under the Licensing (Scotland) Act 2005
- Licences under the Civic Government (Scotland) Act 1982, including Street Traders, some Second Hand Dealers, Window Cleaners, Itinerant Metal Dealer's Licences
- Personal Licences in terms of the Alcohol (Scotland) Act 1976
- Licences for House to House Collections (House to House)
- Personal Licences issued under the Licensing Act 2003

18. Private Hire, Hackney Carriage and Tax Driver Licences were also frequently mentioned. However, these licences are already out of scope of the Directive.

Government Response

19. Having considered the responses the Government intends to introduce a form of mutual recognition for licenses granted in one part of the UK to be recognised in others. However, there will be important exceptions on the grounds of overriding public interest.

20. As highlighted by the vast majority of respondents, it will not be practicable to extend the mutual recognition principle to smaller regions within the UK (for example between District Councils in England). Consequently, the mutual recognition principle will be limited to the four principal parts of the UK (for example England and Wales to Scotland or Northern Ireland), which will also address the European Commission's cross-border concerns.

**21. Question 6: Do you have any other comments that might aid the consultation process as a whole?**

Commentary

22. Several respondents re-emphasised the need to establish a national database for all authorities. Other respondents claimed that without knowing which licensing regimes exactly would be affected by the proposals the potential to miss serious risks to the public or legal ramifications exists. Respondents also mentioned that without being provided with a concrete list of licences affected they are not able to evaluate or predict the potential administrative costs and burdens on their authorities.

23. Some respondents stated that due to overriding reasons of public interest, e.g. in the field of social care, national applicability should not apply to specific licences issued by them.
24. One respondent claimed that the consultation had not distinguished adequately between the applicability of licences across authorities in the same part of the UK (e.g. within Scotland) and between authorities in different parts of the UK (e.g. between Scotland and England within the UK). Another respondent claimed that the proposed changes could lead to increased licensing fees due to the additional liability on the licensing authority.

### Government response

25. The Government does not propose to set up a national licence database. Such a database would probably be expensive to implement, would require a nationally competent body to administer it and would very likely fall out of date through receiving incomplete or inaccurate information.
26. The Government proposes that the changes will apply only to “personal” licences rather than licences that relate to specific premises, and that it is for competent authorities to determine which of the licences they issue fall into this category. Authorities have the power to issue a wide variety of licences covering their geographical area. It would have been impracticable for the Government to provide an exhaustive list of licences affected by the proposed changes. The pragmatic solution was to clearly indicate that only "Personal" or "Fit and proper person" licences will be affected by the proposals and allow the authorities to make their own assessment of their own licences.
27. The mutual recognition principle to be introduced will allow exceptions on the grounds of overriding public interest.

# Next Steps

## Proposed legislative changes

28. The Government intends to amend The Provision of Services Regulations 2009 by introducing a mutual recognition principle under which all licences issued by competent authorities whose function relate to either the entire UK or to one or more of the four main parts of it will be valid throughout the UK. However, there will be room for exceptions on the grounds of overriding public interest.
29. The responses to the consultation have clearly shown that amending the Regulations will be complicated and take some time. There are numerous different licensing and regulatory bodies in different areas of the UK. Many of these are governed by statutes which limit the geographical competence of the authority to a particular part of the UK. It is therefore likely that, in addition to introducing the above-mentioned mutual recognition principle, there will be consequential amendments to primary legislation.
30. We had originally hoped to publish the draft amendments with this response, but given the complexity of the amendments we have decided to publish this response now to allay the concerns of authorities, particularly local councils. We will also engage directly with the authorities whose licensing regimes are potentially affected by the planned changes and publish draft amendments when we have considered the full implications of the consequential amendments.

# **Annex A – List of questions in the consultation document**

- 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?**
- 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.**
- 3. Do you have any views on the extension to legal powers of competent authorities in the above circumstances? If so, please provide details.**
- 4. Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.**
- 5. Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.**
- 6. Do you have any other comments that might aid the consultation process as a whole?**

# Annex B – List of respondents (Alphabetical Order)

1. Aberdeen City Council
2. Aberdeenshire Council
3. Association of Chartered Certified Accountants (ACCA)
4. Bristol City Council
5. Broxtowe Borough Council
6. Care Inspectorate
7. Chartered Accountants Regulatory Board
8. Chartered Legal Executives (CILEX)
9. Construction Industry Council (CIC)
10. Conwy County Borough Council
11. Council for the Curriculum Examinations and Assessment (CCEA)
12. Department for Communities and Local Government (DCLG)
13. Department for Education (DfE)
14. Department for Environment, Food and Rural Affairs (Defra, Livestock Identification team)
15. Driver and Vehicle Agency (DVA)
16. Driving Standards Agency (DSA) (PART OF DFT)
17. Dungannon and South Tyrone Borough Council
18. East Lothian Council
19. Fish Health Inspectorate, Cefas
20. Gas Safe Register
21. Glasgow City Council
22. Health and Safety Executive (HSE)
23. Hinckley & Bosworth Borough Council
24. Insolvency Service
25. Institute of Chartered Accountants England and Wales (ICAEW)
26. Institute of Licensing (IoL)
27. Islington Council

28. Kirklees Council
29. Law Society Scotland
30. Local Government Association (LGA)
31. London Borough Redbridge
32. Midlothian Council
33. Milton Keynes Council
34. Ministry of Justice (Claims and Regulations Unit)
35. National Association of Licensing and Enforcement Officers (NALEO)
36. Newport City Council
37. Northampton Borough Council
38. Nuneaton & Bedworth Borough Council
39. Office of Fair Trading
40. Ofgem
41. Ofqual
42. Ofsted
43. Purbeck District Council
44. Rushmoor Borough Council
45. Scottish Government
46. Scottish Qualifications Authority (SQA)
47. Senior Traffic Commissioner Support Office
48. Solicitors Regulation Authority
49. South Eastern Health Trust
50. South Lanarkshire Council
51. Staffordshire County Council
52. Stoke-on-Trent City Council
53. Tamworth Borough Council
54. Tendring District Council
55. The Moray Licensing Board
56. The Regulation and Quality Improvement Authority (RQIA)
57. Torridge District Council
58. Trafford Council
59. Utility Regulator (NI)
60. Wellingborough Council

61. West Lancashire Borough Council

62. West Lothian Council

63. Wychavon District Council

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