



CILEx Regulation Temporary Guidance for recognition of lawyers qualified in Switzerland

Purpose

This Guidance governs the process by which CILEx Regulation will consider an application for recognition of a Swiss professional qualification as being equivalent to the Chartered Legal Executive/ CILEX Practitioner qualification.

A person who makes a successful application under this Guidance will, despite not having completed the Chartered Legal Executive/ CILEX Practitioner knowledge qualifications and subject to satisfactory assessment of experience, competence and prior conduct requirements, be entitled to apply for a practising certificate to practise as a Chartered Legal Executive or CILEX Practitioner in England and Wales.

Definitions

In this Guidance, the following definitions apply:

“Applicant” means a person who is making an application under this Guidance (except for applications made under Paragraphs 2 and 3);

“Chartered Legal Executive” means a CILEX member authorised by CILEx Regulation to conduct one or more reserved activities (also known as a Fellow of CILEX);

“CILEx Regulation” means CILEx Regulation Ltd;

“Fellow” means a person who has met the requirements of CILEx Regulation (also known as a Chartered Legal Executive) and has paid all subscriptions and other fees to CILEX or has made arrangement for payment;

“Home State” means the state in which the Applicant is established;

“Regulated legal activity” means a) a reserved legal activity; b) immigration advice or immigration services;

“Regulations” means The European Union (Recognition of Professional Qualifications) Regulations 2015;

“Reserved legal activity” has the same meaning as in the Act;

“Services” means carrying out the practice of a Chartered Legal Executive;

“Temporary Register” means the register held by CILEx Regulation of Swiss CILEX Practitioners whose declarations to provide services as a Chartered Legal Executive/ CILEX Practitioner on a temporary or occasional basis have been approved by CILEx Regulation in accordance with the Regulations;

“The Act” means the Legal Services Act 2007.

Delegations

Responsibility for this authorisation scheme is delegated to CILEx Regulation by CILEX.

1. INTRODUCTION

- 1.1. This Guidance implements the provisions of the Regulations.
- 1.2. The Regulations will apply to any relevant issue upon which this Guidance is silent.
- 1.3. Costs incurred by an Applicant under this Guidance and in complying with the Regulations will be met by the Applicant.
- 1.4. Any certificates of qualification submitted to CILEx Regulation as part of an Application under this Guidance must be original documents or certified copies.
- 1.5. An official translation of any qualification/recognition of training/recognition of experience document must be filed with the qualification document.
- 1.6. If CILEx Regulation has justified doubts about the veracity, authenticity or legality of the Applicant's establishment and good conduct or character, it may ask the competent authority of the Home State of the Applicant for information on this issue.
- 1.7. This Guidance takes effect from 11pm (UK time) on 31 December 2020.
- 1.8. This Guidance will cease to have effect at 11pm (UK time) on 31 December 2024.

2. PROVIDING SERVICES IN ENGLAND & WALES ON A TEMPORARY OR OCCASIONAL BASIS

- 2.1. For the purposes of Paragraph 2, an "Applicant" (and "Application") is defined in accordance with Regulation 8(3).
- 2.2. Applications to provide Services on a temporary or an occasional basis under Paragraph 2 should be made using the form 'Declaration to CILEx Regulation to provide the services of a Chartered Legal Executive/Fellow of CILEX in England & Wales on a temporary or an occasional basis'. The form is located on the CILEx Regulation website.
- 2.3. CILEx Regulation will assess, on a case-by-case basis, whether the Applicant's provision of professional services is on a temporary and an occasional basis, in particular in relation to its duration, frequency, regularity and continuity.
- 2.4. Where the Applicant first moves to the United Kingdom (UK), the Applicant must inform CILEx Regulation by way of a written declaration, in advance of providing any Services in the United Kingdom. The written declaration should be made using the form detailed in Paragraph 2.2, and must comply with Regulations 15 and 16.
- 2.5. The Applicant must provide the following documents, in accordance with Regulation 16, when submitting their written declaration:

- a) the Applicant's proof of nationality or, where the Applicant is not a national of a relevant European State, proof of the community right on which the Applicant relies;
 - b) an attestation certifying that the Applicant is legally established in another relevant European State for the purpose of pursuing the activities concerned and that the Applicant is not prohibited from practising, even temporarily, at the moment of delivering the attestation;
 - c) evidence of professional qualifications;
 - d) for cases referred to in Regulation 8(3)(e), any means of proof that the Applicant has pursued the activity concerned for at least one year during the previous ten years; and
 - e) an attestation confirming the absence of temporary or final suspensions from exercising the profession or of criminal convictions. The attestation must include offences which have been 'spent' under the Rehabilitation of Offenders Act 1974 or equivalent legislation in the Home State.
- 2.6. CILEx Regulation may also require the Applicant to produce any of the documents in Paragraph 2.5 where there has been a material change in the situation substantiated by the documents since they were first provided.
- 2.7. If the Applicant makes a successful declaration in accordance with Regulations 15 and 16, the Applicant will be automatically temporarily registered with CILEx Regulation, and will be:
- a) subject to all the CILEx Rules and Regulations relating to the provision of Services in the UK, including (but not limited to) the CILEx Code of Conduct and the CILEx Enforcement Rules; and
 - b) authorised to provide Services.
- 2.8. The Applicant must renew their declaration at the expiry of each full year from the approval of the initial written declaration, if the Applicant intends to provide Services on a temporary or an occasional basis in the UK during that year. An application to renew a declaration must be received by CILEx Regulation no later than 28 days before the expiry of the existing declaration.
- 2.9. Where the Applicant fails to renew their declaration in accordance with Paragraph 2.8, CILEx Regulation may remove the Applicant's name from the Temporary Register. Any further sanction imposed for the failure to renew will be subject to Regulation 24.
- 2.10. When providing Services in the UK, the Applicant shall comply with Regulation 18 in regard to using the relevant professional title under which Services are provided.

- 2.11. The Applicant must provide the recipient of any Services with the following:
- a) details of the professional association with which the Applicant is registered; and
 - b) details of professional indemnity insurance cover in relation to the Services.
- 2.12. The Applicant is required to notify CILEx Regulation immediately if they no longer intend to provide Services in the UK. CILEx Regulation will then immediately remove the Applicant from the Temporary Register.
- 2.13. An Applicant will no longer be entitled to provide Services in the UK, and their entry on the Temporary Register will be terminated if the Applicant:
- a) becomes established in the profession of a Chartered Legal Executive in the United Kingdom; or
 - b) is subject to a decision of the competent or judicial authority in their Home State, which has the effect that the Applicant is no longer lawfully established and/or is prohibited (even temporarily) from practising that profession in their Home State.

3. PROVIDING SERVICES IN THE UNITED KINGDOM ON A PERMANENT BASIS

- 3.1. For the purposes of Paragraph 3, an “Applicant” (and “Application”) is defined in accordance with Regulation 8(4).
- 3.2. The form entitled “Application to CILEx Regulation to establish as a Chartered Legal Executive in the United Kingdom on a permanent basis” can be found on the CILEx Regulation website and should be used for Applications under Paragraph 3.
- 3.3. CILEx Regulation will acknowledge the Application within one month of receipt, and will inform the Applicant if any document is missing.
- 3.4. CILEx Regulation will consider the Application as soon as is reasonably practicable, and must notify the Applicant of its decision, together with reasons, in accordance with the timescales specified in Regulation 42(2).
- 3.5. CILEx Regulation may, before authorising the Applicant to practise as a Chartered Legal Executive in the UK, require the Applicant to take and pass an aptitude test in accordance with Regulations 31, 32, 33 and 34.
- 3.6. An aptitude test means a test of the Applicant’s professional knowledge, skills and competencies carried out or recognised by CILEx Regulation with the aim of assessing the ability of the Applicant to pursue the profession of Chartered Legal Executive in the UK. The aptitude test will be prepared in accordance with Regulation 31.

- 3.7. CILEx Regulation will assess the need for, and the detail of any aptitude test, on a case-by-case basis in accordance with Regulation 32.
- 3.8. Should CILEx Regulation determine that an aptitude test is necessary, it shall inform the Applicant, in accordance with Regulation 33, of:
- a) the level of professional qualification required in the UK and the level of qualification held by the Applicant in accordance with Regulation 27;
 - b) the substantial differences in the knowledge, skills and competencies essential to pursuing the Chartered Legal Executive profession, when comparing the Applicant's training with the duration or content of training required in the UK; and
 - c) the reasons why the substantial differences cannot be compensated by the knowledge, skills and competence acquired in the course of professional experience or lifelong learning formally validated by a relevant body.
- 3.9. The Applicant will be permitted to take an aptitude test within six months of the decision imposing an aptitude test on the Applicant.
- 3.10. When providing Services in the UK on a permanent basis, the Applicant must comply with Regulation 43 in regard to the title under which professional services are provided.

4. PARTIAL ACCESS

- 4.1. CILEx Regulation will grant partial access to perform certain professional activities related to provision of Services in the UK, on a case-by-case basis, when all the following conditions are met:
- a) the professional applicant is fully qualified to exercise in their Home State the professional activity for which partial access is sought in the United Kingdom;
 - b) the differences between the professional activity exercised in the Home State and the practice of a Chartered Legal Executive in the UK are so large that any compensation measures would amount to requiring the professional applicant to complete the full programme of education and training required in the UK before having access to the full practice of a Chartered Legal Executive; and
 - c) the professional activity can be objectively separated from other activities falling under the practice of a Chartered Legal Executive in the UK, taking into account whether the professional activity can be pursued autonomously in the professional applicant's Home State.

- 4.2. Professional applicants who are granted partial access under Paragraph 4.1 shall clearly indicate to recipients of their services the scope of their professional activities.
- 4.3. CILEx Regulation may deny partial access if such denial is justified by overriding reasons of general interest, suitable for securing the attainment of the objective pursued, and does not go beyond what is necessary to attain that objective.

5. LANGUAGE CONTROLS

- 5.1. CILEx Regulation may impose controls in accordance with Regulation 6 when seeking to ensure that a professional has knowledge of language necessary for practising the profession in the UK.
- 5.2. CILEx Regulation will impose controls where there is a serious and concrete doubt about the Applicant's language knowledge in respect of the professional activities the Applicant intends to pursue.
- 5.3. Any controls imposed under Paragraph 5.1 shall be carried out after the recognition of the professional qualification, and will be proportionate to the activity to be pursued.

6. APPEALS

- 6.1. An Applicant may appeal to the appropriate appeal body, on a matter of law or fact (or both), any of the CILEx Regulation decisions in respect of:
 - a) language controls (Regulation 6);
 - b) partial access (Regulation 10);
 - c) provision of services in the UK on a temporary basis (Regulation 13(2)); and/or
 - d) provision of services in the UK on a permanent basis (Regulation 42(2)).
- 6.2. The appropriate appeal body shall be the County Court.
- 6.3. In determining the appeal, the appropriate appeal body may:
 - a) give any authorisation to practise and impose any condition which CILEx Regulation could give or impose; or
 - b) remit the matter to CILEx Regulation with such directions as the appeal body sees fit.

- 6.4. The Applicant must appeal the decision within four months of the notification to the Applicant of CILEx Regulation's decision. Any appeal filed exceeding four months shall require permission from the appropriate appeal body.

7. CILEX REGULATION'S OBLIGATION TO ASSIST COMPETENT AUTHORITIES IN RELEVANT EUROPEAN STATES

- 7.1. CILEx Regulation must assist the competent authorities of other relevant European States in order to facilitate the application of the Regulations, in accordance with Regulation 5.
- 7.2. CILEx Regulation may request the authorities of an Applicant's Home State:
- a) in the event of justified doubts, to provide any information relevant to the legality of the Applicant's establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature imposed on the Applicant; and/or
 - b) for information about the Applicant's training courses as necessary to assess substantial differences likely to be harmful to public health and safety.
- 7.3. CILEx Regulation will exchange information with competent authorities of relevant European States regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for provision of Services under these Regulations in accordance with Regulation 66. In doing so CILEx Regulation will observe the data protection rules set out in the GDPR, as well as Directives 95/46/EC and 2002/58/EC.