



Department for
Business & Trade

Provision of Services Regulations 2009 (Retained EU Law) Reforms Consultation

Response form

This consultation survey is to be read alongside the consultation document and seeks your views on the Government's proposed reforms to the Provision of Services Regulations 2009, under the Retained EU Law programme. The survey also seeks your views on the impacts of the proposed changes, to ensure that our Impact Assessment correctly reflects the likely costs and benefits of any changes.

Personal information (i.e. your name, position in your organisation and email address) will only be accessed by researchers and policy officials leading on this engagement exercise, and the information you provide will be treated in the strictest confidence and in accordance with the Data Protection Act 2018 and the GDPR. Please click this link for more information: [DBT Privacy Notice](#).

Respond by: 7 November 2023 (23:59)

Email completed response form to: servicesregulations@businessandtrade.gov.uk

General questions

(Questions for all)

1. You can choose whether we can share your responses anonymously, or with your organisation named (although any personal details will be kept confidential). Aggregated and anonymised responses may be shared across government departments and in the public domain. If you are happy for your organisation to be named, you can opt for this to be across DBT, wider government, or the public domain. Which option would you prefer? My organisation is happy to be named when sharing findings...

Across DBT and other Government departments, the devolved administrations AND in the public domain (please note we would check you were content before publishing any findings in which your organisation could be identified)

2. What is your name? *CILEx Regulation (referred to as CRL in answers)*
3. What is your email address? *david.pope24@cilexregulation.org.uk*
4. What is your organisation? *Legal Sector Regulator*
5. What type of organisation is this?

An independent competent authority

6. Would you be happy for your response to be published in full?
Yes
7. Are you happy for your response to be quoted in any potential future publications relating to the Regulations, such as an Impact Assessment?
Yes
8. How did you hear about this consultation?

Email from this department & Ministry of Justice

(Questions for competent authorities)

9. Are you responsible for an authorisation scheme?

An authorisation scheme is defined in the Regulations as “any arrangement which in effect requires the provider or recipient of a service to obtain the authorisation of, or to notify, a competent authority in order to have access to, or to exercise, a service activity.”

Yes

- *Chartered Legal Executive*
- *CILEX Practitioner*

10. Do you consider yourself an authority with regulatory functions in relation to mandatory requirements, other than an authorisation scheme?

Mandatory requirements are obligations or conditions that would, if not complied with, prevent a service provider from having access to or exercising a particular service activity and prohibitions or other limitations that restrict access to or the exercise of a particular service activity by a service provider.

No

11. Are you responsible for any voluntary schemes?

Voluntary schemes include schemes where authorisation or notification is not required in order to provide a service activity. These include schemes under which the supply of a service is not restricted (such as chartered status) and schemes that restrict the use of a professional title but not the provision of a service (for example, use of the title “architect” is restricted to certain persons, but the provision of architecture services is not).

No – But the Chartered Institute of Legal Executives is a chartered body and so Chartered Legal Executive falls under its Charter.

12. Are you responsible for any authorisation schemes that regulate the receipt of a service?

No because there are other legal services regulators and whilst the titles of Chartered Legal Executive and CILEX Practitioner belong to CRL, the services that the individuals can provide can also be accessed via other legal services regulators such as the Solicitors Regulation Authority, Bar Standards Board, Council of Licensed Conveyancers.

Proposed reforms

N.B., we would recommend reading [the Regulations](#), as amended, alongside answering all questions in this consultation.

Section 1: Revise the scope of the Regulations' obligations

A) Expand the scope of the Regulations to foreign service providers (Questions for all)

1. To what extent do you agree with the proposed change of applying the Regulations to foreign service providers?

Agree

The primary legislation that applies to CRL's authorisations as a competent authority is the Legal Services Act 2007 which applies only to the provision of legal services in England & Wales and not the whole of the UK. CRL gained its further powers through later additional legislation that amended the LSA 2007.

Any change would not affect the authorisations that CRL can provide but CRL believes that there may be possible issues related to enforcement against those operating outside of the UK.

CRL does not have a substantially different regime for overseas nationals seeking authorisation but then if they operate abroad, they will be under a different regulatory regime.

(Questions for competent authorities)

2. Do you treat service providers who are not UK nationals or established in the UK differently to those who are UK nationals or established in the UK?

No

The primary legislation that applies to CRL's authorisations as a competent authority is the Legal Services Act 2007 which applies only to the provision of legal services in England & Wales and not the whole of the UK. CRL gained its further powers through later additional legislation that amended the LSA 2007.

CRL does not have a substantially different regime for overseas nationals seeking authorisation but then if they operate abroad, they will be under a different regulatory regime. They are required to demonstrate that they have trained in English law and have met the same standards as a UK National seeking authorisation.

B) Narrow the scope of the Regulations so that the obligations only apply to competent authorities that have regulatory functions in relation to mandatory requirements

(Questions for all)

3. To what extent do you agree with the proposed change of applying the Regulations to only competent authorities who have regulatory functions in relation to mandatory requirements?

Agree

CRL agrees with this proposed change as being proportionate and providing clarity on whom the regulations apply to.

(Questions for service providers)

4. Please provide any data or evidence concerning whether this change is likely to increase the administrative burden for you as a service provider.

Not applicable to CRL

c) Reform the ‘overriding reasons relating to the public interest’ (ORRPI) test and establish a limited list of ORRPIs.

(Questions for all)

5. To what extent do you agree with reforming the ORRPI test to require that competent authorities should ensure that measures are appropriate to achieve an ORRPI, as above?

Agree

CRL agrees with the proposal to reform the ORRPI test. Whilst it can rely upon legislation prior to the act for the basis of its authorisation, it is difficult currently to establish the ORRPI that could be relied upon for each regulation because of the lack of clarity within the act.

6. To what extent do you agree with limiting the ORRPIs to the five sets of reasons above?

Agree

CRL supports the proposed reform to the regulations to provide clarity on the definition of what an ORRPI is and to assist in ensuring that regulation is only in place for a justified reason.

7. Which ORRPIs do you believe should remain if the available reasons were reduced? Furthermore, please explain, for each ORRPI, why you believe they should remain if the available reasons were reduced.

Responses on this issue should focus on reasoned policy and legal justifications for the inclusion of any ORRPIs, providing evidence in support of this where possible.

CRL relies on legislation prior to the act but believes that it would be able to use the ORRPI, the efficient administration of justice and the protection of consumers, for the authorisation schemes that it has in place.

CRL does not believe it can comment on which ORRPI are required for other authorisation schemes.

8. To what extent do you agree with reducing the ORRPIs applicable to some regulations, but not all regulations (e.g., regulation 15(5D))?

Neither Agree nor Disagree

As CRL does not rely upon an ORRPI it does not believe it is appropriate to comment on reducing the ORRPIs applicable to some regulations.

(Questions for competent authorities)

9. Are you aware of which ORRPI(s) you rely on to...

[Please tick the relevant box, and provide the additional information where requested]

	Yes (please list the ORRPI(s))	No Not sure
justify the existence of your authorisation scheme, under regulation 14 ?		✓ Rely upon prior legislation.
justify the conditions for authorisation under your scheme, under regulation 15(2) ?		✓

10. Do you rely on an ORRPI(s)...

[Please tick the relevant box, and provide the additional information where requested]

	Yes (Please list the ORRPI(s) and explain whether you believe your measure would objectively be considered adequate to achieve the ORRPI(s) / would objectively be considered proportionate to the ORRPI(s) / takes into account the ORRPI(s), as applicable)	No	Not sure
under regulation 15(5D) ?		✓	
under regulation 16 ?		✓	
under regulation 17 ?		✓	
under regulation 19 ?		✓	
under regulation 21 ?		✓	
under regulation 22 ?		✓	
under regulation 31 ?		✓	

under regulation 34?		✓	
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11. If the number of ORRPIs listed above was limited to the five sets of reasons above, would this impact how you regulate services?

No

There would be no impact on how CRL currently regulates services.

D) Remove provisions giving priority to other legislation
(Questions for all)

12. Is there any legislation that you consider currently conflicts with the Regulations?

Not sure - The primary legislation that applies to CRL's authorisations as an Approved Regulator is the Legal Services Act 2007 which applies only to the provision of legal services in England & Wales and not the whole of the UK. CRL gained our further powers through later additional legislation that amended the LSA 2007.

13. Is there any legislation that you consider would conflict with the Regulations if regulations 6, 5(1) to (2A), 14(3), and / or 22(2)(d) were removed?

Not sure - CRL is not able to comment on whether there are any additional conflicts.

Section 2: Changes to reduce restrictions on service providers and increase the ease and transparency of application processes

E) Expand what information competent authorities are required to supply service providers

(Questions for all):

14. To what extent do you agree with the proposals to expand the information that competent authorities need to provide to service providers?

Disagree

Whilst CRL believes that points ii) and iii) are reasonable and believes that it already complies with the requirements, it is concerned that i) as drafted will cause significant problems to a competent authority.

CRL publishes timeframes for its applications including when an applicant can expect to receive an update on the progress made with their authorisation and how long each step will take. Often the authorisation process is not straightforward and requires consideration of a significant amount of complex information, so the timeframe for dealing with a particular part of an application could be 30 days.

Notwithstanding this a large amount of time is spent dealing with enquiries from applicants as to how their application is progressing and asking for updates despite published deadlines not having been reached. Because CRL cannot just ignore these enquiries, they can take 10/15 minutes each as a minimum to deal with and we could receive between 5/10 enquiries each day. That effectively ties up a member of staff for a half day dealing with these types of queries.

CRL would not support an open expectation that an applicant can request an update at any time because of the impact on the service that CRL can provide by having such a request for information backed by legislation. That would give an unreasonable applicant scope to make repeated requests in a short timeframe, for no benefit to both parties.

If there is a need for this particular proposal then CRL believes that it should be redrafted to allow for any existing timeframes, SLAs etc that a competent authority publishes to service providers. For example, 'An update on the status of their application (when outside any published timeframes)'.

(Questions for competent authorities):

15. Do you currently provide any or all of the information above to service providers?

Yes

CRL believes that it provides sufficient information to comply with ii) and iii).

16. Do you have a procedure in place for service providers resubmitting an application following the rejection of their application, which is different to the procedure for those submitting an application for the first time?

No.

They have to meet the same standards that the original application was assessed against.

17. Are there any costs which you may incur or any potential benefits to you as a result of this change? Please provide any estimates of the time and cost requirements of having to provide this extra information.

CRL has provided some indication of the time impact of dealing with requests for updates in the answer to Q12 above. CRL is seeking to actively manage down the number of unnecessary queries that it receives because of the impact on resources and the adoption of i) would be potentially detrimental to that outcome.

It is difficult to put a real cost to dealing with these types of queries but, assuming we would be expected to publish the 'right to request an update' then it could be assumed that the number of queries could rise significantly. That may require a full-time member of staff to deal with them and we could apply a cost of around £40k/£50k to cover staffing, IT, logging correspondence etc.

F) Increased flexibility of the application process

(Questions for competent authorities and service providers)

18. To what extent do you agree that the above proposed changes will make the authorisation process more flexible and easier to understand?

Agree (with caveat)

CRL believes that it already meets the requirements in the proposed changes and that the application process is proportionate, given the number of schemes that are in place including transitional arrangements.

CRL already provides guidance to service providers in writing because of the standards that are required to be met but will talk to applicants as well to aid understanding.

The changes proposed would therefore have minimal impact apart from an issue in relation to ii).

CRL does not run exams, but just sets the education standards that training providers need to meet. Exams and courses are provided by CILEX and other approved training providers. Therefore, the scheduling is down to the provider and can be driven by commercial decisions (number of applicants, capacity on course, cost, access to trainers etc). Clearly CRL's intention is to have a number of service providers where possible but this is not always feasible.

Therefore, this proposed change needs to reflect that some competent authorities will not offer exams themselves, but these will be delivered by third parties over whom they have no control. Otherwise, it may be assumed that the responsibility rests always with the competent authority.

(Question for competent authorities)

19. Please set out whether you are currently doing what the following proposals suggest:

[Please tick the relevant box, and provide the additional information where requested]

Proposal	Currently do this	Do not currently do this, and, if applicable, reasons why it would not be practicable to do this
Accept and process applications all-year round (aside from outside official working hours and working days)	✓	

Where exams are required, schedule exams at reasonably frequent time intervals and provide a reasonable period of time for applicants to request to take the exam before it occurs		✓ CRL does not run exams, but just sets education standards. Exams and courses are provided by 3 rd party providers. See Q18 above.
Allow the amendment of applications once submitted in cases where they are incomplete	✓	
Provide guidance to applicants to assist them in a case of an incomplete application, on request	✓	
Where an application is incomplete, identify the additional information required to complete the application for the applicant	✓	

(Question for competent authorities and service providers)

20. Please provide any data and evidence on whether this policy is likely to increase/decrease the administrative burden for you as a competent authority or service provider (i.e., increases/decreases in time and cost requirements)

This policy would only increase the administrative burden and cost if the responsibility for exam scheduling rested in every instance with a competent authority. It is difficult to estimate the time and cost impact.

(Questions for service providers)

21. Approximately, how much time do you think would be saved (in hours) throughout the application process by being able to amend an application, as opposed to having to complete an application again, where the application is incomplete?

Not applicable to CRL

22. Approximately, how much time do you think would be saved (in hours) during the application process by having detailed guidance provided on the required documentation, in the case of an incomplete application?

Not applicable to CRL

G) Increased transparency of the application process

(Questions for competent authorities and service providers)

23. To what extent do you agree with the proposal that, where tacit authorisation applies, competent authorities must state this in the acknowledgement of an application (and that the acknowledgement does not have to state that tacit authorisation does not apply)?

Strongly Agree

Because the authorisations that are provided by CRL mean that the requirements for entry to the profession and/or to deliver a particular service under the Legal Services Act 2007, then tacit authorisation does not apply and there should not be any circumstances when it can be misconstrued that it does.

(Questions for competent authorities)

24. Approximately, how many successful applications do you process each year?

In the last 12 months, CRL has provided 859 authorisations to individuals seeking to become a Chartered Legal Executive or CILEX Practitioner.

25. Approximately, how many applications do you receive per year which are incomplete?

Because CRL is assessing an application to be allow an individual to gain the status as an authorised person under the Legal Services Act 2007, the applicant is required to evidence that they have met standards across Knowledge, Skills and Experience. They need to show how they can meet 27 outcomes, which requires 47 pieces of evidence.

We monitor the number of resubmissions where an applicant, following receipt of feedback, is required to provide additional information to supplement that already provided. Across all applications we see an average of around 1.5 resubmissions per application.

26. Do you currently inform applicants of the outcome of an application in writing, regardless of the outcome, except where tacit authorisation applies?

Yes – CRL provides this by email

27. How much time (annually, in hours) do you require to directly inform an applicant of the outcome of their application, or where an application is incomplete?

It is difficult for CRL to be certain that the figure provided is accurate because of varying nature of the applications, the information that may be required

when incomplete, and this not being something that has been analysed previously. The best estimate that can be provided is somewhere between 1900 and 2200 hours annually.

28. What information or assistance do service providers commonly request from you?

An applicant is required to evidence that they have met standards across Knowledge, Skills and Experience. They need to show how they can meet 27 outcomes, which requires 47 pieces of evidence.

Examples of questions that ask include:

- *What they can use for evidence*
- *How they should present the evidence*
- *If they have met all the outcomes*
- *What exemptions they can have*
- *Why the evidence presented is not sufficient*
- *If they can use examples multiple times to meet differing outcomes*
- *Are they eligible to apply.*

Most of this information is presented on the CRL website.

H) Widen and amend provisions governing how commercial communications are regulated

(Questions for all):

29. To what extent do you agree with the proposed changes to regulation 34?

Agree

CRL believes that as the use of Chartered Legal Executive and CILEX Practitioner are limited to only authorisations granted by CRL and cannot be granted by any other competent authority, then regulation 34 would no longer apply to CRL.

(Questions for competent authorities):

30. Do you prohibit service providers' use of (certain types of) commercial communications?

No – CRL does not prohibit the use of commercial communications although individuals are reminded that at all times they should comply with the [CILEX Code of Conduct](#).

(Questions for service providers)

31. Have you ever been prohibited from using commercial communications?

Not applicable to CRL

32. Are there any costs you may incur or potential benefits to you as a result of reforming the commercial communications provisions? Please provide any further data or evidence to support a detailed assessment of this impact.

Not applicable to CRL

I) Clarify when authorisation fees can include the management and enforcement costs of an authorisation scheme

(Questions for all)

33. To what extent do you agree with the proposals to clarify regulation 18(4)?

Agree

CRL agrees with the changes proposed as it will provide authorisation schemes with flexibility in their approach.

(Questions for competent authorities)

34. Do you charge service providers for the costs of management and/or enforcement of an authorisation scheme?

No

CRL's approach is that the authorised person only pays the practising certificate fee at the start of the year following authorisation. So, if they are authorised on 31 January 2023, they don't contribute to ongoing management and enforcement costs until 1 January 2024.

35. Do you charge fees in two stages, i.e., one fee at the point of the submission of the application, and then further fee covering the costs of management and / or enforcement?

No

The CRL approach is set out in the answer to Q34.

36. Would you want to be able to charge applicants for the costs of management and enforcement of an authorisation scheme up front?

No

Because there are elements of the practising fee that cover levies and a payment to CILEX for certain activities that they undertake, the approach adopted by CRL is simpler for all parties involved and clearer for applicants.

(Questions for service providers):

37. Which option would you prefer out of the following, if the costs you have to incur overall are the same:

Not applicable to CRL

J) Remove exclusions under regulation 31, relating to the documentation that competent authorities can request from service providers

(Questions for all)

38. To what extent do you agree with the proposals to change the exceptions under regulation 31?

Agree

CRL supports the changes proposed as being proportionate for competent authorities and linked to the new definitions of what an ORRPI is.

CRL requires original certified copies of the identification documents used to obtain a DBS certificate, but this is the requirement of the company that provides this service.

Otherwise, there is no other instance where an original document or certified copy is required as part of our authorisation processes. In most instances CRL will be carrying out additional checks alongside the receipt of a copy document. For example, when a copy of a practising certificate is requested then CRL will also be checking the appropriate register to make sure the individual is still a member and if there is any disciplinary record.

K) Requiring information to be provided to the Government directly and making the list of information to be provided more comprehensive

(Questions for all):

39. To what extent do you agree with the proposal to require competent authorities to actively provide information to DBT, including the additional information above, but no longer require other pieces of information currently required?

Agree

CRL is content that what is being proposed is proportionate and is not unnecessarily onerous. It does not anticipate that there will be any extra costs in complying with these changes nor unreasonable administrative burden.

CRL would actually request that DBT sends out regular reminders on the maintenance of information on Find a Licence to ensure that the most up to date information is always displayed. This would be helpful.

(Questions for competent authorities)

40. Do you have specific renewal dates for your authorisation scheme, for example a date each year by which all service providers must renew their authorisations?

The annual renewal date for practicing certificates, issued once an individual is authorised, is 31 December annually.

41. Are there public databases on the service activity relevant to you, beyond registers of providers of the service?

Currently there are no other databases and if there were, they would use an API from the CRL register.

(Questions for competent authorities and service providers)

42. Beyond the proposals set out in this document, how, if at all, do you think authorisation application processes could be improved?

Internally CRL has been requesting further functionality on the CILEX CRM to be able to offer more online applications to those seeking authorisation. The applications can be quite large because of the evidence required within a portfolio, and at present these will mostly be sent by email.

Section 3: Removing administrative requirements placed on service providers

L) Remove administrative requirements placed on service providers (Part 2)

(Questions for service providers)

43. If these obligations in Part 2 are removed, would you continue to make the information required to be provided in that part available to service recipients?

Not applicable to CRL

44. If Part 2 of the Regulations is removed, would you make any changes to your process of responding to complaints and finding a satisfactory solution to complaints? (Chapter 2 of Part 2)

Not applicable to CRL

(Questions for service recipients)

45. To what extent do you agree that these obligations on service providers should be removed?

Not applicable to CRL

Section 4: Establish a system for monitoring compliance with the Regulations

- M) Providing a new Monitoring and Compliance mechanism that allows competent authorities and service providers to raise a complaint regarding alleged non-compliance by a competent authority under the Regulations directly with the Government**

(Questions for all)

46. To what extent do you agree with there being a system for raising complaints concerning a competent authority not fulfilling its obligations under the Regulations directly with the Government?

Disagree

CRL has seen no evidence that there is the need to put in place a system for raising complaints regarding a competent authority not fulfilling its obligations.

CRL publishes details of the complaints that are received annually so is transparent as to the issues that it seeks to resolve. CRL has an oversight regulator, the Legal Services Board, that carries out an annual regulatory performance assessment, and this is obligation has never been raised as something that the LSB views as significant.

If it is felt that there are specific areas that would benefit from this obligation, then there may be a basis for a limited system but otherwise to be effective the Government would need to understand the intricacies of all the competent authorities across presumably numerous and varied sectors. CRL suggests that it should be considered as to whether this is proportionate.

(Questions for competent authorities)

47. What procedures do you have in place to deal with complaints by service providers regarding your obligations under the Regulations? [Please explain how you receive complaints e.g., email, automated form, a mechanism within the application process, etc.]

If an applicant wishes to raise a complaint about the service that they have received, then we have a published policy on our website [Complaints about us - CILEx Regulation](#).

CRL also publishes information regarding corporate service complaints in its [annual report](#).

48. Other than raising a complaint directly with you, or taking action in the courts, are there any other ways that service providers can or have raised complaints regarding the fulfilment of your obligations under the Regulations (e.g., to a national regulator and / or the Government)

No.

CRL has an oversight regulator, the Legal Services Board, but they do not deal with complaints regarding the service that Approved Regulators provide. If an applicant did contact them, then the LSB would probably pass the information to the CEO of the regulator for them to resolve.

Section 5: Clarificatory changes and changes to remove references to EU provisions

N) Amending language to clarify the Regulations and make them more appropriate following EU Exit

(Questions for all)

49. To what extent do you agree with the proposed changes?

CRL agrees with the proposed changes.

Final comments

(Questions for all)

50. Please provide any other information which you believe may be useful in the context of this consultation.

CRL has nothing additional to add to its response.

Please email response form to servicesregulations@businessandtrade.gov.uk