



Department for
Business, Energy
& Industrial Strategy

UK Internal Market: the continuity of exclusions from the principles of mutual recognition and non- discrimination for services

Consultation

Closing date: 7 May 2021 (extended from 23 April 2021)

February 2021



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Any enquiries regarding this publication should be sent to us at: servicesregulations@beis.gov.uk

Introduction

The UK Internal Market (UKIM) Act 2020 gained Royal Assent on Thursday 17 December 2020¹. The purpose of the Act is to preserve the UK internal market, providing continued certainty for people and businesses to work and trade freely across the whole of the UK after the conclusion of the transition period provided for in the European Union (EU Withdrawal) Act 2018. The UKIM Act establishes two UK market access principles to protect the flow of goods and services in our home market: the principle of mutual recognition, and the principle of non-discrimination.

This consultation seeks:

- Information about any current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the Provision of Services Regulations 2009 ('the 2009 Regulations');
- Information about why it may be appropriate to formalise such instances under the UKIM Act in the form of specific exclusions from the mutual recognition principle under Schedule 2. If there are no reasons for these instances to be formalised, they will not be included in the list of exclusions under the UKIM Act;
- Information about why any current derogation under the 2009 Regulations should not be added to the exclusions lists; and
- Views on how the exclusions list at Schedule 2, derived from the 2009 Regulations could be amended to reflect the fact that the UK has now left the European Union.

The evidence received will be taken into account by the Government as it further develops the lists of the relevant services, authorisation requirements and regulatory requirements excluded from the mutual recognition and non-discrimination principles.

Mutual Recognition

A form of mutual recognition already operates as part of the existing UK-wide regulatory framework for services, under Regulation 15(5) to (5E) of the 2009 Regulations. This ensures that a service provider, who has been granted an authorisation allowing access to a service activity by a regulator whose functions relate only to a part of the UK, is able to exercise that service activity throughout the whole of the UK. Under the 2009 Regulations, regulators can disapply the requirement for UK-wide applicability where this is justified by an 'overriding reason relating to the public interest'.

The mutual recognition principle for services in the UKIM Act provides that an authorisation requirement does not apply to a person authorised to provide services in another part of the UK. The mutual recognition principle has the effect that a person authorised to provide services in one part of the UK is not required to meet additional authorisation requirements in another part of the UK. Under the UKIM Act, regulators will only be allowed to disapply the mutual recognition principle for new or substantively changed authorisation requirements if the service activity is excluded under Schedule 2 or if it is a reasonable response to a public health

¹ [Link to the United Kingdom Internal Market Act 2020](#)

emergency. There are some key public services and healthcare exclusions under Schedule 2 of the Act for mutual recognition.

Non-Discrimination

Regulators have had to follow rules in the 2009 Regulations preventing discrimination towards service providers from other European Economic Area (EEA) states. These non-discrimination provisions were revoked at the end of the Transition Period, as they were no longer relevant to the UK's landscape.

The principle of non-discrimination under the UKIM Act ensures that a regulatory requirement that directly or indirectly discriminates against a service provider has no effect. The principle of non-discrimination applies both to direct discrimination and to indirect discrimination.

In respect of services, a new or substantively changed regulatory requirement will be of no effect if it directly discriminates against a service provider from another part of the UK due to their "connection" or lack of connection to a part of the UK. This connection could mean being based in another part of the UK, providing services from another part of the UK, or having members, partners, officers, or staff based in another part of the UK.

A regulatory requirement will also be of no effect if it is indirectly discriminatory. This means that: it does not directly discriminate, nonetheless it puts an incoming service provider at a disadvantage but does not put local service providers at that disadvantage; and it has an adverse effect on competition in the market for those services.

However, under the UKIM Act, the new principle applies to service providers from different parts of the UK, ensuring the continued flow of services across the UK. Regulators will only be allowed to disapply the non-discrimination principle if the service or regulatory requirement is excluded under Schedule 2, if it is a reasonably justified response to a public health emergency (in the case of direct discrimination only), or if it can be reasonably considered as fulfilling a legitimate aim (in the case of indirect discrimination only). There are some key public services and healthcare exclusions under Schedule 2 of the Act for non-discrimination.

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General information

Why we are consulting

This consultation seeks:

- Information about any current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the Provision of Services Regulations 2009 ('the 2009 Regulations');
- Information about why it may be appropriate to formalise such instances under the UKIM Act in the form of specific exclusions from the mutual recognition principle under Schedule 2. If there are no reasons for these instances to be formalised, they will not be included in the list of exclusions under the UKIM Act;
- Information about why any current derogation under the 2009 Regulations should not be added to the exclusions lists; and
- Views on how the exclusions list at Schedule 2, derived from the 2009 Regulations could be amended to reflect the fact that the UK has now left the European Union.

This consultation seeks information about the possible exclusion of certain services from the mutual recognition and non-discrimination principles under the UKIM Act. It also seeks information to help determine whether current exclusions in Schedule 2 to the UKIM Act which reflect the pre-existing exclusions set out in the 2009 Regulations are upheld or deemed redundant.

The evidence received will be taken into account by the Government as it further develops the lists of the relevant services, authorisation requirements and regulatory requirements excluded from the mutual recognition and non-discrimination principles.

Consultation Details

Issued: 25 February 2021, 10:30am

Respond by: 7 May 2021, 11:45pm (extended from 23 April 2021)

Enquiries to: servicesregulations@beis.gov.uk

Consultation reference: UK Internal Market: exclusions from the principles of mutual recognition and non-discrimination for services

Audiences: We want to hear from the broad range of service regulators, service providers, policy makers, businesses and individuals associated with the provision of a service.

Territorial extent: We are interested in gathering evidence on a UK-wide basis.

How to respond

The simplest way to respond to this consultation is through our online questionnaire using the Citizen Space link below. We encourage submitting information via Citizen Space where possible as this is the Government's preferred method of receiving responses which supports timely and efficient analysis. Alternatively, responses via e-mail or a Microsoft Word document via e-mail will also be accepted. If responding via e-mail or a Microsoft Word document, please indicate which question your answer relates to in order to support timely analysis.

The evidence received will be taken into account by the Government as it further develops the lists of the relevant services, authorisation requirements and regulatory requirements excluded from the mutual recognition and non-discrimination principles under the Act. When responding, please state whether you are responding as an individual or representing the view of an organisation. Your response will be most useful if it is framed in direct response to the questions posed, though further comments and evidence are also welcome.

Respond online at: <https://beisgovuk.citizenspace.com/trade/uk-internal-market-services-consultation>

or

Email to: servicesregulations@beis.gov.uk

Confidentiality and data protection

Information you provide in response to this consultation, including personal information, may be disclosed in accordance with UK legislation (the Freedom of Information Act 2000, the Data Protection Act 2018, and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential please tell us but be aware that we cannot guarantee confidentiality in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not be regarded by us as a confidentiality request.

We will process your personal data in accordance with all applicable data protection laws. See our [privacy policy](#).

We will summarise all responses and publish this summary on [GOV.UK](#). The summary will include a list of names or organisations that responded, but not people's personal names, addresses or other contact details.

Quality assurance

This consultation has been carried out in accordance with the government's [consultation principles](#).

If you have any complaints about the way this consultation has been conducted, please email: beis.bru@beis.gov.uk.

Consultation

The UK Internal Market (UKIM) Act 2020 gained Royal Assent on Thursday 17 December 2020. The purpose of the Act is to promote the continued functioning of the internal market in the UK after the conclusion of the transition period provided for in the EU (Withdrawal) Act 2018. The Act establishes two UK market access principles to protect the flow of goods and services in our home market: the principle of mutual recognition, and the principle of non-discrimination.

This consultation seeks:

- Information about any current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the 2009 Regulations;
- Information about why it may be appropriate to formalise such instances under the UKIM Act in the form of specific exclusions from the mutual recognition principle under Schedule 2. If there are no reasons for these instances to be formalised, they will not be included in the list of exclusions under the UKIM Act;
- Information about why any current derogation under the 2009 Regulations should not be added to the exclusions lists; and
- Views on how the exclusions list at Schedule 2, derived from the 2009 Regulations could be amended to reflect the fact that the UK has now left the European Union.

Mutual Recognition

The mutual recognition principle under the UKIM Act provides that an authorisation requirement does not apply to a person authorised to provide services in another part of the UK. The mutual recognition principle has the effect that a person authorised to provide services in one part of the UK is not required to meet additional authorisation requirements in another part of the UK.

A similar form of mutual recognition operates as part of the existing UK-wide regulatory framework for services, under Regulation 15(5) to (5E) of the Provision of Services Regulations 2009 (the 2009 Regulations).

This ensures that a service provider, who has been granted an authorisation allowing access to a service activity by a regulator whose functions relate only to a part of the UK, is able to exercise that service activity throughout the whole of the UK. Under the 2009 Regulations, services regulators could disapply the requirement for UK-wide applicability where this could be justified in relation to an 'overriding reason relating to the public interest'.

Under the UKIM Act, regulators will only be allowed to disapply the mutual recognition principle for new or substantively changed authorisation requirements if the service activity is excluded under Schedule 2 or if it is a reasonable response to a public health emergency.

Non-Discrimination

Under the UKIM Act, the non-discrimination principle is split into direct and indirect discrimination. A new or substantively changed regulatory requirement imposed by a regulator will be of no effect if it directly or indirectly discriminates against a service provider from another part of the UK.

Direct discrimination means treating a service provider from one part of the UK less favourably than other service providers explicitly because of their connection or lack of connection to a part of the UK. This connection could mean being based in another part of the UK, providing services from another part of the UK, or having members, partners, officers, or staff based in another part of the UK.

Indirect discrimination is defined as a requirement on a service provider which:

- does not directly discriminate;
- puts an incoming service provider at a disadvantage but does not put local service providers at that disadvantage; and
- has an adverse effect on competition in the market for those services.

The non-discrimination principle applies to both direct and indirect discrimination, whereby direct discrimination is only permitted to the extent it is a reasonably justified response to a public health emergency and indirect discrimination is only justified if it can be reasonably considered a necessary means of achieving a 'legitimate aim'.

Previously under the 2009 Regulations, regulators have had to follow rules preventing discrimination towards service providers from other EEA states. However, under the UKIM Act, the non-discrimination principle applies to service providers from different parts of the UK, ensuring the continued flow of services across the UK.

Services not affected by the UKIM Act

The UKIM Act broadly looks to retain the effect of the 2009 Regulations in terms of their scope of application and sectoral coverage, whilst recognising that changes may be needed to reflect current circumstances following the UK's withdrawal from the EU and the intent of the Act to ensure the continued free flow of services between the four constituent parts of the UK, and also recognising that the UK's withdrawal from the EU may provide new opportunities to enhance the levels of market access for service providers within the UK.

This scope of application is achieved through Schedule 2 of the Act, which lists certain services which are excluded from either or both market access principles in the Act. Schedule 2 currently reflects those services which are either not in scope of the 2009 Regulations or are excluded from its non-discrimination provisions. In addition, legal services have been excluded from the mutual recognition principle in recognition of the historic differences in the legal systems of the different parts of the UK. The market access principles in the Act will apply to new or substantively changed authorisations and regulatory requirements. This will enable service providers with existing authorisations to continue benefitting from the derogations, exclusions, and provisions of the 2009 Regulations.

However, services and authorisation requirements for which the mutual recognition rule is currently allowed to be disapplied in the 2009 Regulations are not listed in Schedule 2. This is because under the 2009 Regulations there was no list of exclusions from the mutual recognition provisions in Regulation 15. Part of the purpose of this consultation is the creation of such a list.

Information we are seeking

This consultation seeks:

- Information about any current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the 2009 Regulations;
- Information about why it may be appropriate to formalise such instances under the UKIM Act in the form of specific exclusions from the mutual recognition principle under Schedule 2. If there are no reasons for these instances to be formalised, they will not be included in the list of exclusions under the UKIM Act.

There are currently cases where a service provider cannot rely on one authorisation to provide services across all parts of the UK because a regulator derogated from the mutual recognition provisions in the 2009 Regulations owing to an 'overriding reason relating to the public interest'. Given that under the UKIM Act regulators will only be allowed to disapply the mutual recognition principle for new or substantively changed authorisation requirements if the service activity is excluded under Schedule 2 or if it is a reasonable response to a public health emergency, there may be instances where it is appropriate to list these current cases as additional exclusions in Schedule 2 of the UKIM Act.

Responses on this issue should focus on explaining current regulatory practice as well as the underlying policy rationale for the disapplication under the 2009 Regulations.

The consultation also seeks:

- Information about why any current derogation under the 2009 Regulations should not be added to the exclusions lists; and
- Views on how the exclusions list at Schedule 2, derived from the 2009 Regulations, could be amended to reflect the fact that the UK has now left the European Union.

The 2009 Regulations implemented the EU Services Directive into UK law. While the UKIM Act looks broadly to retain the effect of the 2009 Regulations in terms of their scope of application and sectoral coverage, the Government believes it necessary to consider whether such scope of application and sectoral coverage continues to be appropriate following the UK's withdrawal from the EU, including whether the depth of the UK's internal market in services can be further strengthened following the UK's exit from the EU. Taking into account UK-specific considerations and the intent of the Act to ensure the continued free flow of services between the four constituent parts of the UK, it may be appropriate to add to, remove from, or vary the current list of exclusions in Schedule 2 of the UKIM Act.

Responses on this issue should focus on reasoned policy justifications for any potential changes to the list of services in Schedule 2 of the Act, providing evidence in support where possible.

Any information and views submitted will be weighed against the effect of proposed measures on UK trade and the coherence of the overall services framework in Part 2 of the UKIM Act.

Who we are seeking views from

We are especially interested in the views of services regulators, i.e., bodies which regulate specific activities related to service provision, or which are responsible for authorisations and/or other formalities (registers, licences, permits, notifications), with which a business must comply in order to provide a service. These may include government departments, local authorities, devolved administrations, independent regulators, self-regulatory professional bodies, as well as the relevant committees of the legislative bodies of the UK.

In addition, we would encourage service providers, business representative organisations, think tanks and other civil society bodies with expert knowledge of services regulation to submit responses.

We will also consider the views of any other stakeholder who submits responses to the consultation.

Consultation questions

About you

1. **What is your name?**
2. **What is your email address?**
3. **What is the name of your organisation?**
4. **Please state whether you are content for your responses to be published.**
 - Yes
 - Yes, but without identifying information
 - No, I do not want my response to be published
 - Don't know
5. **If you have answered 'Yes' to the previous question, are you happy for your response to be quoted in any potential future publications relating to the Act, such as an Impact Assessment?**
 - Yes
 - No
 - Don't know

Introductory questions

6. **Please state which nation(s) in which you operate, are established in, or are a resident of:**
 - England
 - Northern Ireland
 - Scotland
 - Wales
 - A combination of the above (please state)
 - None of the above (please state your interest)
7. **Please choose the category you consider yourself to be a part of**
 - Services regulator (please state if you are an independent services regulator)

-
- Part of a legislative body of the UK (either a committee or other grouping, or as an individual representative)
 - A business representative organisation
 - A services provider which is established in the UK
 - A think tank or other civil society body
 - A trade union
 - A resident of the UK
 - Other (please state your interest)
8. **Please summarise your organisation’s purpose, focus, or main area of business. If you are not part of an organisation, or answered “other” above, please state your interest in this consultation.**
9. **If you operate under a particular piece or pieces of legislation (either for some or all of your organisation’s role or remit), please state which. If you do not act under a particular piece of legislation, please write “Not applicable”.**

Your service and the UKIM Act

10. **Please state in respect of which service activity or sector you are responding. If you are responding regarding multiple services activities or sectors, please identify clearly in your answers which consideration applies to which service(s).**
11. **Please give a high-level overview of the current regulatory regime(s) for the service(s) in question, being clear about whether it is specific to a part of the UK or UK-wide.**
12. **Would you consider this service to be in scope of Part 2 of the UKIM Act?**
13. **Is this service excluded from the application of the mutual recognition or non-discrimination principles in the Act, under Schedule 2? If yes, please specify which entries in Schedule 2 you consider apply to this service.**

Information about current cases in which the requirement to recognise authorisations issued by a regulator in another part of the UK is disapplied under the 2009 Regulations²

If you would only like to provide views regarding potential amendments to Part 2 of the UKIM Act which do not reflect current practice under the 2009 Regulations, **please skip to Question 23**. Please provide evidence in support of your responses.

² The Provision of Services Regulations 2009

Regulators

14. Do you currently disapply the requirement to recognise authorisations issued by a regulator in another part of the UK, under Regulation 15(5D) of the Provision of Service Regulations 2009?
15. If you have answered 'yes' to the previous question, what service activity and legislation does the derogation under Regulation 15(5D) apply to? Please provide as much detail as possible.
16. If the service activity you regulate is not listed under Schedule 2 of the UKIM Act, do you believe that it should be? Please explain your answer.
17. What is the overriding reason relating to the public interest you rely on to be able to disapply the mutual recognition principle under Regulation 15(5D) of the Provision of Services Regulations 2009? See under the 'Current landscape' section for the meaning of 'overriding reason relating to the public interest'.

Service providers and other stakeholders

18. Please specify the regulator(s) relevant to your response.
19. Does your authorisation apply across all of the UK?
20. If not, does Regulation 15(5D) of the Provision of Services Regulations 2009 apply?
21. If you have answered 'yes' to the previous question, please provide as much detail as possible about the service activity and legislation affected by the disapplication under Regulation 15(5D).
22. If the service activity you are responding about is not listed under Schedule 2 of the UKIM Act, do you believe that it should be? Please explain your answer.

Views on further amendments to the exclusions list under Schedule 2 of the UKIM Act

Please provide evidence in support of your responses. If you are only responding to provide information on current regulatory practice under the 2009 Regulations, **please skip the remaining questions.**

23. Do you believe that the list of exclusions at Schedule 2 of the UKIM Act should be changed, or that it should stay as it is?
24. If you believe it should be amended, please state the additions and/or deletions you would suggest making to Schedule 2 of the Act.
25. Please explain the policy rationale for your position. You should seek to explain how any changes would impact the regulatory framework specific to the service(s) you are responding about.
26. Please state the approximate value of the change(s).

-
27. **Please explain your analysis on how any changes would impact the functioning of the UK Internal Market. You should seek to explain any costs of providing the service, the regulatory complexity for your sector and any evidence gaps/limitations (additional information can be annexed).**

Further views on the functioning of the UK Internal Market for services

28. **As part of the Government's ongoing commitment to monitor and assess the functioning of the internal market, please provide your views on any other ways to further enhance the UK Internal Market for services. This could be in the form of changes to the exclusions in Schedule 2 of the UKIM Act, or changes to the UK's Internal Market in services more broadly.**
29. **Please explain the policy rationale for your position. You should seek to explain how any changes would impact the regulatory framework specific to the service(s) you are responding about.**
30. **If possible, please state the approximate value of the change(s).**
31. **What evidence can you provide in support of your answer? e.g., how these changes would impact the functioning of the UK Internal Market (explaining associated costs and benefits of the change, evidence sources, evidence gaps - additional information can be annexed).**

Closing questions

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

Thank you for taking the time to respond to these questions

Background

The Mutual Recognition Principle in the UKIM Act

What is an authorisation requirement?

The mutual recognition principle in the UKIM Act applies to authorisation requirements. An authorisation requirement³ is a legislative requirement that a service provider must have the permission of a regulator before carrying out a business of providing particular services. This means it does not cover non-mandatory membership of organisations which cannot prevent a service provider from offering a service, but which might be desirable to join for other reasons.

A legislative requirement means a requirement imposed by, or by virtue of, legislation. In effect this is a requirement a service provider must meet before being able to even offer the service to others. For example, a requirement to obtain permission to operate from a regulator.

What does the mutual recognition principle mean for service regulators?

The mutual recognition principle in the UKIM Act means that a person authorised to provide services in one part of the UK (e.g., Northern Ireland, Scotland, Wales, England) will not need to satisfy further authorisation requirements to provide those services in the other parts of the UK. As such, they should be able to provide the service in all parts of the UK under that same authorisation.

What authorisation requirements are not covered by the UKIM Act mutual recognition principle?

The general rule is that all authorisation requirements are covered by the mutual recognition principle unless an exception applies.

The mutual recognition principle does not apply in the following circumstances:

- It does not apply to authorisations that cover less than a whole of a part of the UK⁴ (e.g., authorisations issued by a local authority to provide a service in the local authority's area).
- It does not apply to requirements that are covered by the mutual recognition principle for goods in Part 1 of the Act or to provisions that limit the ability to practise a profession by reference to qualifications or experience (That is, provision of the kind dealt with under Part 3 of the Act in relation to Professional Qualifications).
- It does not apply to requirements that apply to both service providers and non-service providers.
- Notwithstanding the principle of mutual recognition, regulators may also still require that service providers notify or register with them.

³ [Clause 17: Services: overview – Subsection \(3\)](#)

⁴ The Parts of the UK are England, Northern Ireland, Scotland, and Wales

- Finally, it does not apply to authorisations that are only issued in relation to a particular premises, place, or piece of infrastructure.

Existing requirements are excluded from the scope of the Act. This means that any authorisation requirements in force (or otherwise having effect) before the entry into force of the relevant provisions of the Act are not within scope of the UKIM principle of mutual recognition, provided they are not later substantively changed.

Similarly, provisions which come into force after the Act but simply re-enact or replicate pre-existing requirements without substantive change, will not be brought within scope of the Act. Instead, they continue to be subject to the provisions for mutual recognition under Regulation 15 of the Provision of Services Regulations 2009.

The principle of mutual recognition in the UKIM Act applies to all new or substantively changed authorisation requirements. If a corresponding authorisation requirement in another part of the UK is substantively changed, that will also bring an existing provision into scope of the UKIM Act.

Requirements to notify or register with a regulator and to provide evidence of being authorised to provide services in a part of the UK other than the part in which the requirements apply will also not be covered under the UKIM Act.

The mutual recognition principle will not apply to an authorisation requirement, to the extent it can reasonably be justified as a response to a public health emergency.

What services are excluded from the mutual recognition principle?

Services and authorisation requirements not in scope of the Provision of Services Regulations 2009 are currently excluded from the mutual recognition principle under Parts 1 and 3 of Schedule 2 of the UKIM Act. See Tables 1 and 2 below, for a list of the excluded services and authorisation requirements.

Table 1. List of exclusions under Part 1 of Schedule 2 of the UKIM Act (services to which mutual recognition does not apply)

Services	Examples
Audiovisual services	terrestrial cable or satellite television, video on demand, film services, radio services, video sharing services, video recording services, video games services
Debt collection services	services of bailiffs, messengers-at-arms, and sheriff officers
Electronic communications services and networks, and associated facilities and services	
Financial services	banking, credit, insurance, and re-insurance, occupational or personal

Services	Examples
	pensions, securities investment funds, payment, and investment advice
Gambling services	accepting bets, operating a lottery, or providing facilities for gambling
Healthcare services	healthcare services provided in hospitals, other healthcare facilities or at other places, xenotransplantation, human genetics, human fertilisation, embryology, services in connection with surrogacy
Legal services	provision of legal advice, litigation services
Notarial services	
Private security services	
Services of temporary work agencies	service, of employment businesses within the meaning given by section 13(3) of the Employment Agencies Act 1973
Services provided by a person exercising functions of a public nature or by a person acting on behalf of such a person in connection with the exercise of functions of public nature	
Social services relating to social housing, childcare, adult social care and support of families and persons permanently or temporarily in need	
Transport services	railways, operation of ports, air transport, air traffic services, road transport of goods and passengers, ancillary services

Table 2. List of exclusions under Part 3 of Schedule 2 of the UKIM Act (mutual recognition)

Authorisation requirements
Any authorisation requirement in connection with taxation

The Non-Discrimination Principle in the UKIM Act

What is a regulatory requirement?

The non-discrimination principle in the UKIM Act applies to regulatory requirements. A regulatory requirement⁵ is a legislative requirement imposed by, or by virtue of legislation that would, if not satisfied, prevent a service provider from carrying out a business of providing particular services.

This is a broader concept to authorisation requirements. It would include any rule which a service provider must comply with when carrying out the service. For example, a requirement to have a registered address in a particular part of the UK, a requirement to pay a licence fee or a requirement on how to treat client funds would each be regulatory requirements.

What does the non-discrimination principle mean for service regulators?

The principle of non-discrimination in the UKIM Act applies to direct discrimination⁶ and indirect discrimination⁷. Together they ensure that a regulatory requirement that directly or indirectly discriminates against a service provider is of no effect.

Direct discrimination means that a service provider is treated less favourably due to their “connection” or lack of connection to a part of the UK. This connection can mean being based in another part of the UK, providing services from another part of the UK, or having staff (including members, partners, or officers) based in another part of the UK. A regulatory requirement is not directly discriminatory to the extent that it can be reasonably justified in response to a public health emergency.

A requirement is indirectly discriminatory where it does not directly discriminate, nonetheless, it puts an incoming service provider at a disadvantage but does not put local service providers at that disadvantage; and if it has an adverse effect on competition in the market for those services.

For indirect discrimination, a regulatory requirement will not indirectly discriminate if it can be reasonably considered a necessary means of achieving one of the following legitimate aims: the protection of the life or health of humans, animals, or plants; the protection of public safety or security; the efficient administration of justice. Therefore, a service regulator can impose requirements which would otherwise be considered indirectly discriminatory if it is necessary to meet one, or a combination of, these legitimate aims.

The list of legitimate aims covers a limited range of public interest objectives for regulators which would justify a requirement that may have an indirectly discriminatory effect. This list recognises that sometimes it is necessary to indirectly discriminate for the purposes of one of the reasons listed above.

Services are in scope of the non-discrimination principle unless the sector is excluded under Part 2 or Part 4 of Schedule 2. The non-discrimination principle will only apply where a service provider is subject to a new or substantively changed regulatory requirement, which, if not satisfied, would prevent them from carrying out a service.

⁵ [Clause 17: Services: overview – Subsection \(4\)](#)

⁶ [Clause 20: Direct discrimination in the regulation of services](#)

⁷ [Clause 21: Indirect discrimination in the regulation of services](#)

What services are excluded from the non-discrimination principle?

Services and regulatory requirements not in scope of the Provision of Services Regulations 2009 are excluded from the non-discrimination principle under Parts 2 and 4 of Schedule 2 of the UKIM Act. See Tables 3 and 4 below, for a list of the excluded services and regulatory requirements.

Table 3. List of exclusions under Part 2 of Schedule 2 of the UKIM Act (services to which non-discrimination does not apply)

Services	Examples
Audiovisual services	terrestrial cable or satellite television, video on demand, film services, radio services, video sharing services, video recording services, video games services
Debt collection services	services of bailiffs, messengers-at-arms, and sheriff officers
Electronic communications services and networks, and associated facilities and services	
Financial services	banking, credit, insurance, and re-insurance, occupational or personal pensions, securities investment funds, payment, and investment advice
Gambling services	accepting bets, operating a lottery, or providing facilities for gambling
Healthcare services	healthcare services provided in hospitals, other healthcare facilities or at other places, xenotransplantation, human genetics, human fertilisation, embryology, services in connection with surrogacy
Notarial services	
Postal services	delivery of letters and parcels by post, sorting and collection of letters and parcels for delivery by post
Private security services	

Services	Examples
Services connected with the supply of natural gas through pipelines or production or storage of natural gas	transportation of gas, retail supply, operation of a gas interconnector
Services connected with the supply or production of electricity	distribution or transmission of electricity, retail supply, operation of an electricity interconnector
Services of a statutory auditor within the meaning of Part 42 of the Companies Act 2006	
Services of temporary work agencies	service, of employment businesses within the meaning given by section 13(3) of the Employment Agencies Act 1973
Services provided by a person exercising functions of a public nature or by a person acting on behalf of such a person in connection with the exercise of functions of a public nature	
Social services relating to social housing, childcare, adult social care and support of families and persons permanently or temporarily in need	
Transport services	railways, operation of ports, air transport, air traffic services, road transport of goods and passengers, ancillary services
Waste services	disposal of waste, importation or exportation of waste, waste processing
Water supply and sewerage services	

Table 3. List of exclusions under Part 4 of Schedule 2 of the UKIM Act (non-discrimination)

Regulatory requirements
Any regulatory requirement in connection with taxation

Current landscape: The Provisions of Services Regulations 2009

The Provision of Services Regulations 2009 implemented European Union (EU) Directive 2006/123/EC ('the Services Directive') into UK law. The 2009 Regulations regulated the cross-border provision of services within the EEA⁸ countries.

EU Exit and UK services regulation

Since the end of the Transition Period on 31 December 2020, the Services Directive no longer applies in the UK. However, under the European Union (Withdrawal) Act 2018, EU-derived domestic legislation has been preserved as 'retained EU law', including the Provision of Services Regulations 2009.

In 2018, the Department of Business, Energy, and Industrial Strategy (BEIS) made the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018⁹ ('the 2018 Regulations') to address deficiencies arising in the 2009 Regulations due to the UK's exit from the EU, which will come into effect at the end of the transition period. The 2009 Regulations, as amended by the 2018 Regulations, will continue to protect and benefit UK businesses and consumers' rights by maintaining obligations on UK regulators to ensure that their regulation of service activity is justified by an overriding reason in the public interest and cannot be achieved through less restrictive measures.

The 2018 Regulations have received the consent of the devolved administrations in Scotland, Wales, and the Northern Ireland Civil Service, under the protocol established for considering regulations of this nature and will apply UK-wide to UK nationals established in the UK and UK-established businesses. The 2009 Regulations will continue to:

- prevent regulators from imposing disproportionate or unnecessary requirements on businesses who seek to provide services in the UK;
- require regulators to notify the Secretary of State for BEIS of new requirements affecting access to, or the exercise of, a service activity;
- require the UK government to maintain an online facility for information dissemination and the process of authorisation application;
- set out duties of businesses, detailing the requirements for contact details and other information to be made available for service recipients.

Mutual Recognition under the Provision of Services Regulations 2009

The Provision of Services Regulations 2009, as amended by the Provision of Services (Amendment) Regulations 2014, implemented a form of mutual recognition in Regulation 15(5) to (5E), to ensure that an authorisation issued by a regulator whose functions related only to part of the UK allowed a service provider to provide the service throughout the whole of the UK.

Regulators could derogate from the requirement for UK-wide application where this could be justified in relation to an 'overriding reason relating to the public interest'. These overriding

⁸ Members of the European Union and Iceland, Liechtenstein, and Norway.

⁹ [The Provision of Services \(Amendment etc.\) \(EU Exit\) Regulations 2018](#)

reasons have been considered in the existing case law of the Court of Justice of the European Union, and include the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives.

Non-discrimination under the Provision of Services Regulations 2009

The Provision of Services Regulations 2009 prevented regulators discriminating against services providers from other EEA states. These non-discrimination provisions were revoked at the end of the Transition Period, as they were no longer relevant to the UK's landscape.

Annex A – Glossary

Authorisation requirements

An authorisation requirement is a legislative requirement that a service provider must have the permission of a regulator before carrying out a business of providing particular services.

Devolved administrations

A collective term for the executive bodies in Scotland, Wales, and Northern Ireland – the Scottish Government, the Welsh Government, and the Northern Ireland Executive.

European Economic Area (EEA)

The EEA includes all EU countries and also Iceland, Liechtenstein, and Norway. This essentially allows them to be part of the EU's single market.

European Union

An economic and political union of 27 countries. It operates an internal (or single) market which allows free movement of goods, capital, services, and people between Member States. Switzerland is not an EU or EEA member but has access to some aspects of the single market, on a bilateral basis.

European Union Directive

A European Union legislative instrument that sets out a goal that all EU Member States must transpose into their national law.

Legitimate aim

Under the UKIM Act, this is one or a combination of any, of the following aims: the protection of life or health of humans, animals or plants, the protection of public safety or security or the efficient administration of justice.

Regulatory requirement

A regulatory requirement is a legislative requirement imposed by, or by virtue of legislation that would, if not satisfied, prevent a service provider from carrying out a business of providing particular services.

Service Provider

A person that provides or intends to provide a service in the course of their business and that has a permanent establishment in the United Kingdom.

Service Regulator

A body exercising regulatory functions. This includes, providing or imposing requirements, restrictions, or conditions, or setting standard or giving advice in relation to the provision or receipt of services and securing compliance with, or the enforcement of, requirements, restrictions, conditions, standards, or guidance which relate to the provision or receipt of services. For example, a Minister of the Crown, the Scottish Ministers, the Welsh Ministers, or a Northern Ireland department.

The Provision of Services Regulations 2009

The Regulations set out rules relating to the provision of services by transposing the Services Directive ((EU) Directive 2006/123/EC) on services in the internal market. The Regulations concerns both the provision and the supervision of services. The aim was to make it easier for businesses to provide cross-border services with other European Economic Area countries, by lowering non-tariff barriers to trade.

Transition Period

Under the European Union (Withdrawal Agreement) Act 2020, this is the time period from 31 January to 31 December 2020.

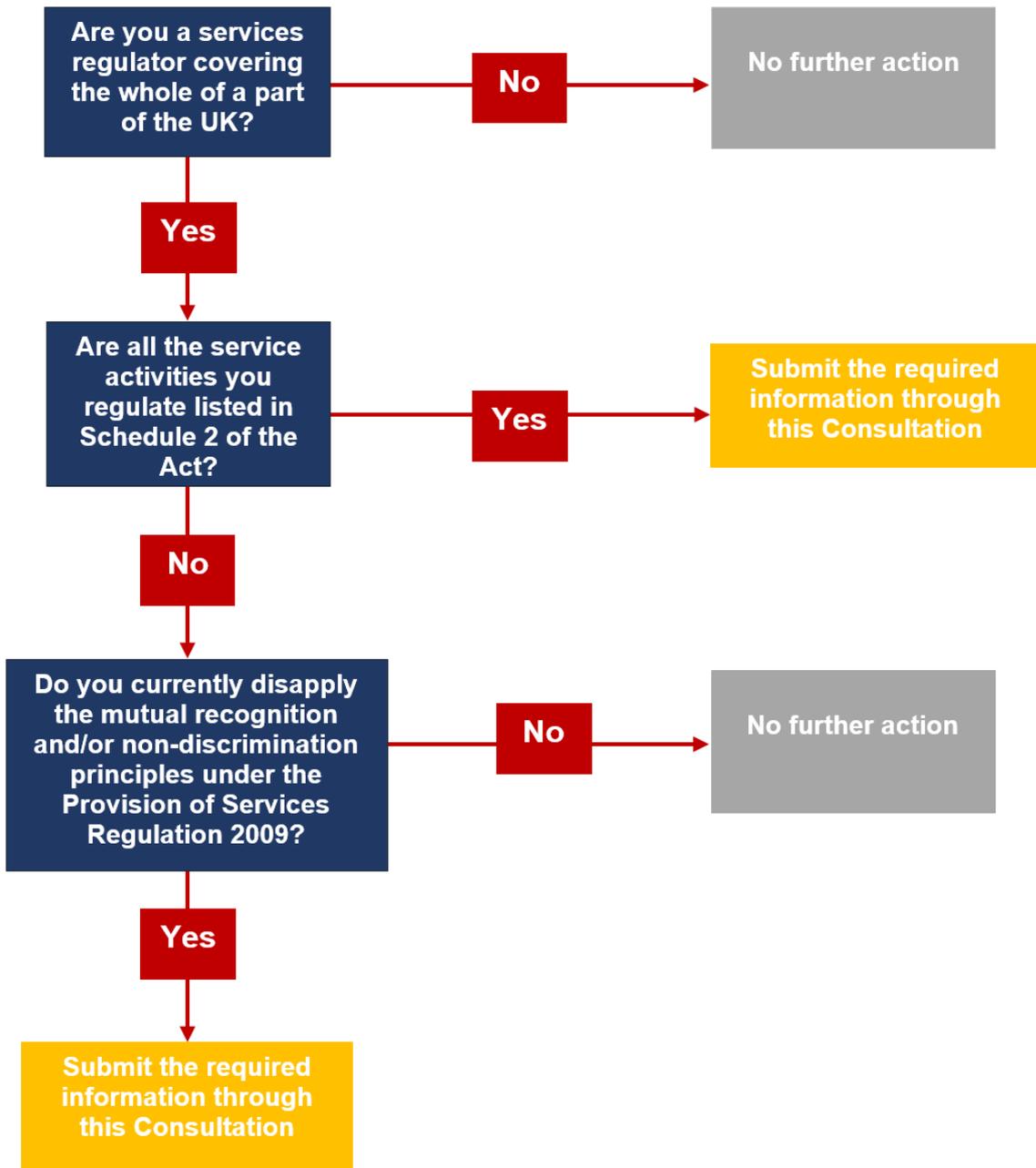
UK Internal Market

The movement of goods and services between the four parts of the United Kingdom – England, Scotland, Wales, and Northern Ireland.

UK Internal Market (UKIM) Act

The purpose of the United Kingdom Internal Market Act is to preserve the UK internal market, providing continued certainty for people and businesses to work and trade freely across the whole of the UK. The Act was introduced in the House of Commons on 9 September 2020 and concluded its parliamentary passage on 17 December 2020.

Annex B – Consultation Flowchart



This consultation is available from: <https://www.gov.uk/government/consultations/uk-internal-market-the-continuity-of-exclusions-from-the-principles-of-mutual-recognition-and-non-discrimination-for-services>

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