

CENTRE FOR CROSS BORDER STUDIES

# Briefing Paper:

The recognition of professional qualifications post-Brexit and the Professional Qualifications Bill

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### Introduction

The end of the Brexit transition has seen citizens and businesses in the UK and the EU facing a great deal of additional complexity, which they must now try to understand the practical implications of.

The Trade and Cooperation Agreement (TCA) between the UK and EU allows for zero-tariff, zero-quota trade in goods between the two (although there are non-tariff barriers), while the Protocol on Ireland/Northern Ireland ensured that the free circulation of goods could continue on the island of Ireland. Conversely, there are significant new obstacles for those wishing to provide services cross-border between the UK and EU, including between Northern Ireland and Ireland.

Cross-border trade in services on the island of Ireland is [estimated](#) to have been worth £3.41bn in 2019. In the same year, and as [reported by the House of Commons Library](#), total trade in services between the UK and Ireland was worth more than £35bn, with almost half of this figure was contributed by business services, such as legal work, accounting, and other professional work. There are more than 160 professions regulated by law in the UK, overseen by over 50 regulators, plus a range of other professions regulated voluntarily. According to the European Commission's [regulated professions database](#), Ireland currently has 182.

Many of these sectors have been facing uncertainty about the validity of their professional qualifications to practice outside of their home jurisdiction. It is this challenge that is explored in this Briefing Paper.

### Protecting trade in professional services on the island of Ireland post-Brexit

Whereas UK and EU negotiators agreed a number of specific provisions – in the Protocol on Ireland / Northern Ireland in the [Withdrawal Agreement](#) – to ensure the free movement of goods on the island of Ireland, no similar arrangements were put in place for trade in services across the Irish border. Article 3 of the Protocol does say that the UK will ensure the continued application of the Common Travel Area (CTA), however.

As early as 2018, the Irish Department of Foreign Affairs (DFA) consulted with the European Commission on ways to protect UK and Ireland qualified professionals operating within the Common Travel Area. The Commission's view was that an overarching intergovernmental agreement between London and Dublin was only possible if Ireland could secure a specific

derogation from the EU, which could not be guaranteed, particularly within the tight time-frame of the Brexit negotiations.

Instead, in May 2019, the UK and Irish governments signed a [Memorandum of Understanding](#) to expand on their shared pledge on the CTA and the rights and privileges associated with it. This MoU included a commitment on the right to work, stating that:

“The CTA affords British citizens in Ireland and Irish citizens in the UK the right to work, including on a self-employed basis, without any requirement to obtain permission. The Participants are to continue to ensure that their national laws provide for such a right to work. It is acknowledged that the recognition of qualifications, including professional qualifications, is an essential facilitator of the right to work associated with the CTA. The Participants are committed to ensuring that within their respective jurisdictions, comprehensive measures continue to be in place to allow for the recognition of such qualifications, covering all relevant professions, in accordance with their national laws.”

UK regulatory authorities were asked by the Department for Business, Energy and Industrial Strategy (BEIS) to approach their Irish counterparts about putting in place bilateral arrangements, in the form of a mutual recognition agreement (MRA) or an MoU, or agreed unilateral arrangements.

The government in Dublin has given similar encouragement to Irish regulators. In addition, the DFA has set up an Interdepartmental Working Group to support bodies in recognising British qualifications. It has also been noted that some professional bodies regulate on an all-island basis already, meaning that at least those registered on the island of Ireland are already covered.

In a [speech](#) in April 2021, Minister for Further and Higher Education, Research, Innovation and Science, Simon Harris TD, argued that Irish regulators were making greater progress than those in other member states. He acknowledged, however, that there had been some hurdles where recognising UK qualifications in Ireland required legislative amendments or was in a sector within the purview of the EU.

## The mutual recognition of professional qualifications

Professional qualifications are usually considered to be those required for a person to practice a certain regulated profession or to adopt a vocational title associated with that profession. Examples include accountants, architects, doctors, or lawyers.

### MRPQ within the EU

The legal basis by which EU member states acknowledge and accept each other's qualifications is the Union's Mutual Recognition of Professional Qualifications Directive 2005, which is also complemented by a range of sector-specific legal provisions. Although this

legislation was transposed into British law through the European Union (Withdrawal) Act 2018, the UK ceased to be bound by it when the Brexit transition period ended on 31 December 2020.

The EU has a system of automatic recognition for seven professions: architects, dentists, doctors, midwives, nurses, pharmacists, and veterinary surgeons. Despite professional qualifications being recognised as equally valid across all member states in these seven fields, those wanting to work in another member state must still apply to the relevant national regulatory authority in the host country.

This system applied to both British citizens wishing to work in the EU and EU citizens wishing to work in the UK until the end of the Brexit transition period on 31 December 2020.

### MRPQ since Brexit

Professionals who had their qualifications recognised under this system before the end of the transition period may continue to work without taking additional action, under Chapter 3 (Professional Qualifications) of the citizens' rights title of the Withdrawal Agreement.

The UK and European Commission did not agree to an overarching system of automatic or streamlined mutual recognition, meaning that, by default, professional qualifications achieved today in the UK are not recognised in EU national jurisdictions and *vice versa*.

To mitigate the effects of this, the UK introduced a new, interim system for recognising qualifications gained by professionals in the European Economic Area (EEA) (including EU) or Switzerland from 1 January 2021. In its [guidance notes](#), the British government has said that this system, amongst other things, will “provide a route to recognition for professionals with equivalent Irish qualifications, helping the UK to meet its commitments under the Common Travel Area”. This temporary framework is equivalence-based, meaning that British regulators will recognise EEA or Swiss professional qualifications as valid so long as they are “comparable to UK qualification requirements and standards in scope, level and content”.

The UK government has stated that this system “cannot run in perpetuity”, adding that it wants to introduce a long-term framework “for the recognition of qualifications that enables the UK to attract the best talent and that reflects the UK’s global trade agenda”. A [call for evidence](#) on this framework was held between August and October 2020. Of the 417 respondents, just two – both regulatory bodies – were from Northern Ireland, with one coming from the Republic of Ireland.

### The future of UK-EU MRPQ

Two or more regulatory bodies, with responsibility for the same profession in different jurisdictions, may reach a mutual recognition agreement (MRA) with each other to streamline the process by which a professional with qualifications in one country or region can register to practice in another.

Article 158 of the UK-EU [Trade and Cooperation Agreement](#) establishes a framework that allows British and member state regulators or professional bodies to develop arrangements for the mutual recognition of qualifications on a profession-by-profession basis. Once negotiated, this MRA is then recommended to the Partnership Council – also established by the TCA – for approval and entry into force across both the UK and the EU.

This framework is similar – but not identical – to that found in recent EU free trade agreements with countries such as Canada. In the five years since the [Comprehensive Economic and Trade Agreement \(CETA\)](#) was agreed, European and Canadian regulators have made very little progress in agreeing MRAs for any professional sectors. It remains to be seen whether the closer geographical and economic ties between the UK and the EU, an existing history of MRPQ, or other factors will mean that progress between British regulators and their European counterparts will be quicker or more successful.

The footnotes to Article 158 stipulate that the UK and EU could agree to an overarching agreement in future that complements or supersedes that part of the TCA.

Regulators are not obliged to pursue MRAs through the TCA process, and may instead agree memoranda of understanding with a regulator in a particular member state on a bilateral basis. Although they can be written to achieve much the same thing as a full mutual recognition agreement, a MoU on professional qualifications is not legally binding in the same way that a MRA is.

Some sectors have already put in place measures to this effect. For example, the [Architects Registration Board \(ARB\)](#) – the statutory body for regulating the architectural profession in the UK – has made the decision to continue to unilaterally recognise qualifications gained in the EU / EEA under the MRPQ Directive. The ARB has also reached an [MoU](#) with its Irish counterpart, the [Royal Institute of the Architects of Ireland \(RIAI\)](#), in December 2020 agreeing that the mutual recognition of architecture qualifications would not be affected by the end of the transition period. Similarly, the [Irish Teaching Council](#) altered their general third country qualification recognition route to take account of the potential impact of Brexit on newly-trained educators in the UK wanting to work in Ireland. This was later followed up by an [MoU between the British and Irish governments on reciprocal rights in the education sector within the Common Travel Area](#), including “enabling the longstanding practice of enabling appropriately qualified Irish and British citizens to take up employment within the education sectors of the respective states of to apply for and receive recognition for their academic qualification where it is comparable in scope, content and level to domestic qualifications”.

BEIS has set up a dedicated facilitation team within the department, as well as working with the UK Centre for Professional Qualifications, to encourage regulators to pursue MRAs and to offer support to them in doing so. It has also published specific [guidance](#) for regulator and professional bodies. However, it is ultimately for regulators themselves, as independent

authorities, to decide whether or not to seek arrangements with their counterparts abroad and which regions to prioritise.

Representatives of BEIS have acknowledged that achieving MRAs will be more challenging and potentially take longer in sectors with a more fragmented regulatory framework across member states.

## The Professional Qualifications Bill

The [Professional Qualifications Bill](#) was introduced into the House of Lords on 12 May 2021. It is designed to replace the interim system for EEA/Swiss professionals (see above) and replace it with a long-term framework for recognising professional qualifications from abroad.

The provisions within the Bill, and any subsequent amendments of secondary legislation after it becomes law, will apply to England, Wales, Scotland, and Northern Ireland.

In a [press release](#) announcing the Bill's publication, the Department for Business, Energy and Industrial Strategy said that the new legislation would "establish an effective regulatory framework for professional qualifications" so that "skilled professionals can have their qualifications recognised in the UK where they meet UK standards". Specifically, the Bill grants regulators the autonomy to assess qualifications in other countries and pursue arrangements, such as mutual recognition agreements, with their counterparts in foreign jurisdictions.

A [Policy Statement](#) has made clear that the UK "will keep those parts of the EU-derived system that work well for our professions and professionals' needs and adapt those that work less well", adding that the Government "will end the systematic disparity in treatment of professional qualification holders from the EU, Norway, Iceland and Liechtenstein [...] compared to those from other countries". In other words, the British government is seeking to replace a European framework with a more global one. This mirrors the decision to end freedom of movement with European countries and implement a new immigration system.

There is a potential additional layer of complexity for professions which have different regulatory bodies in the various home nations of the UK. Last year, through part three of the [United Kingdom Internal Market Act](#) 2020, on professional qualifications and regulation, Ministers sought to avoid administrative hurdles for people gaining approval to practice a number of professions in one part of the UK. The Professional Qualifications Bill builds on this work by establishing a system of information sharing between national or regional regulators within the UK. BEIS has said that "it is the responsibility of those regulatory bodies based across the UK to work collaboratively to agree a single recognition arrangement [with counterparts from another country] for their given profession, where possible".

At the time of writing the Bill was still being scrutinised by peers and had not yet begun its passage through the House of Commons. It is not expected to have undue difficulty in gaining

approval from Parliament. Labour have expressed some concerns about a dilution of regulators' independence, which the Government has repeatedly stressed will not occur.

## Conclusion

There can be no doubt that Brexit has made the cross-border provision of services more difficult between the UK and the EU, including between Northern Ireland and the Republic of Ireland.

Whilst the British government has introduced and is introducing more measures to ease the process of mutual recognition of professional qualifications with other countries, significant questions remain unanswered. Which jurisdictions will UK regulators prioritise – as they have been asked to do, to address skills shortages – and how will they make this decision? Although some countries outside of the EU are likely to welcome a more global approach from the UK, professionals in some member states would be forgiven for bemoaning a dramatic change from freedom of movement.

The repeated affirmations from governments on both sides of the Irish sea to fully uphold the Common Travel Area are a positive sign. So too is the general encouragement from UK ministers to pursue streamlined arrangements for the mutual recognition of professional qualifications in other member states. But statements alone cannot guarantee progress. Respecting the independence of regulators is understandable and admirable, but it also means there is a risk of a lacuna for newly-qualified professionals seeking to work in other jurisdictions if their relevant authority has chosen not to act or has not been able to act quickly enough.

Further complications emerge for professions that are regulated differently in the various nations of the United Kingdom. It will be important for regulatory bodies within the UK to work closely and transparently with one another to prevent that complexity being passed on to those seeking to practice within the UK having qualified elsewhere.

All the necessary players appear willing and able to mitigate the effects of Brexit for professionals wishing to have their qualifications recognised abroad, at least over the medium term. Nevertheless, even in a best-reasonable-case scenario, the resultant patchwork of pathways to that recognition could be an administrative thorn in the sides of those carrying out their work for a long time to come.

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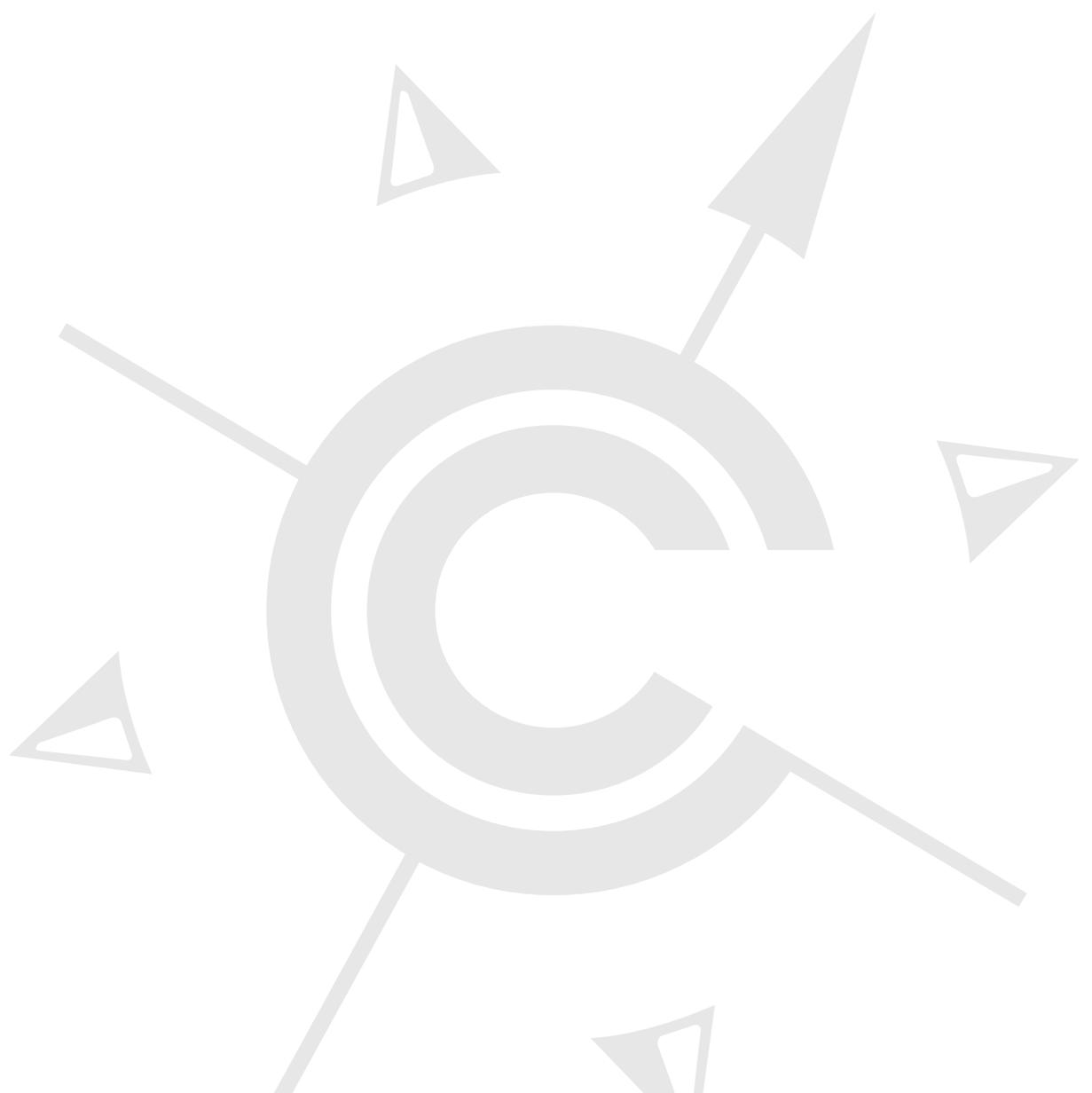
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