



Draft response of the Law Society of England and Wales to the Commission consultation on the regulation of professions

Part 1 - Comments on the UK National Action Plan

1. Do you think this NAP is based upon the most relevant information on the impact of regulation on the market and/or professionals (e.g. empirical studies, reports by professional associations and consumer protection bodies, reports and/or opinions of other national authorities such as competition authorities)?

- Yes
- To some extent
- Not really
- **No**
- Don't know

2. Do you think this NAP is based upon the most relevant information on the impact of regulation on securing quality and consumer protection?

- Yes
- To some extent
- Not really
- **No**
- Don't know

3. From reading this NAP do you think it thoroughly analysed all regulated professions?

- Yes
- To some extent
- **Not really**
- No
- No opinion

Please explain why you think this: Our position on the regulatory regime for solicitors is outlined in the accompanying statement.

4. From reading this NAP do you think it thoroughly analysed all impacts of regulation?

- Yes
- **To some extent**
- Not really
- No
- No opinion

Please explain why you think this: This report provides a superficial analysis of the general impacts of regulation. It notes a number of specific proposals but, in this document and at this time, there is insufficient detail of the proposals to know what their impact would be, including

on consumers and growth; we have therefore stated that we "disagree" that the proposals will have the effects covered by Question 5. In particular, we do not agree with some of the statements made in the NAP and we are aware of evidence that contradicts these. In addition to the proposals noted in the Plan, there is a market study by the Competition and Markets Authority [CMA] of the supply of legal services in England and Wales by regulated and unregulated providers. The Society has engaged with this study, indicating support for non-regulatory solutions to the principal issue identified by the CMA, namely measures to improve price and service quality transparency that benefits consumers and is clearly in the public interest. It is anticipated that further consultations will be released over the next year or so, including the Ministry of Justice's consultations on the legal services regulators and the regulatory landscape. These are likely to also address the impacts of regulation. Currently, the Solicitors Regulation Authority is consulting on proposals that have major implications for the regulation of individual solicitors and solicitors firms in England and Wales and for the delivery of legal services by regulated and unregulated providers. We have significant concerns about these proposals, which we believe are misconceived and poorly evidenced. In particular, they would weaken consumer protection, create a two tier profession, lead to greater client confusion and lower professional standards.

5. Overall, thinking about any proposals made in the NAP, to what extent do you agree with the following statements? (Please enter one tick only per row)

"The proposals in this NAP will....

	Agree	Disagree	Don't know / No opinion
...make it easier to access or exercise the professions"		x	
...make it harder to access or exercise the professions"		x	
...improve consumer choice"		x	
...improve prices for consumers"		x	
...improve employment opportunities / business growth"		x	
...improve opportunities for economic growth"		x	
...improve the quality of service provision"		x	
...not change anything"		x	

6. Is your profession or a profession of interest to you mentioned in this NAP?

- **Yes, there is a profession of interest to me mentioned**
- No, the profession I am interested in is not mentioned
- I am not interested in a particular profession

7. Which profession? Legal (solicitor) The Law Society of England and Wales is the professional body for the solicitors' profession in England and Wales, representing over 165,000 solicitors. The Society has a public interest in the reform of the law and represents the profession to the UK Parliament, the UK Government, the European Commission and others.

8. Does this NAP suggest any material changes to the regulation of this profession?

- **Yes**

- No

9. Do you think there should be any changes to how this profession is regulated?

- Yes
- No

10. In your opinion, do the current regulation on the profession you refer to create disproportionate barriers to the access and exercise of this profession? (please enter one tick per row)

	Agree	Disagree	Don't know / No opinion
Disproportionate professional qualification requirements		x	
Activities reserved to the profession are too many or too broad <i>Reserved activities refer to those that only the professional may conduct. It may for example be the case that anyone may prepare company accounting information but the act of submitting this information to the authorities are reserved to a particular regulated professional.</i>		x	
Unnecessary protected title		x	
Unnecessary compulsory membership or authorisation schemes		x	
High registration fees		x	
Compulsory professional liability insurance		x	
Multidisciplinary restrictions or over-strict incompatibility rules <u>Multidisciplinary restrictions</u> refers to the exercise jointly or in partnership of different activities (such as a business offering both legal activities and accountancy) <u>Incompatibility rules</u> prohibit the exercising simultaneously of certain professional activities (such as the same professional acting as both a lawyer and an accountant to their client)		x	
Continuous professional development		x	

Are there any other regulations that you think are acting as disproportionate barriers to this profession? Yes. We believe there are aspects of regulation that impose a disproportionate burden on regulated professionals: In particular the burden of proving compliance is overburdensome.

11. Are there any another profession(s) you think should've been covered in this NAP but which were not?

- Yes
- No

Which profession(s)? n/a

12. Are there any further general observations you wish to make regarding this NAP?

As noted, some statements in the NAP relate to proposals which are not yet issued for consultation and make statements of benefits which are not evidenced.

13. Would you like to add any further information regarding the regulation of a specific profession(s) in this Member State or in general which you think may be helpful for assessing the operation of regulation in the professional landscape?

We think it is vital that legal regulation strikes the right balance between the need to ensure fair competition, protect the consumers and act in the public interest (all of which are regulatory objectives pursuant to the Legal Services Act 2007) and support growth. Given the economic importance of the legal services sector and the role played by the UK legal professions in supporting private sector activities across the EU eg on matters of competition and contract law, it is vital that regulation has a broad degree of public confidence. To achieve this, regulation and its enforcement should meet the following five principles: Proportionality; Accountability; Consistency; Transparency; and Targeting. Any changes to regulation of the legal professions should therefore be considered in a broader context, taking into account the economic effects, impact on consumers and their contribution to advancing public interest.

Part 2 – Proportionality assessment

1. Should authorities analyse the impact of the professional regulations they introduce?

- Yes
- No
- No opinion

2. Should proportionality be analysed with a set of common minimum criteria to assess the impact of regulation so that the most relevant factors are considered by all regulators?

- Yes
- No
- No opinion

3. Are you aware of requirements for a proportionality assessment of regulation in your country?

- Yes, a systematic methodology exists.
- Yes, it is done on a case by case basis.
- **No, there is no methodology to assess the proportionality of regulation.**
- I don't know.

4. Can you please provide a reference to or summary of this methodology?

N/A

5. Are you aware of existing criteria at the national or EU level to analyse proportionality in professional regulation?

- Yes
- No

6. Do you think there should be common guidance on how to conduct a proportionality assessment?

- Yes
- No
- Don't know / no opinion

7. Do you think such guidance should be mandatory for public authorities to use?

- Yes
- **No¹**
- Don't know

It is an existing legal requirement before adopting any act of law to analyse the necessity and proportionality of the regulation, i.e. by demonstrating that no less restrictive means are available to meet the public objectives. However, there is no common EU methodology on how to properly conduct this analysis.

8. What do you think the impact would be of introducing a common methodology to clarify the minimum criteria necessary for the proper assessment of proportionality when introducing new or revising old regulations? (please enter one tick per row)

	Agree	Disagree	Don't know / No opinion
Would improve the quality of regulation			x
Would simplify professional regulation			x
Would lead to the modernisation of national regulation regarding access and conduct requirements			x
Would help to clarify the minimum criteria necessary to comply with the requirement to assess proportionality	x		
Would support Member States with a common template and guidance on the method needed to carry out such assessments	x		
Would improve the overall quality of proportionality assessments			x
Would help investigating alternatives to regulation and propose appropriate actions to improve legislation			x
Would make proportionality assessments more transparent and comparable across Member States	x		
Would support compliance with existing legal requirements on the notification of new regulation and the reasons for which it is considered proportionate* <i>* As stipulated under existing EU rules in the Professional Qualifications Directive 2005/36/EC as well as the Treaty</i>			x
Would improve the involvement of various affected groups, such as businesses and consumers, in the development of legislation			x
Would make it easier to compare regulatory requirements across the EU			x
Would improve legal certainty on compliance with existing requirements under EU law			x
Would make Member States seriously consider, in a structured way, necessity and proportionality factors when adopting new or revising existing regulations			x
Would reduce administrative burdens for professionals			x
Would ease access to the professions			x

¹ This is following the exchange with Olivia Marley from the SRA. Their feeling is that while the guidance is a welcome development, making it mandatory without the necessary 'testing period' or at least allowing the users to get used to it would be premature.

Would ease the mobility of professionals between Member States			x
Would increase competition in the market			x
Would raise the level of consumer protection			x
Would improve the functioning of labour market			x
Would deliver a better price-to-quality ratio of services			x
Would raise the quality of professional services			x