Title: The Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2020

IA No: MoJ062/2020

Lead department or agency: Ministry of Justice

Other departments or agencies:

Impact Assessment (IA)

Date: July 2020

Stage: Final

Source of intervention:

Type of measure: Secondary legislation

Contact for enquiries:
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Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option (in 2019 prices)

Total Net Present Social Value	Business Net Present Value	Net cost to business per year	Business Impact Target Status
n/a	n/a	n/a	Non-qualifying regulatory provision

What is the problem under consideration? Why is government intervention necessary?

In February 2019, the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 ("the 2019 Revocation Regulations") were made. Those Regulations prepared for an exit from the EU without a Withdrawal Agreement, by removing the preferential access rights EU and EFTA lawyers enjoyed in the UK by virtue of the UK's EU membership. Without intervention, those Regulations will come into force at the end of the transition period. MoJ also made the Services of Lawyers and Lawyer's Practice (Amendment) (EU Exit) Regulations 2019 ("the 2019 Amendment Regulations") in February 2019 which amend the 2019 Revocation Regulation so as to correct deficiencies in the relevant retained EU law taking into account the relevant provisions of the UK- Swiss Citizen's Rights Agreement ('the Swiss CR Agreement'). However, given that the UK secured a Withdrawal Agreement with the EU in October 2019, this legislation will no longer function correctly. Government intervention is therefore required as a new statutory instrument (SI) will need to be laid to correct this.

What are the policy objectives and the intended effects?

This instrument revokes but largely remakes the 2019 Revocation Regulations and the 2019 Amendments Regulations. It, however, does not contain provisions that were in the 2019 Revocation Regulations, but which would, as a result of the Withdrawal Agreement now be redundant at the end of the transition period. It also contains references to "IP completion day" (as defined by the European Union (Withdrawal Agreement) Act 2020) rather than "exit day". Further it contains additional provisions implementing the relevant provisions of the Separation Agreements that relate to lawyers and the provision of legal services. The policy objectives of this statutory instrument (SI) are in line with Government's approach to the end of the transition period: to implement the relevant provisions from the Withdrawal Agreement, the Swiss CR Agreement and the EEA EFTA separation agreement (collectively referred to in this assessment as 'the Separation Agreements'). Further, to otherwise cease any residual preferential rights enjoyed by EU, EFTA or Swiss lawyers on 31 December 2020 and to ensure a functioning statute book with the necessary minor consequential amendments.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

- **Option 0** – 'Static acquis' - retain the current legal framework.
- **Option 1 -** Make new legislation to replace our previous EU Exit legislation as a result of the Withdrawal Agreement and to implement the outstanding elements of the Separation Agreements.

The Government's preferred option is option 1 as this best meets the policy objectives.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date:** n/a

Does implementation go beyond minimum EU requirements?		n/a		
Are any of these organisations in scope?	**Micro** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)		**Traded:**		**Non-traded:**

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister: Alex Chalk Date: 20/07/2020

Summary: Analysis & Evidence

Policy Option 1

Description: Make new legislation to replace our previous EU Exit legislation as a result of the Withdrawal Agreement and to implement the outstanding elements of the Separation Agreements.

FULL ECONOMIC ASSESSMENT

Price Base Year n/a	**PV Base Year** n/a	**Time Period Years** n/a	**Net Benefit (Present Value (PV)) n/a**		
			Low: **Optional**	High: **Optional**	Best Estimate:

COSTS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low	n/a		n/a	**n/a**
High	n/a		n/a	**n/a**
Best Estimate	n/a		n/a	**n/a**

Description and scale of key monetised costs by 'main affected groups'

None

Other key non-monetised costs by 'main affected groups'

Indirect costs are dependent on how EU, EEA EFTA and Swiss lawyers operating in the UK are employed (or how their business is structured), the work they do and the individual choices they make in response to the end of the transition period, such as whether they choose to seek admission to the domestic legal profession, wish to undertake regulated activities (previously and in the future), or the way they choose to change their business model to comply with the new regulatory position. Any costs incurred by Swiss lawyers is them electing to exercise rights (like joining a UK profession) that incur costs as standard. For those who wish to continue to be regulated and provide reserved legal activities, the costs will relate to renewing REL registration (this will only be applicable at the end of the transition period to RELs in scope of the Swiss CR Agreement and for those not in scope their REL status will end at the end of the transition period), to taking steps to seek admission as a solicitor or barrister, to restructuring or to working under supervision.

BENEFITS (£m)	**Total Transition** (Constant Price) Years		**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low	N/A		N/A	N/A
High	N/A		N/A	N/A
Best Estimate	N/A		N/A	N/A

Description and scale of key monetised benefits by 'main affected groups'

None

Other key non-monetised benefits by 'main affected groups'

The associated statutory instrument will provide clarity and certainty for EU and EFTA lawyers, businesses, the wider sector and consumers on their status. This option will make provision for the Separation Agreements and therefore should provide EU and EFTA lawyers with greater certainty on their status. This instrument will also implement the provisions of the Separation Agreements to facilitate regulator cooperation. This will enable ongoing regulator cooperation in relation to ongoing applications for admission to the host state profession as provided for under the Agreements and, in addition, in relation to registration and the provision of services under home title as provided for under the Swiss CR Agreement. Transitional provision in this instrument will also enable regulators in England and Wales or Northern Ireland to complete any ongoing disciplinary proceedings against EU or EEA-EFTA lawyers started before the end of the transition period.

Key assumptions/sensitivities/risks **Discount rate** n/a

None

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			**Score for Business Impact Target (qualifying provisions only) £m**
Costs:	**Benefits:**	**Net:**	

Evidence Base

A. Background

The UK Legal Services Regulatory Landscape

1. The UK has three separate legal jurisdictions, England and Wales, Scotland and Northern Ireland. Each jurisdiction has different legal professions, different qualifications, routes to qualify and different regulatory regimes. In terms of legislative responsibility, the regulation of most legal services is devolved in Scotland and Northern Ireland. The regulation of patent attorneys and trade mark agents, however, is reserved.

2. This impact assessment applies to the legal jurisdictions of England and Wales and Northern Ireland. Scotland plan to take forward their own further legislation in this area.

Regulation of Legal Services in England and Wales

3. The regulation of legal services in England and Wales is based on a mix of 'reserved activities' and professional titles. The majority of legal services regulation is covered by the Legal Services Act 2007. There are also overlapping regulatory regimes that cover other elements of legal services. This includes the Immigration and Asylum Act 1999 which provides a separate regulatory regime for immigration advice and services. Similarly, the regulation of claims management activities has a separate regulatory regime under the Financial Guidance and Claims Act 2018 and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001. Both regimes require service providers to be regulated by other regulators although there are exemptions for some regulated lawyers.

4. The 'reserved' legal activities, as set out in the Legal Services Act 2007, can only be undertaken by 'authorised persons,' i.e. only those qualified and authorised by one of the relevant regulators to carry on such activities. The reserved activities are:

    - the exercise of a right of audience
    - the conduct of litigation
    - reserved instrument activities
    - probate activities
    - notarial activities
    - the administration of oaths

5. Lawyers who do not seek to undertake these reserved activities are not required to be regulated under the Legal Services Act 2007. Whilst the provision of general legal advice is not required to be regulated under the Legal Services Act 2007, there is some legislation that does require types of general advice to be regulated. For instance, immigration advice is regulated by the Office of the Immigration Services Commissioner and advice which is a claims management activity is regulated by the Financial Conduct Authority, unless the service provider is exempt from being so regulated. However, lawyers wishing to practise under a protected title such as "solicitor", regardless of what legal services they provide, must be regulated.

6. Non-lawyers may own legal businesses falling under the definition of a "licensable body" or "licensed body" in the Legal Services Act 2007 (sometimes also referred to as "Alternative Business Structures"(ABS)), subject to regulatory approval.

Regulation of Foreign Qualified (third country) Lawyers in England and Wales

7. Foreign qualified lawyers are, generally, not permitted to undertake reserved legal activities in England and Wales. However, there are routes for foreign-qualified lawyers to transfer into the English/Welsh profession without entirely re-qualifying, in the form of transfer or aptitude tests. The Solicitors Regulation Authority (SRA) offers the Qualified Lawyers Transfer Scheme (QLTS), managed by private providers, and the Bar Standards Board, offers the Bar Transfer Test (BTT), managed by BPP Law School, another private provider. The Bar also has a system granting

temporary authorisation to qualified foreign lawyers called a temporary Call to the Bar for the purpose of conducting a specific case or cases.

8. Once admitted as a solicitor or barrister, those lawyers are subject to the same regulatory regime as all others who have qualified as solicitors or barristers. In addition, foreign qualified lawyers registered with the SRA - Registered Foreign Lawyers (RFLs) - can participate in the ownership of a legal business with domestically qualified lawyers, although they cannot undertake reserved legal activities unless they are working for a firm and supervised by a domestically qualified lawyer.

Regulation of Legal Services in Northern Ireland

9. There are only two branches of the legal profession in Northern Ireland. The regulation of legal services in Northern Ireland is undertaken by the Law Society of Northern Ireland for solicitors, and by the Honourable Society of the Inn of Court of Northern Ireland for barristers. A statutory framework is in place for the regulation of solicitors, underpinned by the Solicitors (NI) Order 1976, and the Law Society acts as the regulatory authority governing the education, accounts, discipline and professional conduct of solicitors. For barristers, a similar, but non-statutory, framework of regulation is undertaken by the Inn of Court and the Bar Council.

10. ABS are not permitted in Northern Ireland, nor is the external ownership of law firms.

Regulation of Foreign Qualified (Third Country) Lawyers in Northern Ireland

11. Foreign qualified lawyers cannot practise as either a solicitor or a barrister in Northern Ireland without first re-qualifying through the normal channels, although there are slightly different requirements for applicants from certain Commonwealth countries applying to practise as a solicitor.

Current European Framework and the Regulation of EU and European Free-Trade Agreement (EFTA) lawyers

12. The current EU framework specifically relating to lawyers centres around two European Directives:

- Under the Lawyers Establishment Directive (Directive 98/5/EC) ("the LED") (implemented in England and Wales and Northern Ireland by the European Communities (Lawyer's Practice) Regulations 2000) particular EU and EFTA lawyers can practise activities normally reserved to UK advocates, solicitors and barristers (with limited restrictions) under their home state professional title. They can also gain a UK professional title on the basis of three years of practice in the law of the relevant UK legal jurisdiction. To exercise these practice rights under the LED, EU and EFTA lawyers must register with a UK regulator as Registered European Lawyers (REL). Additionally, EU and EFTA lawyers may practise jointly with UK solicitors, or be sole owners of legal businesses in the UK, providing reserved activities (subject to some limitations).

- Under the Lawyers Services Directive (77/249/EEC) ("the LSD") (implemented in the UK by the European Communities (Services of Lawyers) Order 1978) certain EU and EFTA lawyers are entitled to provide temporary services across EU and EFTA states, including the UK; they are not required to register with a UK regulator to do so. EU and EFTA lawyers providing temporary services in England, Wales or Northern Ireland, can provide reserved legal activities (with some restrictions).

13. According to SRA data, there were 783 RELs registered with the SRA as of June 2020 and 2,747 RFL. The Bar Standards Board (BSB) identified 21 RELs (2 registered in the last 12 months), 17 of which are self-employed, and 4 employed as of June 2020.

14. Figures provided by the Law Society of Northern Ireland reveal there were 5 RELS registered with them in Northern Ireland as of June 2020. The Bar Council of Northern Ireland indicated that there had been 4 applicants to become a barrister via one of the EU routes in the past 5 years. However, only one of these was practising as at June 2020.

Routes to transfer into the UK profession for EU and EFTA lawyers

15. RELs can be admitted to a UK profession on the basis of three years' experience in the law of the relevant part of the UK.

16. Alternatively, under the Mutual Recognition of Professional Qualifications Directive (MRPQ) (Directive 2013/55/EU, amending 2005/36/EC), a European lawyer may seek admission as an English and Welsh or Northern Irish solicitor or barrister by requesting recognition of their qualifications. If the regulator deems the qualification not to be equivalent, then they must offer an aptitude test or adaptation period. EU and EFTA lawyers may take the QLTS and BTT as set out above like other foreign practitioners, and thereby be admitted to the solicitors' profession and to the Bar in England and Wales.

B. Problem Under Consideration

17. In preparation for the UK's exit from the EU potentially without a Withdrawal Agreement, the Ministry of Justice made an SI (the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 (S.I. 2019/375)) ("the 2019 Revocation Regulations") using a power under s.8 of, and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018, to amend deficiencies in retained EU law[1] arising from the UK's withdrawal from the EU.

18. In the event the UK did not secure a Withdrawal Agreement, this instrument would have aligned the position of EU and EFTA and third country legal service providers. If it had come into force on exit day, it would have provided transitional arrangements up until 11p.m. on 31 December 2020, to allow registered European lawyers (RELs) and EU and EFTA lawyers with ownership interests in legal businesses to have adequate time to make alternative arrangements to comply with the new regulatory framework, such as changing practice or transferring qualifications, hiring new staff or restructuring businesses.

19. Given the UK did secure a Withdrawal Agreement, these provisions did not come into force on exit day[2]. If we took no action, these provisions would come into force at the end of the transition period, removing all preferential practising rights for EU, EEA EFTA and Swiss lawyers, where necessary. However, there are several issues with this:

    a. The references to 'exit day' in the legislation will mean that some provisions will not work effectively. For example, a provision that enables regulators to complete ongoing disciplinary proceedings started before 'exit day' will need to be amended to refer to the end of the transition period. Otherwise there would be a risk that regulators will not be able to continue disciplinary proceedings that are ongoing on 31 December 2020.
    b. Our legislation allowed RELs until 11pm 31 December 2020 to continue with this status and to give them time adjust their regulatory position. Such a provision will now be redundant.

[1] The key retained EU law is the European Communities (Services of Lawyers) Order 1978 (S.I. 1978/1910) which implements Directive 77/249/EEC (the Lawyers Services Directive) and the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) which implements Directive 98/5/EC (the Lawyers Establishment Directive). The SI also makes a number of consequential amendments to primary and secondary legislation. Both the Lawyers Services Directive and the Lawyers Establishment Directive apply to Switzerland by virtue of the EU-Swiss Free Movement of Persons Agreement.

[2] As a result of the European Union (Withdrawal Agreement) Act 2020, the commencement date of the 2019 Revocation Regulations was deferred to "IP completion day".

c. We need to implement some of the outstanding provisions of the Separation Agreements including provisions in those Agreements to facilitate regulator cooperation.

20. The 2019 Revocation Regulations extend to England and Wales and Northern Ireland. The regulation of legal services (except for patent attorneys and trade mark attorneys) is devolved to both Scotland and Northern Ireland. The Scottish Government made separate legislation in preparing for the UK's departure from the EU.

C. Policy Rationale and Objectives

21. In February 2019, the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019 (the "2019 Regulations") were made. This legislation was made to prepare for an exit from the EU without a Withdrawal Agreement and will come into force at the end of the transition period without further action. Given that the UK secured a Withdrawal Agreement with the EU, the 'no deal' legislation will no longer function correctly. We need to lay a new statutory instrument to correct this.

22. The policy objectives of this instrument are:

- Firstly, to implement the relevant provisions relating to the recognition of legal qualifications/provision of legal services in the Separation Agreements.
- Secondly, to otherwise cease any residual preferential rights enjoyed by EU, EEA EFTA or Swiss lawyers at 11pm on 31 December 2020.
- Lastly, to ensure a functioning statute book with the necessary minor consequential amendments.

D. Affected Stakeholder Groups, Organisations and Sectors

23. This statutory instrument extends to England and Wales and Northern Ireland (although some minor consequential amendments extend to Scotland). The groups most likely to be affected by the options in this IA are as follows:
    - EU, Swiss and EEA EFTA lawyers
    - Businesses employing such lawyers
    - The wider legal sector
    - Regulators and administrators

E. Description of Options Considered

24. In order to meet the policy objectives, the following options are assessed in this IA:

- **Option 0 – Static acquis: retain the current legal framework.**
- **Option 1: Make new legislation to replace our previous EU Exit legislation as a result of the Withdrawal Agreement and to implement the outstanding elements of the Separation Agreements.**

25. The Government's preferred option is option 1 as this best meets the policy objectives.

Option 0: Static acquis

26. Under this option, the majority of the provisions of the Withdrawal Agreement, EEA EFTA Separation Agreement and Swiss CR Agreement will come into force at the end of the transition period. The Swiss CR Agreement enables lawyers who are established in Switzerland to provide temporary services in the UK for up to 90 days a year, for 5 years from the end of the transition period, pursuant to contracts signed and started before the end of the transition period. The current 2019 Revocation Regulations (as amended by the 2019 Amendment Regulations) need to be

corrected as the relevant provision in those Regulations refers to contracts signed and started before exit day rather than before the end of the transition period. The relevant provision also refers to the 5 year period as beginning from exit day and so needs to be corrected.

27. In addition, there are similar references to "exit day" in other provisions of the 2019 Revocation Regulations (as amended by the 2019 Amendment Regulations) giving effect to the provisions of Swiss CR Agreement which need to be corrected. As an example, the definition of "Swiss lawyer" in those Regulations includes someone who has started to obtain but not completed their professional qualifications before exit day – this needs to be corrected so as to include those who had started to obtain their qualifications between exit day and the end of the transition period.

28. There are also provisions in the Separation Agreements in relation to regulator cooperation which need to be implemented.

29. The existing 2019 Revocation Regulations (as amended by the 2019 Amendment Regulations) contains a number of additional transitional provisions and consequential amendments to both primary and secondary legislation which make various references to "exit day" – which will make the statute book unclear and confusing – and which will need to be corrected. There are also some additional consequential amendments included in the new instrument, the need for which having arisen since the 2019 Revocation Regulations and the 2019 Amendment Regulations were made.

Option 1: Make new legislation to replace our previous EU Exit legislation as a result of the Withdrawal Agreement and to implement the outstanding elements of the Separation Agreements.

30. The proposed SI revokes but remakes with amendments many of the provisions of the 2019 Revocation Regulations and the 2019 Amendments Regulations. It, however, does not contain provisions that were in the 2019 Revocation Regulations but which would, as a result of the Withdrawal Agreement now be redundant at the end of the transition period. It also contains references to "IP completion day" (as defined by the European Union (Withdrawal Agreement) Act 2020) rather than "exit day". Further it contains additional provisions implementing the relevant provisions of the Separation Agreements that relate to lawyers and the provision of legal services.

31. This option also ensures that we meet out international obligations in implementing the relevant provisions of the Separation Agreements effectively:

- The EU Withdrawal and EEA EFTA Separation Agreements allow applications made before the end of the transition period under Article 10 of the LED for admission to the host state's legal profession to be completed under the terms of the Directive.

- The Swiss CR Agreement makes provision for existing UK and Swiss RELs. It also provides a transition period of 4 years from 31 December 2020 for lawyers within scope of the Agreement to register as a REL and to provide services under the terms of the LED or to apply for admission to the host state's legal provision under the terms of the Directive. Finally, it allows lawyers and law firms to continue to provide up to 90 days temporary services in a year, for at least 5 years from the end of the transition period, where this is under a contract agreed and started before the end of the transition period.

- This SI contains provisions to facilitate regulator cooperation under the Separation Agreements in relation to applications to transfer into the host state profession and, in addition, in relation to registration to provide, and the provision of, services under home title under the Swiss CR Agreement.

- Given the terms of the Swiss CR Agreement which will retain the practising rights that come with REL status under the LED for those in scope of the Agreement, this SI retains the provision that it is an offence to pretend to be a REL.

- This SI will make consequential amendments to various pieces of legislation.

F. Cost and Benefit Analysis

32. This IA follows the procedures and criteria set out in the IA Guidance and is consistent with the HM Treasury Green Book.

33. Where possible, this IA identifies both monetised and non-monetised impacts on individuals, groups and businesses in England and Wales and Northern Ireland with the aim of understanding what the overall impact on society might be from the options under consideration. EU exit IAs are normally compared to a "static acquis" baseline. This approach involves baselining all costs and benefits against the UK statute book as expected to be before EU exit in January 2020, including all existing domestic and EU legislation.

34. IAs place a strong focus on the monetisation of costs and benefits. There are often, however, important impacts that cannot sensibly be monetised. These might be impacts on certain groups of society or some data privacy impacts, both positive or negative. Impacts in this IA are therefore interpreted broadly, to include both monetisable and non-monetisable costs and benefits, with due weight given to those that are non-monetisable.

35. This IA concerns a number of variables that relate to individual choices and actions as a result of the statutory instrument coming into force. The instrument itself does not provide for numerical or monetary arrangements. Therefore, the IA focuses on detailing the non-monetary costs, trends and risk factors that may arise; it does not and cannot predict overall quantifiable costs or benefits to individual organisations or governments.

36. The figures we provide below are estimates, for information, of costs for EU and EFTA lawyers practising or with interests in business ownership and UK regulators. These are the parties in the scope of our instrument whose position is being affected by it. The costs and benefits are compared to a "static acquis" baseline i.e. option 0 - retaining the current legal framework.

<u>Option 1:</u> Make new legislation to replace our previous EU Exit legislation as a result of the Withdrawal Agreement and to implement the outstanding elements of the Separation Agreements.

Costs of Option 1

EU, EEA EFTA and Swiss Lawyers

37. There are no known direct costs. Any indirect monetised costs and non-monetised costs would relate to the steps EU and EFTA lawyers choose to take to adjust their services, practice or business model to align with the new regulatory position, dependent on their individual circumstances. Given this uncertainty, they are not quantifiable.

38. Some EU and EEA EFTA lawyers may not be providing 'reserved legal activities' and, as such, may choose to continue to practise without being regulated; some currently providing reserved legal activities may choose to enter the unregulated market and stop carrying on such reserved activities. For those who wish to continue to be regulated and provide reserved legal activities, the costs will relate to renewing REL registration (this will only be applicable at the end of the transition period to RELs in scope of the Swiss CR Agreement and for those not in scope their REL status will end at the end of the transition period), to taking steps to seek admission as a solicitor or barrister, to restructuring or to working under supervision.

39. As of June 2020, there are 783 RELs registered with the SRA. The Bar Standards Board (BSB) identified 21 RELs, 17 of which are self-employed, and 4 employed. Figures provided by the Law Society of Northern Ireland reveal there were 5 RELs registered with them in Northern Ireland as at June 2020. The Bar Council of Northern Ireland indicated that there were 0 RELs.

- Application for admission as a solicitor in England and Wales through the 3 year experience route currently provided for in the European Communities (Lawyer's Practice) Regulations 2000 costs £500 and takes up to three months to process. This particular route will remain available for 4 years after the end of the transition period for those in the scope of the Swiss CR Agreement but will no longer be available to anyone else after the end of the transition period.

- Applications for admission to the Bar of England and Wales through the 3 year experience route currently provided for in the European Communities (Lawyer's Practice) Regulations 2000 also cost £440. The cost of the BTT ranges from £968.20 for compulsory modules, to £2,332.95 with optional assessments, and is currently managed by BPP Law School.

- The cost of a full QLTS qualification at Kaplan (an education service provider) is £3,607 per individual lawyer, plus variable VAT depending on location. These fees are paid directly to Kaplan. Despite the difference in cost, the QLTS is a more popular option for admission as a solicitor in England and Wales for EU and EFTA lawyers than the '3 years' experience' route under the European Communities (Lawyer's Practice) Regulations 2000. In the renewal year 2018-19 there were 94 applications and 76 successful applications) for admission as a solicitor via the three-year experience route (the number of applications and the number of approvals are independent of one another. Application figures do not represent a distinct count of individuals. Approval figures do represent a distinct count of individuals)

- Alternatively, EU and EEA EFTA lawyers may wish to continue practising in their place of employment under supervision of a qualified solicitor or barrister. Those in scope of the Swiss CR Agreement will be able to carry on as RELs subject to meeting the relevant conditions. The associated costs are not quantifiable.

40. Some existing RELs may need to alter their business models to continue to participate in the ownership of regulated legal businesses. SRA data show that out of 94 RELs registered with the SRA who are partners or equivalents in a firm, 17 are the only shareholders (this includes both sole practices with traditional business models and sole directors). Depending on the business structure involved, there are a number of different posts which are considered a partner equivalent within the firm. This may for example be a Director in a company limited by shares. This corresponds to 18 distinct firms (with one REL being a partner or equivalent in 2 entities). Of the remaining 77 RELs, 4 RELs are partners or equivalents in a firm where there are no England & Wales authorised solicitor partners or equivalents. This corresponds to 3 distinct firms (i.e. one firm has 2 REL partners or equivalents and no England & Wales authorised solicitor partner). Should these RELs wish to continue to provide reserved legal activities, they will need to alter their business model, by bringing a solicitor or barrister into the ownership structure or becoming an ABS or qualifying as a solicitor themselves to continue to provide reserved legal activities.

- The cost of registration as an RFL is £338, or pro-rateable for registration if issued part-way through the year. RFLs based outside the UK pay £160 (registration or renewal). The SRA aims to review 90% of its applications for RFL status within 30 days. There are 2,747 RFLs as of June 2020. These numbers have increased with the same pattern as RELs.[3] This would offer lawyers the option to co-own businesses with domestic lawyers and to practise unregulated legal activities.

- The SI will implement provisions in the Swiss CR Agreement, meaning that the impact on some Swiss lawyers differs to that of EU, and other EFTA state lawyers. In making provision for

[3] https://www.sra.org.uk/sra/how-we-work/reports/data/population_solicitors.page

particular UK and Swiss lawyers to provide services as RELs under certain conditions, providing a transition period for such lawyers to join the host state's legal profession under current arrangements, and to allow the continued provision of temporary services for a time limited period under certain conditions, this SI will provide particular Swiss lawyers with a degree of continuity and certainty. This is necessary in order for the UK to uphold its international obligations.

41. Republic of Ireland barristers and solicitors who are in practice do not take the 3 years' experience route under the European Communities (Lawyer's Practice) Regulations 2000 as the relevant regulators in Northern Ireland and England and Wales assess their applications under the MRPQ directive. Republic of Ireland lawyers may practise without requalifying in Northern Ireland by submitting an application form without taking any further aptitude tests. In England and Wales, some exemptions are granted to solicitors of Republic or Ireland on the basis that their qualifications are pre-assessed against the outcomes under the QLTS. Of the outcomes tested prior to admission there are currently no areas of substantial differences between the law and practice of Republic of Ireland and that of England and Wales, except that relating to the land/property law. As such, Republic of Ireland lawyers can either complete land/property modules in the QLTS assessment or an English Property Law module provided by the Law Society of Ireland prior to applying for admission.

Business owners employing EU and EFTA lawyers

42. There are likely to be indirect monetised and non-monetised costs to businesses employing EU and EEA EFTA lawyers. These are not quantifiable for the following reasons:

- It is difficult to establish from available statistics what types of legal activities RELs carry on. As a result, it is unclear what the level of restructuring required may be. Employed RELs providing unregulated activities may be able to continue to provide such services.

- Businesses may potentially witness a decreased availability of staff and specialist staff, from the loss of practice rights for RELs and temporary service providers. This may be offset by non-REL provision, and the options available to EU and EFTA lawyers to continue to practise, such as providing unregulated activities or qualification into the domestic profession. EEA EFTA lawyers will still be able to provide temporary services in the same way to that of third country lawyers. However, freedom of movement will end and therefore entry requirements will be subject to the UK's immigration regime.

- Businesses may incur restructuring costs from hiring new staff in addition to RELs, or from ensuring that these former RELs work under the supervision of England and Wales/Northern Irish qualified lawyers.

- Legal businesses may alternatively wish to reorganise as an ABS to accommodate the combination of regulated and unregulated legal activities.

43. The transition period running until 31 December 2020 will allow these businesses to restructure if necessary and complete ongoing work.

The wider legal sector

44. Direct monetised costs are not quantifiable. Any indirect monetised costs and non-monetised costs will relate to the loss of preferential rights to practise and provide temporary services. EU and EFTA lawyers (aside from those within scope the Swiss CR Agreement) will still be able to provide temporary services in the same way that third country lawyers currently can. However, the removal of freedom of movement will more likely impact the ability to provide such temporary services as entry requirements to the UK will be subject to the UK's immigration laws.

Regulators and administrators

45. The direct monetary cost to regulators is not quantifiable. Any indirect monetary and non-monetary cost will relate to shifts in resources as of exit day.

46. As the REL application process will only be available to those under the Swiss CR Agreement, regulators and private legal education providers might find more applications through alternative routes (QLTS, BTT, RFL registration) being redirected towards them. However, the processes and costs for these routes are broadly similar to those for RELs: this could involve reallocation of resources.

Benefits of Option 1

EU and EFTA lawyers, businesses employing such lawyers, the wider legal sector, regulators and administrators

47. The SI will also provide clarity and certainty for legal services providers.

48. The SI will implement the provisions to facilitate regulator cooperation under the Separation Agreements. This will ensure ongoing regulator cooperation in relation to applications for admission into the host state profession as provided for in the Agreements and, in addition, in relation to registration as a REL and the provision of services as a REL under the Swiss CR Agreement.

49. This SI will implement provisions in the EU Withdrawal agreement and EEA EFTA Separation Agreement which allow applications to be completed under the current arrangements where lawyers have applied to join one of the legal professions in England and Wales or Northern Ireland before the end of the transition period. Regulators will be able to complete ongoing disciplinary proceedings against EEA-EFTA lawyers started before the end of the transition period.

50. The Swiss CR Agreement makes provision for particular lawyers. It will enable lawyers who are established in Switzerland and sent by their employer to provide temporary services in the UK for up to 90 days a year, for at least 5 years from the end of the transition period, pursuant to contracts signed and started before the end of the transition period. In addition, this SI will also implement provisions in the Swiss CR Agreement which make provision for Swiss lawyers within scope of that Agreement who are established, registered and providing services in England and Wales or Northern Ireland under their Swiss professional title immediately before the end of the transition period. It will also implement a further transition period of 4 years from the end of the transition period for Swiss lawyers and those who have started but not completed their Swiss professional qualification before the end of the transition period to register as a REL and practise under their Swiss professional title or to apply for admission to one of the legal professions in England & Wales or Northern Ireland under the terms of the Swiss CR Agreement.

G. Better Regulation and Business Impact Target

Impact on small and micro businesses

51. The costs for small and medium enterprises (SMEs) are unquantifiable and indirect but there is likely to be a low-cost impact caused by any familiarisation for the legal profession to adapt some practices caused by the UK transitioning from the EU. First, the cost of restructuring if they have a higher density of RELs or consist exclusively of RELs could potentially be disproportionate. EU and EEA EFTA lawyers will be able to provide fly-in and fly-out services in the same way as third country lawyers. However, the removal of freedom of movement and the UK immigration/mobility laws will determine who can enter the UK, visa or not, for how long and for what purpose and this will likely impact incoming EU and EEA EFTA lawyers wishing to provide fly-in and fly out services. The cost would be related to the loss of specialists. These impacts could be mitigated by individual choices discussed above in detail, with respect to working under supervision, conducting unregulated activities, or gaining access by examination to the England and Wales and Northern Ireland professions.

H. Wider Impacts

52. This SI does not amend, repeal or revoke any provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts, or in section 75 of the Northern Ireland Act 1998.

53. We have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010 or section 75 of the Northern

Ireland Act 1998. Our assessment is that our proposal to revoke and amend primary and secondary legislation that gives EU and EFTA lawyers preferential rights to practise, establish and own businesses in England and Wales and Northern Ireland are not directly discriminatory within the meaning of the Equality Act. We do not consider that the proposals would result in individuals being treated less favourably because of their protected characteristics.

54. Our proposal to replace the 2019 Revocation Regulations and to implement the relevant provision of the Swiss CR Agreement, retains some preferential treatment for certain Swiss and UK nationals who hold or acquire a Swiss professional title as required under the Agreement as compared to nationals from other states seeking to provide legal services in the UK where the UK does not have an international agreement with that state allowing their nationals to practice in the UK. Other than this preferential treatment that is necessary to meet our international obligations, we do not consider that the proposals would result in individuals being treated less favourably because of their protected characteristics.

I. Monitoring and Evaluation

55. This SI is being made, in part, using powers in the European Union (Withdrawal) Act 2018, in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union. It is also made using powers in the European Union (Withdrawal Agreement) Act 2020 in order to implement the relevant provisions of the Withdrawal Agreement, the EEA EFTA Separation Agreement and the Swiss CRA relating to the recognition of professional qualifications of lawyers.

56. This SI is being made as a result of EU Exit and the UK's obligation to implement its international agreements. In addition, the future relationship is dependent on the outcome of the trade negotiations. In the circumstances and given there are no direct costs and the indirect costs are not quantifiable, a review provision is not considered appropriate.

J. Business Impact Target

57. Legislation made for the purposes of implementing the EU Withdrawal Agreement is exempt from the Government's Business Impact Target.

58. This measure is out of scope of the Business Impact Target.