



The Bar Council

**House of Lords International Agreements Committee
Inquiry into the UK-Swiss Professional Qualifications Agreement
Bar Council written evidence**

About Us

The Bar Council represents approximately 17,000 barristers in England and Wales. It is also the Approved Regulator for the Bar of England and Wales. A strong and independent Bar exists to serve the public and is crucial to the administration of justice and upholding the rule of law.

Overview

1. The Bar Council is grateful for the opportunity to assist the Committee in its understanding of the Professional Qualifications Agreement, recently concluded between His Majesty's Government (HMG) and the Swiss Federation (the present Agreement)¹.
2. The Bar Council has had sight of the oral evidence provided in late June by the Law Society of England and Wales on the Agreement ([link](#)). We regret however, that due to a temporary shortfall in staffing, combined with the summer recess, it has not proved possible for the Bar Council to give this topic the attention it deserves. In particular, in the time available we have not been in a position to draw parallels with other ongoing international negotiations, such as with India and the US, as touched on in the aforementioned evidence session. The position below therefore focuses on headline points arising on the present Agreement, followed by a few more general observations.
3. We remain fully committed however, to contributing to the valuable work of the Committee on this and related international agreements going forward.

Background

4. The Bar Council welcomed the Agreement reached late last year to extend to end 2025 the 2020 UK-Swiss Services Mobility Agreement² (SMA) which, broadly speaking, enables UK service providers to work in Switzerland for up to 90 days without a work permit and gives Swiss professionals the reciprocal right to work in the UK under a Tier 5 International Agreement Visa.

¹ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1162806/uk-switzerland-rpq-agreement.pdf

² <https://www.gov.uk/government/publications/temporary-agreement-between-the-swiss-confederation-switzerland-and-the-uk-on-services-mobility>

5. The SMA itself contained a headline commitment to ongoing joint work towards a comprehensive agreement for the recognition of professional qualifications (RPQ), resulting in the present Agreement, signed in June of this year and to enter into force at the start of 2025. It replaces interim arrangements on RPQ with Switzerland, agreed ahead of the UK's EU Exit.
6. We note that both agreements should be seen in the broader context of ongoing negotiations, launched earlier this summer, on a new comprehensive UK-Switzerland Free Trade Agreement (FTA). We look forward to the eventual FTA building on the excellent foundation that these two agreements provide and enhancing further the opportunities for UK legal professionals to provide their services, on a reciprocal basis, in a key European market.

Relevant particularities of the self-employed Bar

7. Whilst a significant minority of our membership is employed, often in law firms or as in-house counsel, the majority of barristers are self-employed, generally offering their services from chambers based in England and Wales. With few exceptions therefore, barristers providing legal services on overseas territory tend to do so on a temporary fly-in, fly out basis rather than through a local establishment and/or extended periods of practice on the territory concerned.
8. This characteristic of cross-border professional practice as a barrister can lead to important differences in emphasis between the Bar Council and, say, the Law Society, on matters relating to cross-border practice, be they mobility, recognition of professional qualifications or market access. For that reason, we consider it crucial for bodies that are developing policy and negotiating and concluding international agreements in this area, including this Committee and relevant government departments, to engage fully with all representatives of the legal profession, in order to develop a full understanding and picture of same.

Headline points for the Bar

9. The Bar Council welcomes the central element of the Agreement providing for the acquisition of the host title based on mutual recognition of the practitioner's home title under Article 2.3, subject to meeting the conditions set out in e.g. Article 2.4.
10. We further note that if the conditions are not met, and the host relevant authority requires compensatory measures under Article 2.5, in principle, those could be satisfied through the applicant sitting an aptitude test, rather than the alternative of having to complete an adaptation period of up to three years "effective and regular practice of the law of the host jurisdiction". Moreover, that Annex 3, by way of exception to Article 2.5 reserves the choice to the applicant "covered lawyer". For the reasons outlined at paragraphs 7- 8 above, requiring a lengthy period of adaptation would be impracticable for most of our membership.
11. The Bar Council welcomes these central provisions as well as the flanking requirement that the "relevant authority schedules aptitude tests with reasonable frequency and at least once a year, where applicable."

12. We further note that these and other provisions of the Agreement safeguard the autonomy of the relevant regulators to independently set and maintain standards and decide who is fit to practise the profession. This too is to be welcomed.
13. However, as with all such agreements, the more so where discretionary elements are involved, its value will only fully emerge once we see how it is implemented and as necessary, enforced in practice. Among many other elements, how discretion is exercised in practice, will need to be monitored, including:
 - a. How will the host relevant authority assess whether professional qualifications are “comparable” (Art 2.3) or if there is a “substantial difference” (Art 2.4.2); or interpret the definition of “covered lawyer” (Annex A)?
 - b. How willing will they be to provide written reasons for a decision to require compensatory measures under Art 2.5?
 - c. Will the exception set out in Annex A to Article 2.5 that provides that the relevant authority must offer the choice between adaption period or aptitude test when requiring compensatory measures of a “covered lawyer” be fully honoured? This choice will be of particular importance to, say a self-employed practitioner who wishes to provide FIFO services in Switzerland, for whom the requirement to fulfil an adaptation period would be tantamount to a refusal to recognise.
14. The Bar Council therefore calls for close monitoring and as necessary, enforcement of the Agreement once it is in force. We note of course that informal Bar to Bar discussions when issues like those mentioned above arise, may provide an avenue to resolving any such difficulties.

General Points

15. The Bar Council agrees with the Law Society that the combination of the existing SMA together with this present Agreement provide an excellent foundation for the future UK-Swiss FTA and indeed for other comparable international agreements. The Committee is fully aware of the importance of UK legal services as a proportion of UK (professional) services exports. Moreover, and the Bar’s international reputation for advocacy plays a crucial role here, the quality of our service provision abroad is widely acknowledged as a key element in the attractiveness to others of using English law and the jurisdiction itself.
16. Thus, we stress that all affected branches of the legal profession should be consulted in a full and timely manner at every stage of negotiation of such agreements, and indeed on their implementation and enforcement.
17. Efforts should continue in parallel to enhance the range of legal services and advice that our practitioners can offer under their home title in other jurisdictions, extending eventually, beyond domestic law and public international law whenever possible.
18. We note and agree with the Law Society’s oral observations on the slim prospects for a horizontal Mutual Recognition Agreement (MRA) arrangement under the EU-UK Trade and Cooperation Agreement (EU-UK TCA) for the legal profession. However,

the Bar Council continues to pursue Memoranda of Understanding with individual national and/ or as applicable, regional Bars in the EEA Member States, leading we hope to MRAs. Thus, whilst we certainly encourage HMG to secure broader agreements that open international opportunities for the legal profession whenever possible, we consider that both approaches are necessary and desirable.

19. The Bar Council is also taking a variety of steps to prepare for the pending first wave of reviews of the EU-UK TCA, both internally and through our engagement as e.g. members of the UK Domestic Advisory Group under that agreement. We will be encouraging HMG to be ambitious, beyond simply better implementation. That said, we will also urge a selective, strategic approach to any substantive changes the UK may seek – including a focus on areas where there is a clear mutual benefit likely to emerge from any changes.

The Bar Council's European Committee
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