



Department for Business, Energy and Industrial Strategy Call for Evidence – “The Recognition of Professional Qualifications and Regulation of Professions”

**A Response by
The Chartered Institute of Legal Executives (CILEX)**

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1. Introduction

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association for Chartered Legal Executive lawyers (CLEs), other legal practitioners and paralegals, representing approximately 20,000 members, including 8,000 fully qualified Chartered Legal Executive lawyers (CLEs). By virtue of the Legal Services Act 2007 (LSA 2007) Schedule 4, CILEx further occupies the role of Approved Regulator for the legal profession and has delegated these regulatory powers to the independent regulator CILEx Regulation Ltd.
- 1.2. CILEx welcomes this opportunity to contribute to the Department for Business, Energy and Industrial Strategy's Call for Evidence on the recognition of professional qualifications and regulation of professions as the Transition Period draws to a close. Recognised as the second largest legal services market in the world, with a worth of up to £25 billion to the UK economy¹, it is essential that policies and agreements are established to maintain the integrity and value of the UK legal profession at both a national and international level as the country's departure from the European Union (EU) takes place.

2. The Recognition of Professional Qualifications: Outside the UK

- 2.1. The Call for Evidence rightly acknowledges the opportunities that will be brought to improve the current system of qualification recognition overseas, as it applies across Europe, once the 31st December 2020 has passed.
- 2.2. As distinct from other professions within the UK, the recognition of lawyers across the European Union (EU) currently derives from the EU Directive on The Establishment of Lawyers² (the 1998 Directive); as opposed to the general EU Directive on the Recognition of Professional Qualifications³ that covers most other professions.
- 2.3. Under Article 1 of the 1998 Directive, the definition of 'lawyer' for the UK territory (in order to practice in a member state other than that in which the qualification was obtained), is explicitly stated with reference to 'Advocate (Scotland)/Barrister/Solicitor.' This was by virtue of the 1998 landscape of the UK legal profession at the time of the Directive's passing.
- 2.4. Unfortunately, however, the Directive has been unable to since evolve alongside the growth of the profession, with its last iteration having passed in 2006; a year before the introduction of the Legal Services Act 2007 (LSA 2007) which overhauled the UK legal profession and its regulatory framework. Of note, were changes to the national recognition of Chartered Legal Executives (CLEs) as 'authorised persons' and therefore qualified lawyers within the jurisdiction of England and Wales.

¹ <https://www.gov.uk/government/news/legal-services-and-lawtech-bolstered-with-2-million-of-government-funding>

² Directive (EU) 1998/5/EC.

³ Directive (EU) 2005/36/EC.

- 2.5. Due to the resulting disparities between the LSA 2007 and the 1998 Directive, CLEs have since been placed in a unique position: recognised as lawyers by the UK Government for domestic purposes, but not recognised by the UK Government for international purposes. The result of this anomaly has been to restrict the ability for CLEs to provide services to other EU countries and has consequently limited the UK's own ability to effectively export legal services overseas.
- 2.6. In anticipation of any bilateral agreements to be formed on the recognition of professions following the end of the Transition Period, CILEx implores that this new opportunity be maximised to update the relevant rules and cut the red tape that prohibits CLEs from offering their services to the maximum possible market. This simple change would not only bring international recognition of UK lawyers in line with the reality of the profession, by ensuring consistency of recognition at all levels, but also help to maintain and safeguard the ongoing reputation, position and quality of the UK's legal services industry post-Brexit and enhance the UK's competitiveness abroad.

3. UK Internal Market: Regulation of Professions

- 3.1. The Department for Business, Energy and Industrial Strategy's (BEIS) observation as to the function of regulation strongly resonates with CILEx, namely to *"raise standards: protecting consumers of services and the wider public from practitioners who do not have the necessary skills or training...[whilst recognising that] This needs to be balanced alongside promoting a regulatory environment that supports social mobility and access to professions for individuals from all backgrounds."*⁴
- 3.2. As a Chartered professional body, a vast majority of CILEx members operate under a form of voluntary regulation (as recognised within the Call for Evidence, Annex A)⁵; yet equally the nature of the regulatory regime contained within the LSA 2007 means that CLEs and those who have acquired subsequent practice rights are subject to regulation by law⁶ (are authorised to practise) but are also regulated for all other aspects of their work which does not require statutory regulation. In this way, the CILEx model offers a unique approach to regulation within the legal sector in which both voluntary and statutory regulation complement one another in the public interest (i.e.: regulation operates similarly to those *"professions where activities and the title are reserved to holders of specific professional qualifications"* as well as those *"professions regulated voluntarily through Chartered Professional Bodies."*)⁷
- 3.3. The development of this unique approach is two-fold and directly draws from the BEIS's above remark:

⁴ Call for Evidence Paper (The Recognition of Professional Qualifications and Regulation of Professions), page 14.

⁵ Call for Evidence Paper (The Recognition of Professional Qualifications and Regulation of Professions), page 17.

⁶ In the first instance, this is by virtue of CLE authorisation for the reserved legal activity of administration of oaths.

⁷ Call for Evidence Paper (The Recognition of Professional Qualifications and Regulation of Professions), Table 1, page 18.

- 3.3.1. Firstly, in the interests of protecting consumers of legal services, CILEx's commitment to voluntary regulation ensures that legal services offered by all CILEx practitioners are subject, at the very least, to a suitable redress mechanism and regulatory oversight with additional requirements dependent on the nature of services offered. Consequently, as distinct from other regulatory models within the legal profession, CILEx members are regulated for all the activities they conduct and not just for those activities for which authorisation is statutorily mandated.⁸
- 3.3.2. Secondly, CILEx's approach to regulation which sees regulatory burdens imposed on a transitional scale as opposed to an 'all or nothing' fashion, is underpinned by our commitment to enhance social mobility within the sector by facilitating flexible entry routes into the profession and offering a more targeted and proportionate form of regulatory oversight therein. Accordingly, at the outset of their careers, as a baseline, CILEx professionals are subject to more targeted and proportionate voluntary regulation for the legal activities they engage. These practitioners are then able to subsequently enjoy authorisation on qualification as a CLE should they wish it (specifically for the administration of oaths), with the added option of being able to acquire specialist authorisation to practise any of the other reserved legal activities by demonstrating specific competence and knowledge per activity, enabling flexibility for individual practitioners to identify and meet emerging wider market needs.
- 3.3.3. CILEx strongly believes that this framework in which our practitioners operate, strikes a good balance between protecting consumer interests, by ensuring that all legal services fall within the remit of regulatory protection, whilst also supporting social mobility aims for enabling access to the profession for a more diverse cohort of talented individuals.
- 3.4. In fact, CILEx practitioners take a non-traditional path not only in the case of regulation, but in the pathways to education and training for acquiring their professional qualifications. This is achieved by virtue of the CILEx qualification model:
- Operating on a work-as-you-learn basis, including enhanced opportunities for distanced learning⁹,
 - Enabling greater flexibility when undertaking legal education and training, empowering individuals to become specialists in their field, whilst accommodating individuals to learn at their own pace and pause learning where necessary¹⁰,
 - Providing competitive prices for qualification at an average cost of a third the price of the solicitor route, and

⁸ The current legal regulatory framework requires authorisation only for those legal service providers that are authorised to conduct reserved legal activities under the LSA 2007 Section 12. Consequently, it is often the assumption that those providers who aren't authorised, operate outside the regulatory remit. However, in the case of CILEx, this does not apply.

⁹ This is further supplemented by the unique role CILEx plays within the legal profession, whereby it does not solely act as a qualification provider, but has also established resources to cultivate educational delivery through its Law School arm, promoting the benefits and outreach of distanced learning capabilities.

¹⁰ For example, in situations of pregnancy.

- Being the sole route of entry to the legal profession that is not predicated on having a university degree.
- 3.5. As a result, CILEx lawyers are drawn from a variety of backgrounds, empowering those who cannot afford to access full-time education, are juggling family and childcare responsibilities, or have decided to pursue a legal career later in life, to enter the profession. The benefits of this approach are witnessed by the sheer diversity of CILEx practitioners comprising of: a 72% female and 12% BAME demographic, with 85% of practitioners having attended state schools, 30% being the first generation in their family to attend university, and only 2% of members having had a parent who is also a lawyer.
 - 3.6. However, despite CILEx practitioners exhibiting the diversity that the legal profession has long been criticised for failing to cultivate, there are barriers presented to their ability to practice. As recognised by the Call for Evidence, this is largely because “*where professions are regulated differently within the UK, there is potential for barriers to movement of professionals or provision of services.*” This does not solely extend to differences in regulatory regimes across the devolved nations of the UK but is witnessed within the backdrop of regulation in the singular jurisdiction of England and Wales for the legal profession.
 - 3.7. Alongside the aforementioned anomaly as to the recognition of CLEs on a domestic versus international level, the parity provided to CLEs under the LSA 2007 regulatory framework has not been fully recognised within our own national framework; with numerous instances of domestic legislation falling foul of the same inconsistencies as the 1998 Directive. This includes the outstanding anomaly contained within the Powers of Attorney Act 1971 Section 3, that prohibits CILEx practitioners from certifying copies of power of attorney, despite their ability to create the original document at the outset. Again, this barrier arises as a direct result of the relevant provision being outdated by nearly 36 years, and is one of a handful of instances in which the true capabilities of the UK legal profession are not being realised due to anomalous barriers in a tightly woven network of rules and stipulations.
 - 3.8. In addition to these legislative anomalies, recognition of the profession is further hampered by a lack of transparency regarding the diversity of providers offering legal services, as well as misunderstandings as to their regulatory status. This has been noted amongst the general public¹¹, but also amongst key public bodies and associated third parties. For example, CILEx practitioners have experienced inadvertent barriers caused by HM Land Registry as a result of inconsistent and unclear approaches in allowing CILEx Lawyers to sign certain forms, as well as in the context of major mortgage lender panel policies. Similarly, in the midst of COVID-19, practical barriers were created for those in need of will writing services when key worker definitions were framed so as to extend solely to ‘solicitors.’ As a result, inconsistent rules and regulations applied to the freedoms available to solicitors in continuing to deliver legal services, as compared with their counterparts. As well as limiting consumer choice at a time when will writing services were in demand amongst vulnerable consumers, this approach overlooked

¹¹ As explored within the “Independent Review of Legal Services Regulation,” UCL Centre for Ethics and Law, Professor Stephen Mayson.

the more junior professionals that play a key role in preparing documentation and in drafting stages.

- 3.9. All of the above outstanding barriers to the provision of legal services within England and Wales have not only undermined the profession's ability to provide good value customer services, but seek to threaten overall objectives to: *"promote a regulatory environment that supports jobs, social mobility and access to professions for individuals from all backgrounds."*¹²
- 3.10. In establishing a suitable and open regulatory landscape for the UK moving forward, CILEx hopes that the Department for Business, Energy and Industrial Strategy is sensitive to the need to correct these barriers to then ensure all branches of the legal profession are on an equal footing, thus enhancing greater transparency and understanding of alternative qualifications and regulatory models to offer greater consumer choice and access to justice and so enhance the reputation and competitiveness of the UK's legal services profession abroad.

For further details

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¹² Call for Evidence Paper (The Recognition of Professional Qualifications and Regulation of Professions), page 8.