



The Law Society of Scotland
Atria One, 144 Morrison Street
Edinburgh
EH3 8EX

Scottish Affairs Committee
House of Commons
London
SW1A 0AA

15 January 2019

Dear Members of the Scottish Affairs Committee

Mutual Recognition of Professional Qualifications

Thank you for giving us the opportunity for further comment on the topic of mutual recognition of professional qualifications (MRPQ) in the context of the draft Withdrawal Agreement and the Political Declaration between the UK and the EU.

As we set out in our written and oral evidence, the MRPQ system for lawyers was put in place over more than two decades. Lawyers operate on the basis of a bespoke system which recognises the jurisdiction-specific nature of legal qualifications, meaning that something above and beyond the standard system was required.

Mutual recognition is most often referred to in the context of qualification or requalification in another Member State, or in the EEA/EFTA States (Norway, Iceland and Liechtenstein) and Switzerland, which also participate in the scheme. However, the idea of mutual recognition is also intrinsically linked to the rules which give standing to qualified lawyers before the EU institutions (including the Court of Justice of the European Union) and in other Member States. It may also be considered a relevant factor in the context of legal professional privilege.

The Withdrawal Agreement (Article 27) provides for mutual recognition to continue until the end of the transition. This is in line with the overarching principle of the Withdrawal Agreement and is to be welcomed. It is also helpful that the UK would continue to be able to access the internal market information system in respect of applications for a number of months beyond the end of the transition period (see Article 29(2)).

However, we are concerned that the Political Declaration may not be ambitious enough to secure continued participation in the Internal Market for legal services in such a way as to replicate the advantages which UK lawyers and law firms and EU counterparts currently enjoy on a reciprocal basis. In our response to the Political Declaration,¹ we commented that “further detail as to the anticipated nature of “deep commitments” is needed, along with an outline of how services and investment would operate in practice.”

¹ https://www.lawscot.org.uk/media/361477/191118-response-by-lss-re-outline-of-political-declaration-setting-out-framework-of-future-relationship-btw-eu-plus-uk_.pdf

Paragraph 30 refers to arrangements including professional and business services. The reference to “all modes of supply and providing for the absence of substantially all discrimination in the covered sectors, with exceptions and limitations as appropriate”. However, if this is to be accomplished “in line with Article V of the General Agreement on Trade in Services” (GATS), this suggests that the level of ambition is set only at implementation WTO rules.

This would be very concerning as the level of legal services integration and market access set out WTO rules is far below that achieved through the EU’s internal market for legal services. While paragraph 36 offers greater comfort that a future relationship agreement might include provisions on mutual recognition, the terms of the drafting are not specific enough to offer a high level of reassurance.

If you have any further questions, please do not hesitate to contact me.

Yours faithfully,

Carolyn Thurston Smith
Policy Executive