



Department for
Business, Energy
& Industrial Strategy

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

Government response



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Contents

| | |
|--------------------------------------|----|
| Introduction | 4 |
| Conducting the Consultation Exercise | 6 |
| Government Response | 7 |
| Overall Conclusion | 12 |
| Next Steps | 12 |
| Contact Details | 12 |
| Annexes | 13 |

Introduction

On 25 February 2021, the Government launched a 10-week [consultation](#) on the exclusions from the market access principles for services under the United Kingdom Internal Market Act 2020 (UKIMA), “UK Internal Market: the continuity of exclusions from the principles of mutual recognition and non-discrimination for services.”

Part 2 of UKIMA governs how the market access principles of mutual recognition and non-discrimination apply to the regulation of services in the UK.

Schedule 2 of UKIMA lists certain services and legislative requirements which are excluded from either or both of the market access principles. All services and related legislative requirements are in scope of UKIMA unless they are specifically excluded under Schedule 2, or are otherwise not subject to UKIMA’s broader scope.¹

The consultation asked for:

1. 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’);
2. Information about why it may be appropriate to formalise such instances under UKIMA 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 UKIMA
3. Information about why any current derogation under the 2009 Regulations should not be added to the exclusions lists; and
4. 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 (EU).

The Government consulted in this way for three main reasons. Firstly, under the 2009 Regulations there is no written list of exclusions from the mutual recognition provisions (unlike with the non-discrimination provisions). This means that any instances where regulators previously disapplied the requirement to recognise authorisations under the 2009 Regulations for an overriding reason relating to public interest², are not currently listed in Part 1 of Schedule 2 of UKIMA (services to which mutual recognition does not apply). The Government consulted

¹ See p.17-18 of the consultation document: <https://www.gov.uk/government/consultations/uk-internal-market-the-continuity-of-exclusions-from-the-principles-of-mutual-recognition-and-non-discrimination-for-services>

² These overriding 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.

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

UK regulators to obtain this information and see whether such cases should be formulated as an exclusion from the UKIMA mutual recognition principle.

Secondly, although the Government aims to retain the effect of the 2009 Regulations with the exclusions from the mutual recognition principle, in some cases changes may need to be made to the exclusions to reflect the UK's circumstances following exit from the EU. The Government therefore wished to consider whether the scope of application and sectoral coverage continues to be appropriate and requested information on any other proposed changes to Schedule 2, either by adding to, removing from, or varying the current exclusions.

Finally, the Government also sought views on ways in which the internal market for services could be further strengthened.

Conducting the Consultation Exercise

The consultation was aimed at services regulators, i.e., bodies which regulate specific activities related to service provision, such as 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, it was aimed at service providers, business representative organisations, think tanks and other civil society bodies with expert knowledge of services regulation.

The online consultation was published on GOV.UK on 25 February 2021. During the consultation period from February – May 2021, the Government circulated the consultation with relevant stakeholders, published a [news story](#) on GOV.UK, and held four webinars explaining the consultation and Part 2 of UKIMA for external stakeholders, including services regulators, businesses, and local authorities.

Overall, the Government received 17 external responses to the consultation. This includes responses from: eleven service regulators; two service providers and four professional bodies. Out of these responses, three were from stakeholders based in Scotland; Wales or Northern Ireland.

Most respondents did not provide their consent to publish their responses and share their identities, so all the responses have been anonymised. A list of respondents who consented to being named can be found at Annex A.

Some respondents used the Citizen Space online questionnaire. However, most respondents did not use the questionnaire in the consultation document, but instead sent a written response via a word document or email to our nominated email address.

Following the consultation exercise, further engagement took place with the Devolved Administrations.

Government Response

1. Given that the majority of respondents elected to provide information without reference to the specific questions in the consultation document, the Government has structured the response by setting out the proposed alteration to Schedule 2, rather than by consultation question.
2. The responses are grouped thematically, based on the consultation's three aims and the grouping of questions. Below is a summary of each of the responses, the Government's response to these, and an explanation of how the Government took them into account in developing its policy approach.

Proposed additions to Part 1 of Schedule 2 (services to which mutual recognition does not apply):

Summary

3. This section addresses the information received in relation to gas, electricity, water supply and sewerage services, and waste services.
4. Respondents to this section of the consultation provided information about regulators currently disapplying the requirement to recognise authorisations under the 2009 Regulations for an overriding reason relating to the public interest³, namely the protection of consumers and public safety, and the protection of the environment. Respondents requested the addition of new exclusions from the mutual recognition principle for gas, electricity, water supply and sewerage, and waste services to reflect the existing disapplication.
5. The respondents' views were that application of the mutual recognition principle to the sectors could cause potentially harmful impacts on both consumers and the sectors themselves. The harmful consequences could include the applicability of licence conditions, issues with compliance with the industry codes and issues surrounding differences in market operation.

Government Response

6. The Government aims to maintain continuity by adding each of these sectors to the list of exclusions under Part 1 of Schedule 2. This will ensure that these sectors can continue operating as they do now, and ensure that newly introduced requirements remain out of scope of UKIMA's mutual recognition principle in the future.

³ See 2.

7. In addition, as the mutual recognition principle did not apply to these sectors in the past, introducing these exclusions should not result in new market fragmentation in the UK.

Other proposed additions to Schedule 2:

Summary

8. Respondents suggested a range of other additions to the UKIMA services exclusions:
 - One response suggested adding a broad exclusion from the mutual recognition principle for all services relating to the environment. The respondent suggested that this would bring the UKIMA in line with the 2009 Regulations and would ensure regulators could continue to regulate to protect the environment.
 - Another respondent suggested adding a new exclusion from the mutual recognition principle for postal services. They argued this would bring the sector in line with how other services are regulated in the communications sector.
 - Other respondents, including regulators in devolved jurisdictions, suggested that certain aspects of the provision of qualifications-awarding services could be in scope of the market access principles, in particular the mutual recognition principle. It was asserted that this could risk undermining the specific qualification systems in place in each jurisdiction. Respondents also suggested that a broader education services exclusion could be needed, with one respondent also mentioning the need to ensure higher education is out of scope of the UKIMA market access principles.

Government Response

9. The Government thanks all those who took time to respond and has assessed each of these requests for new exclusions on their own merits:
 - The Government is committed to the protection of the environment but does not consider a sufficiently strong case was made to justify a new exclusion for environmental services, given the significant potential impact on the functioning of the UK's internal market. Moreover, the addition of the exclusions for the utility and energy sectors from the mutual recognition principle will go some way in ensuring regulation in these environmentally sensitive areas can continue without the application of UKIMA's market access principles.
 - The Government has considered the rationale for the request to add an additional exclusion of postal services from the mutual recognition principle. Although the Government accepts the premise that the regulator has responsibility for multiple sectors, including electronic communications and postal services, and wishes for them to be treated alike, as these sectors operate uniformly across the UK, our view is that exclusions are not needed in areas where the UKIMA market access principles will have little to no impact on how the service is regulated or provided in the UK. In this case, the Government considers that the most appropriate way to reflect this position is to remove

the existing postal services exclusion from the non-discrimination principle, and also remove the related electronic communications services exclusions from both the mutual recognition and non-discrimination principles. This will also lead to alignment in the approach for these sectors.

- The Government believes that most of the education sector is already excluded by virtue of the exclusion for “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”. However, the Government recognises that there may be confusion over whether certain aspects of the provision of qualifications-awarding services could be in scope of the mutual recognition principle, and agrees that there are sound policy objectives for different regulatory approaches within the UK. The Government therefore intends to add an exclusion from the mutual recognition principle for the award and authentication of qualifications services to ensure that this sector is out of scope of the mutual recognition principle.
- The Scottish Government requested the addition of an exclusion for heat regulation including certain services connected with heat networks from the mutual recognition principle, because of the different licences for the provision of heat networks services. The Government recognises that there are sound policy objectives for different regulatory approaches within the UK. The Government therefore proposes to add an exclusion to Part 1 of Schedule 2 to prevent this, which is in part consistent with the approach adopted to other energy and utility sectors (see above).

Proposed amendment to an existing exclusion under Parts 1 and 2 of Schedule 2:

Summary

10. Respondents suggested that the wording of the existing exclusion for “social services relating to social housing, childcare, adult social care and support of families and persons permanently in need” should be amended to clarify whether public and private provision of childcare and children’s social care and other services is covered under the exclusion.

Government Response

11. The Government intends to provide clarity about the scope of this exclusion, by amending the wording to reflect the original policy intention to exclude services relating to social housing, childcare, social care (both adult and children), and other support of families and persons in need, regardless of whether such services are publicly or privately provided.

Proposed removal of Schedule 2 exclusions:

Summary

12. Respondents suggested that some of the existing exclusions carried over from the 2009 Regulations are no longer relevant, so these exclusions could be removed in order to reflect the fact the UK has left the EU.
13. Respondents suggested removing the existing financial services exclusions under Part 1 and Part 2 of Schedule 2, as they were only in UKIMA for continuity purposes and are no longer relevant following the UK's withdrawal from the EU. This is because this service is generally reserved, and it is considered that financial services are uniformly regulated across the UK.

Government Response

14. Having assessed the information received in relation to financial services, the Government agrees that the exclusions for this sector are not necessary, due to the way financial services are regulated in the UK. The Government therefore intends to remove these exclusions from Schedule 2.
15. Similarly, the Government conducted an internal review of all the existing exclusions as per the consultation's aims. As a result, the Government plans to remove the existing exclusions for services of a statutory auditor and services of temporary work agencies. The reason for this is because the exclusions are also seen as no longer necessary because they operate uniformly across the UK.

Other information about services exclusions / how services operate:

Summary

16. Several respondents provided information about how their service sector currently operates. This includes architect services and farrier services.
17. Multiple respondents suggested that the legal services exclusion from the mutual recognition principle should remain in Schedule 2. Some of these respondents also gave further information about the legal sector, and how their framework operates.
18. Another respondent suggested that the gambling services exclusion should remain in Schedule 2.

Government Response

19. The Government appreciates the further information that respondents submitted to our consultation. This provides useful context when considering how individual services are regulated in the UK.

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

20. It is also useful to understand where exclusions are needed and should remain under UKIMA. The Government therefore does not intend to change the legal services or gambling services exclusions.

Overall Conclusion

The consultation provided the Government with responses which helped inform potential changes to the services exclusions currently listed in Schedule 2 of the UKIMA. Stakeholders' responses fit into the following four categories: make technical changes to exclusions, add exclusions, remove exclusions, and retain current exclusions.

The responses to the consultation have clearly shown that Schedule 2 of UKIMA needs to be amended in order to make sure the scope of application is appropriate and reflects how services are currently regulated in the UK.

The Government plans to make the majority of changes suggested by stakeholders. Where the Government is not adding exclusions, or is proposing different changes to the ones suggested by respondents, the reasons for doing so are explained.

Next Steps

The Government intends to amend the UK Internal Market Act 2020 through a statutory instrument, using the powers contained in section 18(2) of that Act, to implement these changes to Schedule 2. Timing of this will be dependent on the Parliamentary timetable.

The Government has engaged with all of the Devolved Administrations throughout this process and has sought the consent of the Devolved Administrations to the making of this statutory instrument, as required under section 18(8).

The Government will conduct a review of the use of the power in section 18(2) in the period of three to five years of the passing of the Act, in accordance with the requirement in section 22 of UKIMA.

Contact Details

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Annexes

Annex A: Stakeholders who responded (and consented to being named):

- Bar Standards Board
- Ofsted
- Royal Society of Ulster Architects
- The Council for Licensed Conveyancers
- The Solicitors Regulation Authority

Annex B: Useful Links:

- [Trade in Services – Guidance for regulators on complying with the UK Internal Market Act 2020](#)
- [The UK Internal Market Act 2020 in full](#)

This publication is available from: 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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