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Technical Notice – No Deal Brexit – Recognition of professional qualifications

In November 2018, the European Union (the “EU”) and the United Kingdom (the “UK”) concluded the terms of a Withdrawal Agreement providing for the UK’s orderly departure from the EU. Gibraltar forms part of these arrangements. The Agreement includes a transition period until the end of 2020. The transition period would also apply to Gibraltar. The Agreement has been debated and voted upon at length but is still subject to ratification by the UK Parliament and the European Parliament.

The door is now open for a short extension to the Article 50 process. There will be an extension to 22 May if the Withdrawal Agreement is approved. The extension will run to 12 April if the Withdrawal Agreement is not approved.

In the meantime, HM Government of Gibraltar (“HMGoG”) continues to plan for the eventuality that the UK and Gibraltar may leave the EU without this Agreement.

Purpose

If the UK and Gibraltar leave the EU without a deal the requirements for how professional qualifications will be recognised will change. This Notice explains the future arrangements for how these areas will work in the context of a No-Deal Brexit.

Existing Position

EU Directive 2005/36/EC on the recognition of professional qualifications (the “MRPQ Directive”) provides a reciprocal framework of rules which enables EEA and Swiss nationals to have their professional qualifications recognised in a state other than the one in which the qualification was obtained. In addition to the EU, the MRPQ Directive applies to Iceland, Liechtenstein and Norway and to Switzerland by virtue of it being annexed to the EEA Agreement and the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons.

It provides several routes to recognition, including:

- automatic recognition based on minimum training conditions or professional experience (recognition based on minimum training conditions 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 Gibraltar if they hold the qualifications required by an EEA State or Switzerland. 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 Gibraltar;
- a mechanism for those who want to work on a temporary or occasional basis in another EEA State or Switzerland, including the role of the regulator and the procedures and formalities with which an applicant must comply.

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

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

The MRPQ Directive has been implemented in Gibraltar by via the Qualifications (Right to Practise) Act 2009 (the “Act”).

If there is a Withdrawal Agreement

If the Withdrawal Agreement enters into effect the status quo would remain up to the end of the transition period – that being 31 December 2020.

If there is no Withdrawal Agreement

HMGOG will continue to apply the framework contained in the MRPQ Directive which will become retained EU law when Gibraltar leaves the European Union.

It does not, in the short term, plan to make any significant amendments to the Act. Gibraltar will therefore continue to recognise the qualifications of EEA and Swiss professionals in accordance with the Act.

Gibraltarians seeking recognition to work in regulated professions in the EEA or Switzerland should check the host state’s policies. The European Commission has stated that decisions on the recognition of UK qualifications in EU countries before exit day are not affected and it has published guidance in the Commission’s Brexit Professional Qualification Preparedness notice to this effect.

Regarding the position in Spain, HMGOG should underline that, as UK nationals, Gibraltarians will be covered by contingency measures adopted by the Government of Spain providing for the continued recognition of professional qualifications obtained in either the UK or Gibraltar.

Specific Guidance for Lawyers



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 and Switzerland 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.

This will become retained EU law if the UK and Gibraltar leave the EU without an agreement.

However, in the event of a No-Deal Brexit, Gibraltar lawyers practising in other Member States will not have the same rights under these Directives. In such cases, Gibraltar lawyers may only be entitled to the rights granted by the national regulators of the Member States concerned to non-EU lawyers. For lawyers practising in other Member States more information can be sought from the following guidance published by The Law Society:

<https://www.lawsociety.org.uk/support-services/documents/no-deal-brex-it-providing-legal-services-in-eu-2019/>

Further information

This Notice is meant for guidance only.

Where appropriate, professional legal advice on the implications of these changes should be sought.