

CEO report - ANNEX B

Guidance - Providing services including those of a qualified professional if there's no Brexit deal

A scenario in which the UK leaves the EU without agreement (a 'no deal' scenario) remains unlikely given the mutual interests of the UK and the EU in securing a negotiated outcome.

Negotiations are progressing well and both we and the EU continue to work hard to seek a positive deal. However, it's our duty as a responsible government to prepare for all eventualities, including 'no deal', until we can be certain of the outcome of those negotiations.

For two years, the government has been implementing a significant programme of work to ensure the UK will be ready from day 1 in all scenarios, including a potential 'no deal' outcome in March 2019.

It has always been the case that as we get nearer to March 2019, preparations for a no deal scenario would have to be accelerated. Such an acceleration does not reflect an increased likelihood of a 'no deal' outcome. Rather it is about ensuring our plans are in place in the unlikely scenario that they need to be relied upon.

This series of technical notices sets out information to allow businesses and citizens to understand what they would need to do in a 'no deal' scenario, so they can make informed plans and preparations.

This guidance is part of that series.

Also included is an overarching framing notice explaining the government's overarching approach to preparing the UK for this outcome in order to minimise disruption and ensure a smooth and orderly exit in all scenarios.

We are working with the devolved administrations on technical notices and we will continue to do so as plans develop.

Recognition of professional qualifications

Before 29 March 2019

The Mutual Recognition of Professional Qualifications (MRPQ) Directive is a reciprocal arrangement which enables European Economic Area (EEA) nationals to have their professional qualifications recognised in an EEA State other than the one in which the qualification was obtained. It provides several routes to do so, including:

- automatic recognition based on EEA-wide standards or professional experience (recognition based on EEA-wide standards applies to: doctors, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists and architects)
- the 'general system' under which, subject to certain exceptions, regulators must not refuse, on grounds of inadequate qualifications, applicants who seek

to practise a regulated profession in the UK if they hold the qualifications required by an EEA State. In certain cases, regulators may require an applicant to complete either an aptitude test or an adaptation period before allowing the applicant to practise the regulated profession in the UK

- a mechanism for those who want to work on a temporary or occasional basis in another EEA State, including the role of the regulator and the procedures and formalities with which an applicant must comply

The Directive applies in general to regulated professions unless otherwise stated. A non-exhaustive list of professions covered by the Directive is available in the database of regulated professions.

The Directive also provides rules for recognition of non-EEA qualifications held by EEA nationals.

The current version of the MRPQ Directive (Directive 2005/36/EC as amended by Directive 2013/55/EU) has been implemented in the UK by the European Union (Recognition of Professional Qualifications) Regulations 2015 (MRPQ Regulations). This is supplemented by sector-specific legislation.

After March 2019 if there's no deal

The MRPQ Directive will no longer apply to the UK and there will be no system of reciprocal recognition of professional qualifications between the remaining EEA states and the UK.

The UK will ensure that professionals arriving in the UK from the EEA after the exit date will have a means to seek recognition of their qualifications. However, this will differ from the current arrangements. For example, specific mechanisms and functions linked to EU membership, such as automatic recognition, or temporary access to regulated activities on the basis of a declaration, will no longer be applicable. Tools such as the Internal Market Information system will also no longer be available in the UK.

The government will continue to work with the Scottish Government, Welsh Government and the Northern Ireland Civil Service as well as regulatory bodies to ensure the future system for the recognition of professional qualifications works across the UK. These arrangements are without prejudice to the rights and privileges accorded, by virtue of the Common Travel Area, to Irish and UK citizens when in each other's state.

The government will share details of the new procedure in due course and applicants should contact the relevant regulators at the appropriate time.

Implications

There are implications for all the professions named in this notice as well as businesses.

For EEA professionals (including UK nationals holding EEA qualifications) who are already established and have received a recognition decision in the UK, this recognition decision will not be affected and will remain valid.

EEA professionals (including UK nationals holding EEA qualifications) who have not started an application for a recognition decision in the UK before exit will be subject to future arrangements, which will be published before exit day.

EEA professionals (including UK nationals holding EEA qualifications) who have applied for a recognition decision and are awaiting a decision on exit day will, as far as possible, be able to conclude their applications in line with the provisions of the MRPQ Directive.

Individuals with UK qualifications seeking recognition to offer services in the EEA should check the host state national policies. The EU Commission has stated that decisions on the recognition of UK qualifications in EU countries before exit day are not affected.

Actions for businesses and other stakeholders

EEA professionals (including UK nationals holding EEA qualifications) who are already established and have received a recognition decision in the UK do not need to take any action as the recognition decision will not be affected by the Withdrawal Act or the Statutory Instrument.

Further guidance will be issued to provide professionals and employers with more details concerning recognition decisions pending on exit or issued after exit.

More information

In 2015, the government published guidance for regulatory bodies of professional qualifications. It sets out the obligations placed upon them by the revised Mutual Recognition of Professional Qualifications Directive 2005/36/EC. In the scenario where the UK leaves the European Union on 29 March 2019 without a formal agreement, the published guidance will be updated to reflect the changes that are made to the MRPQ Regulations.

The Lawyers' Establishment Directive and the Lawyers' Services Directive

Before 29 March 2019

The qualification recognition arrangements under the MRPQ Directive cover a wide range of lawyers. In addition to this framework, there is a specific framework setting out rights for listed lawyers to provide legal services and to establish on a permanent basis in EEA States other than the one in which the qualification was obtained.

This framework takes the form of two Directives:

- The Lawyers' Services Directive (Directive 77/249/EEC) – which allows specified lawyers to provide legal services on a temporary basis in a Member State other than the one in which they qualified. It clarifies the professional and regulatory rules applicable, the professional title they should use and the conditions for providing services.
- The Lawyers' Establishment Directive (Directive 98/5/EC) - a reciprocal arrangement which allows specified lawyers in one Member State to establish and practise permanently in another Member State, under their existing title, and the conditions for doing so (Registered European Lawyers). It also allows lawyers that are practising in another Member State to be admitted to the profession in that Member State, after 3 years of practice without having to go through the usual qualification routes.

After March 2019 if there's no deal

If we leave the EU without an agreement, the Lawyers' Services Directive and Lawyers' Establishment Directive will no longer apply to the UK and there will be no system of reciprocal arrangements under which EEA lawyers (including UK nationals holding EEA qualifications) can provide services and establish on a permanent basis. We will therefore revoke the implementing legislation and EEA lawyers will be treated in the same way as other third country lawyers.

EEA lawyers will be able to practise in England and Wales under the regulatory arrangements and rules that apply to lawyers from other third countries. However, this change will mean:

- EEA lawyers will no longer be able to provide legal activities normally reserved to advocates, barristers or solicitor under their home state professional title in England/Wales and Northern Ireland. (Reserved activities are: the exercise of a right of audience, the conduct of litigation, reserved instrument activities (conveyancing), probate activities, notarial activities and the administration of oaths)
- EEA lawyers will no longer be able to seek admittance to the English/Welsh or Northern Irish profession based on experience

As outlined above, the UK will ensure that professionals arriving in the UK from the EEA after the exit date will have a means to seek recognition of their qualifications. This will include lawyers. We will share details of the new procedure in due course and applicants should contact the relevant regulators at the appropriate time.

There will be transitional arrangements for Registered European Lawyers.

Scottish regulatory arrangements for EEA and third country lawyers are different to those in England and Wales, or Northern Ireland.

These arrangements are without prejudice to the rights and privileges accorded, by virtue of the Common Travel Area, to Irish and UK citizens when in each other's state.

Implications and actions for individuals and businesses

EEA lawyers who have already been admitted to the legal profession, allowing them to use the professional title of solicitor or barrister in England/Wales or Northern Ireland on the exit date will be able to continue to practise under that title and provide regulated legal activities, in accordance with the relevant regulator's rules. They will not need to take any action.

EEA lawyers who have applied for admission to the English/Welsh or Northern Irish legal profession prior to exit day (through routes available under either the MPRQ Regulations or European Communities (Lawyer's Practice) Regulations 2000), and are awaiting a decision on the exit date, will, as far as possible, be able to complete their recognition process under pre-exit rules.

Registered European Lawyer status – which allows EEA lawyers to practise permanently in the UK under their existing title - will cease on the exit date. From exit day, EEA lawyers will be treated in the same way as other lawyers qualified in any other third country jurisdiction.

Existing Registered European Lawyers will need to consider whether they intend to provide regulated ('reserved' in England and Wales) legal activities. If so, they will need to take steps to transfer into the profession of the relevant UK jurisdiction (England/Wales or Northern Ireland) to continue providing those services and should contact their UK regulator for advice.

Employers of Registered European Lawyers and other EEA lawyers providing services in England/Wales and Northern Ireland will need to consider whether their employees will provide regulated ('reserved') legal activities. If so, they will need to take steps to make sure their employee can continue providing those services, for example by transferring into the profession of the relevant UK jurisdiction, or working under the supervision of a lawyer qualified to undertake those activities, subject to regulatory rules.

Employers of Registered European Lawyers and other EEA lawyers should contact their regulator for advice.

EEA lawyers who own or manage legal businesses in England/Wales or Northern Ireland will need to consider whether their business model is compliant with the

relevant regulatory rules, once Registered European Lawyer status ceases, and should contact their regulator for advice.

More information

Further information, including arrangements for third country lawyers, is available from the relevant regulatory bodies: the Solicitors Regulation Authority, the Bar Standards Board (England and Wales), The Law Society of Northern Ireland and the Law Society of Scotland.

Provision of Services Regulations

Before 29 March 2019

The EU Services Directive (2006/123/EC) makes it easier for businesses to establish themselves in other Member States, and to provide services cross-border on either a temporary or permanent basis. The Services Directive is implemented into UK legislation by the Provision of Services Regulations 2009.

The Regulations simplify the rules for, and prevent unjustifiable barriers to, the provision of services. They ensure that Competent Authorities, including government departments, Devolved Administrations, local authorities and other licensing and authorisation bodies, comply with a set of regulatory principles.

The current Regulations set out the following requirements:

- the Regulations ensure Competent Authorities cannot impose discriminatory, disproportionate or unnecessary requirements on EEA businesses who are providing services on either a permanent or temporary basis in the UK
- the Regulations set out the duties of businesses, detailing the requirements for contact details and other information to be made available for service recipients
- the Regulations require Competent Authorities to notify the Secretary of State for Business, Energy and Industrial Strategy of new measures
- the Regulations set out obligations on Competent Authorities to ensure effective administrative cooperation with their counterparts in other Member States
- the Regulations require the government to establish an electronic assistance facility to operate as the UK's Point of Single Contact, which is GOV.UK

After March 2019 if there's no deal

When the UK leaves the EU, EEA businesses will be treated like other third country service providers as the Regulations will need to be amended to comply with the UK's commitments under World Trade Organisation rules.

The Regulations will continue to ensure that businesses in the UK are not subject to disproportionate or burdensome regulation. For example, businesses and consumer

rights will be protected as UK Competent Authorities will continue to regulate service provision in line with the general principles of open competition.

The government will continue to work with the Scottish Government, Welsh Government and the Northern Ireland Civil Service and Competent Authorities to ensure future arrangements for provision of services work across the UK. These arrangements are without prejudice to the rights and privileges accorded, by the Common Travel Area, to Irish and UK citizens when in each other's state.

Implications

The scope of the UK Regulations will be amended to apply to UK nationals established in the UK and UK-established businesses. EEA businesses will no longer have preferential access rights and protections provided for by the Regulations. Competent Authorities will regulate EEA businesses in the same way they regulate third country service providers. The UK services market is highly liberalised and it is not envisaged that EEA businesses will face additional barriers to entry to the UK Services market.

UK businesses providing services in the EEA would no longer be covered by the EU Services Directive. As a result, countries in the EEA could treat them in the same way as they treat third country service providers. In many EEA countries, the regime for third countries has different requirements. This could result in additional legal and administrative barriers for UK firms, such as requirements based on nationality, re-submitting information to regulators and potential loss of access to any online portal to complete mandatory applications and licenses where this is only available to EEA nationals. The tangible impacts this would have on businesses will likely vary depending on sector and the Member State.

A 'No Deal' scenario will also mean changes for UK nationals providing services in person into EEA countries, whether on a short term 'fly in, fly out' basis, longer term movement to provide services to clients, or placements within other parts of the business. Businesses should check whether a visa and/or work permit is required and otherwise comply with the immigration controls in place in each Member State where the service is being provided in person. This would vary depending on the Member State in question. If the provision of services relies on a UK qualification being recognised by a Member State regulator, individuals should check the host state national policies. The EU Commission has stated that decisions on the recognition of UK qualifications in EU Member States before exit day are not affected.

Actions for businesses and other stakeholders

UK businesses will continue to be obliged to provide the required information for service recipients and to maintain a complaints procedure. Businesses looking to provide services in the UK will continue to benefit from the Regulations as Competent Authorities should continue to design authorisation schemes and licensing requirements that are proportionate and justified in the public interest.

Competent Authorities will be able to regulate EEA service providers as third country service providers. Regulators will have the choice to impose more restrictive requirements on EEA service providers, in line with their new status as third country service providers. Individual Competent Authorities will be responsible for advising businesses on any future changes to their processes and any changes are likely to be subject to consultation allowing businesses time to make necessary preparations.

More information

In 2009, the government published guidance providing businesses and Competent Authorities (who set licensing requirements and authorisation schemes for businesses) with detailed advice on the principles and suggested direction for the application of the Services Directive. In the scenario where the UK leaves the European Union on 29 March 2019 without a formal agreement, the published guidance will be updated to reflect the changes that are made to the Provision of Services Regulations 2009. It would provide further information on the restrictions requirements that may be imposed on EEA service providers.

SOLVIT

Before 29 March 2019

The SOLVIT network was established in 2002 following a European Commission Recommendation of 7 December 2001. SOLVIT Centres in each EU and EEA Member State work with each other to try to resolve informally complaints that arise following a decision issued by a public authority or regulator that affects the EU single market rights of EU businesses and citizens. SOLVIT provides an informal alternative to filing a court case, submitting a formal complaint to the European Commission or putting forward a petition.

People who encounter a problem exercising their rights apply to their 'Home Centre', usually in their home country. The Home Centre prepares the case and sends it to the SOLVIT Centre in the country where the problem occurred (the Lead Centre), which then deals with the authority or regulator in question.

After March 2019 if there's no deal

When the UK has left the EU, it will no longer have access to the SOLVIT network. The UK will close its SOLVIT Centre, will not accept any new cases and will close any unresolved open cases after exit day.

Implications

As the UK SOLVIT Centre will close, there are implications for UK citizens and business as well as EU and EEA citizens and business in terms of raising concerns.

Actions for businesses and individuals

UK citizens and businesses will have to raise concerns directly with the national authorities of the relevant EU or EEA Member State.

EU and EEA citizens and businesses will have to raise concerns directly with UK national authorities.

More information

Stakeholders will be able to find further information on rules and rights after the UK exits the EU on www.gov.uk and in other technical notices.

This notice is meant for guidance only. You should consider whether you need separate professional advice before making specific preparations.

It is part of the government's ongoing programme of planning for all possible outcomes. We expect to negotiate a successful deal with the EU.

The UK government is clear that in this scenario we must respect our unique relationship with Ireland, with whom we share a land border and who are co-signatories of the Belfast Agreement. The UK government has consistently placed upholding the Agreement and its successors at the heart of our approach. It enshrines the consent principle on which Northern Ireland's constitutional status rests. We recognise the basis it has provided for the deep economic and social cooperation on the island of Ireland. This includes North-South cooperation between Northern Ireland and Ireland, which we're committed to protecting in line with the letter and spirit of Strand two of the Agreement.

The Irish government have indicated they would need to discuss arrangements in the event of no deal with the European Commission and EU Member States. The UK would stand ready in this scenario to engage constructively to meet our commitments and act in the best interests of the people of Northern Ireland, recognising the very significant challenges that the lack of a UK-EU legal agreement would pose in this unique and highly sensitive context.

It remains, though, the responsibility of the UK government, as the sovereign government in Northern Ireland, to continue preparations for the full range of potential outcomes, including no deal. As we do, and as decisions are made, we'll take full account of the unique circumstances of Northern Ireland.

Norway, Iceland and Liechtenstein are party to the Agreement on the EEA and participate in other EU arrangements. As such, in many areas, these countries adopt EU rules. Where this is the case, these technical notices may also apply to them, and EEA businesses and citizens should consider whether they need to take any steps to prepare for a 'no deal' scenario.