



FACULTY OFFICE

UNITED KINGDOM INTERNAL MARKET BILL

The Bill

On 9 September the Government introduced their United Kingdom Internal Market Bill to make provision (*inter alia*) for an internal market for goods and services in the United Kingdom (including provision about the recognition of professional and other qualifications) as the transitional arrangements contained in the EU-UK Withdrawal Agreement come to an end.

The issues

There are two main issues which have a bearing on the regulation of notaries within England and Wales

- The mutual recognition of services – under section 17 of the Bill, if one is authorised to provide services in one part of the UK (eg England) one does not have to be authorised to do it in another (eg Scotland). By virtue of section 16 and Schedule 2 Part 1 this doesn't apply to "Legal Services". This is defined as "provision of legal advice, litigation services" and is therefore excluded from the right to be mutually recognised in another part of the UK. However, "notarial activities" are not included within the exemption. Notaries do not only provide "legal advice" and the consequence of this would be that notaries appointed and regulated in Scotland and Northern Ireland could practice within England and Wales and if a regulator attempted to stop them this could potentially be "discriminatory" and therefore illegal under the Bill.
- The mutual recognition of qualifications – although the Bill generally requires regulators to accept the qualifications and authorisations given to them by equivalent regulators in other parts of the UK – see section 22(2) in particular, this explicitly does not apply to the notarial profession – see section 22(5),(6). This does not give rise to a problem and preserves the status quo.

What has happened so far

The Faculty Office wrote to Mr John Russell, Policy Adviser for the UK Legal Services and Innovation at the Ministry of Justice, on 13th September to point out the deficiency in the definition of "Legal Services" and that it would break down the territorial nature of regulation within the UK. It was suggested by the Faculty Office that the definition of reserved legal activity within the Legal Services Act 2007 be used. On 15th September Mr Russell replied:

"Dear Ian – As you say, this is not our Bill. But we understand that BEIS are intending to closely follow the Provision of Services Regulations 2009, under which notaries are excluded.

So we understand that at some point BEIS are intending to ensure that notarial activities is included in both parts of Schedule 2, so that notaries will be excluded from both the mutual recognition requirements and the non-discrimination requirements.

...

The Bill is still at an early stage of the Parliamentary process, but we will seek to keep in close contact with officials in BEIS over this."

Suggested action

Subject to advice the Faculty Office is content with the reply provided by the Ministry of Justice and intends to keep a watching brief to ensure that the Bill is corrected to preserve the status quo on territorial nature of United Kingdom legal services.

15th September 2020