

FAQ: Professional Qualifications After Brexit

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The freedom to exercise a profession across the European Union is fundamental to the realization of free movement of persons and services in the EU and the strengthening of the internal market. Ultimately, it produces beneficial consequences for both businesses and consumers as it allows them to access a skilled workforce more readily and more economically. As a member of the EU, the UK economy benefits from the Unions' rules on the recognition of professional qualifications and work experience, which facilitate the portability of professional qualifications across Europe.

This FAQ discusses:

- The significance of the rules on the recognition of professional qualifications
- The objective and function of the rules on the recognition of professional qualifications
- The relevant EU legal framework currently transposed in the UK
- The impact of Brexit on various aspects of the recognition of professional qualifications

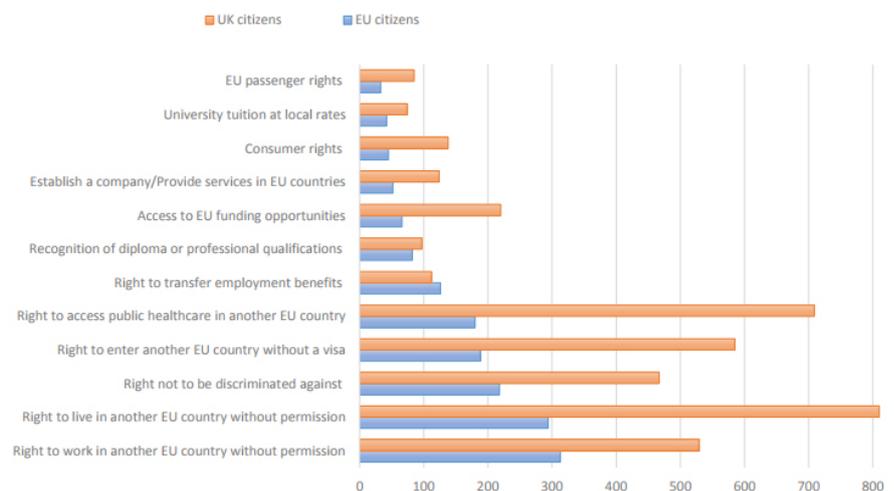
Q: How is the recognition of professional qualifications relevant?

A: The freedom of movement of people and services across borders lies at the heart of EU treaties and underpins the single market. For nationals of the EU Member States, this involves the right to exercise a profession, whether as an employed or self-employed person, in a Member State other than the one in which they obtained the professional qualifications (including training and professional experience). The right to have a diploma or a professional qualification recognised is one of the most valued rights by EU and UK citizens according to the European Citizen Action Service Survey held in March - May 2017.

EU Member States can limit the access to some professions (e.g. doctors and paramedics, architects, lawyers, commercial agents etc.) by requiring possession of specific qualifications. A preliminary official recognition of the professional qualifications obtained in the country of origin may thus be necessary, but the process can be complicated, expensive, and time-consuming. Accordingly, the Treaty provides for the adoption of secondary legislation concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications, in order to guarantee equivalence of professional standards across Europe (Article 53 TFEU) and ultimately facilitate free movement.

The UK's pending departure from the EU raises concerns that the discontinued application of the existing regime will reduce the quantity of skilled professionals readily available to businesses and consumers, with the potential to increase costs and decrease quality; and will restrict the freedom of UK residents to pursue their chosen careers across the EU. Impact (indirectly) is expected also on the UK's higher education and training system more generally.

Top Valued Rights By EU And UK Citizens (No. of mentions)



Q: What is the current EU legal framework on the recognition of professional qualifications?

A: The core EU legal framework regarding the recognition of professional qualifications is set out in Directive 2005/36/EC. It departs from the previous sector-by-sector approach and provides for a general system of equivalence of professional qualifications. A 'regulated profession' is one whose practice is made conditional upon the fulfilment of certain requirements, such as holding a specific degree, sitting special exams, or registering with a professional body.

The system introduced by the Professional Qualifications Directive rests upon the principle of 'mutual recognition' grounded on reciprocal trust between Member States and assumes that qualifications awarded in one Member State should be accepted in good faith in the other Member States. Directive 2005/36/EC has been recently revised by Directive 2013/55/EU with the purpose of rationalising, simplifying and improving the existing rules and incorporating the case law of the CJEU. Where the profession is regulated in the host country but not at home, the Directive requires that the professional provides evidence of exercise of the profession in the home country for at least 2 of the last 10 years. If the profession is regulated at home but not in the host country, the professional can practice it under the same conditions as the nationals of that country.

The UK has transposed the EU provisions on the recognition of professional qualifications, through the [European Union \(Recognition of Professional Qualifications\) Regulations 2015](#). Depending on the sector, the devolved constituencies may have chosen to make separate Regulations in relation to devolved areas.

Q: How does the EU regime on recognition of professional qualifications work in practice?

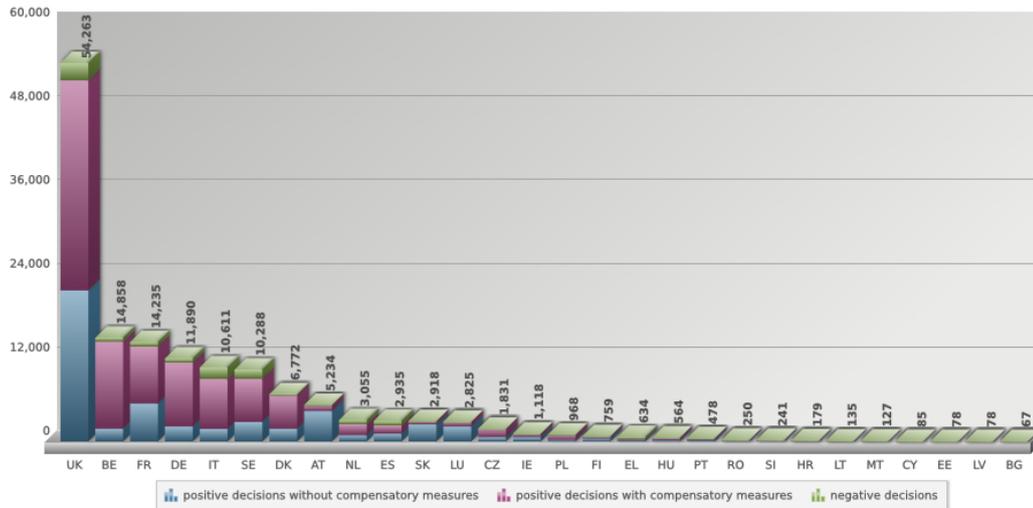
A: For people who want to work in another EU country the revised Directive 2005/36 provides for the following:

- **a general system** that requires a professional who wants to move to another EU country to apply to the competent authority in the destination country to have their qualifications or professional experience recognised. 'Compensation measures', such as an aptitude test or a traineeship, can be imposed on the applicant where there are major differences between the training obtained in the home country and the qualifications required in the host Member State. 'Partial access' to the profession will instead be granted when the differences between the fields of activity are so large that a full programme of education and training would be required to compensate for shortcomings.
- **automatic recognition** of qualifications for a limited number of professions, such as doctors, general care nurses, dental practitioners, veterinary surgeons, pharmacists or architects. The Directive sets out harmonised minimum training requirements or professional experience conditions that the person must meet for successful recognition, but compensatory measures are not allowed.
- **specific EU legislation** applies to certain professions (e.g. sailors and seafarers, lawyers, commercial agents, etc.).

Directive 2013/55 has introduced the European Professional Card (EPC). This is an electronic system for the recognition of professional qualifications for the purpose of temporary mobility or establishment. The procedure operates through the Internal Market Information System (IMI) and provides access to uploaded documents and a speedier process in case of subsequent applications. Once the application is approved, the system generates an EPC certificate. Currently the EPC procedure can be used only for specific professions, i.e. nurse responsible for general care, pharmacist, physiotherapist, mountain guide and real estate agent.

Between 2013 and 2015 the UK reported 51,800 positive recognition decisions; over 20,200 for nurses (around 6,400 from Spain, 3,700 from Portugal and 3,600 from Romania) followed by secondary school teachers (13,500) and doctors (8,500).

Total number of decisions by host country, 2013-2015



Source: Database on regulated professions (validated up to 30 January 2017). www.ec.europa.eu/internal_market/scoreboard/performance_per_policy_area/professional_qualifications/index_en.htm#maincontentSec3

Q: What rules apply to recognition of qualifications in respect of the legal profession?

A: The recognition of qualifications related to the legal profession is regulated by Directive 77/24 on facilitating the effective exercise by lawyers of their freedom to provide services, and Directive 98/5 on facilitating the practice of the legal profession on a permanent basis in a Member State other than that in which the qualification was obtained. These Directives operate alongside the general Professional Qualifications system.

Under such rules, lawyers qualified in one Member State may practice the profession in another Member State, alternatively, by way of temporary provision of services or permanent establishment. Professional activities in the host country can be carried out using the home country title (e.g. Barrister, Avvocato, Avocat, Rechtsanwalt, Abogado). However, lawyers who have been established in another Member State, and have effectively and regularly practiced the law of that State for three years under their home country title, may apply to the host Bar association to obtain the title of the legal profession in the host state, upon evidence of such practice.

According to the Solicitors Regulation Authority, approx. 2.1% of the practicing solicitors in July 2017, in England and Wales, were non-UK European lawyers (661 registered and 2,364 exempt from insurance regulation); and there was a similar number of foreign lawyers (2,919). The Law Society of England and Wales, reports that 36 of the top 50 UK law firms have at least one office in one of the EU Member States and 2,731 solicitors are based in 24 other EU Member States (except for Estonia, Lithuania and Slovenia).

Q: What rules apply to professional qualifications obtained in third countries?

A: Each Member State may permit individuals in possession of evidence of professional qualifications obtained in a third country to pursue a regulated profession on its territory in accordance with national rules. This should be regarded as evidence of formal qualifications also in other EU Member States, once the holder has three years of professional experience in the Member State which first recognised the non-EU evidence of formal qualifications (Article 3 of Directive 2013/55).

Specific and more favourable rules apply to highly qualified third-country nationals under the so-called 'Blue Card' Directive (2009/50/EC). It enables them to work in a specific sector of employment and to enjoy equal treatment with nationals regarding the recognition of diplomas. After 18 months of legal residence in the first Member State as an EU Blue Card holder, the person concerned may move to another EU country for the purpose of highly qualified employment. The UK, Ireland and Denmark, however, do not take part in the Blue Card programme.

Q: Will EU rules on recognition of professional qualifications and experience still apply after Brexit?

A: Recognition of professional qualifications and protection for other economic rights remain to be discussed, but five scenarios can be distinguished.

1. Professional qualifications recognised before the withdrawal date. The Commission's guidelines for the negotiation of an agreement with the UK provide that, for legal certainty purposes, the Agreement should ensure, in the UK and in the EU27, continued protection of recognised professional qualifications obtained in any of the Member States before the withdrawal date. The position of the UK Government rests on similar premises as it will seek to ensure that EU citizens with professional qualifications obtained in the EU27 prior to the UK's withdrawal from the EU will continue to have those qualifications recognised in the UK. Despite these reassurances, the Law Society of England and Wales reports that since the outcome of the EU referendum, a greater number of UK lawyers have been using the mechanisms of the EU Directives on professional qualifications in the legal sector to re-qualify in one of the other EU legal professions (notably Ireland, Belgium, Luxembourg, etc.).

2. Professional qualifications obtained in a third country recognised before the withdrawal date. The Commission's position is that continued recognition after the withdrawal date should also be guaranteed with regard to professional qualifications obtained in a third country and recognised in any of the EU Member States before the withdrawal date in accordance with Union law rules. The UK's position is not clear and the issue is not mentioned explicitly in the June policy paper.

3. Professional qualifications in the process of being recognised on the date of withdrawal. Arrangements relating to procedures for recognition which are ongoing on the withdrawal date will need to be negotiated. The UK's policy paper sets out that the Government will seek to ensure that arrangements be made to allow an initiated recognition process to continue.

4. Recognition of professional qualifications after the withdrawal date. There are no indications on this point, but specific regulatory problems can be anticipated because free trade in services and cross-border establishment rely in essence on mutual recognition. This is only possible when common standards, including an enforcement mechanism, apply. The best option to continue to maintain the status quo, whilst not being an EU member, is through membership of the European Free Trade Association (EFTA) - currently Norway, Lichtenstein, Switzerland and Iceland - which is broadly aligned with the EU single market law. The EFTA members (except for Switzerland) and the EU Member States form the European Economic Area (EEA). The EFTA has its own Court which handles cases against members that fail to implement the rules of the single market. The issue with this solution is that the "EFTA-EEA package" also includes the free movement of workers. As a result the UK would be required to transpose single market law into domestic law without being able to influence those rules in the legislation-making process, whilst being subjected to another external judicial body overseeing UK law – the EFTA Court.

Alternatively, if the future EU-UK Trade Agreement will include a chapter on free trade in services and establishment it will require not only rules granting market access but also a monitoring mechanism to assess whether the common standards are aligned and continue to be applied in practice. If the monitoring mechanism does not have judicial review powers (i.e. similar to the role currently played by the Court of Justice of the EU, or the EFTA Court), it could be foreseen that mutual recognition will continue to apply as long as standards are harmonised. Where one of the parties (EU or UK) changes the standards unilaterally, mutual recognition could be suspended until standards are aligned again. This option of course creates important legal uncertainties but it may also operate as a disincentive to change rules unilaterally.

5. High level education studies that started before the Referendum date and will be completed after Brexit takes place. The UK government has committed to encourage and ensure that EU students continue choosing UK world-class universities. In the interest of legal certainty, the Government has confirmed that current EU students and those starting courses at an English university or other education institution in the 2017/18 and 2018/19 academic cycles will continue to be eligible for student support, will remain eligible to apply for Research Council PhD studentships at UK institutions, and will have a parallel right to remain in the UK to complete their course. For more information on the impact of Brexit on higher education, read our FAQ on [Brexit and International Education](#).