

## **Law Society of Scotland**

### **Review of EU-UK Trade and Cooperation Agreement**

#### **Information about your organisation:**

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

#### **How trade in goods and services between the EU and UK is currently working and if there are areas where it can be improved.**

It is worth noting from the start that whilst the EU-UK Trade and Cooperate Agreement (TCA) is helpful from a services perspective the deal is largely focused on trade in goods. Generally, the provisions on trade in services and investment could have been stronger. There are a number of helpful aspects, including a specific section on legal services not always found in a trade agreement.

The majority of the discussions surrounding the TCA review will take place during 2025 before being completed and agreed by both sides in early 2026. This presents an opportunity for the profession to raise concerns about the operation and content of the TCA. We expect the majority of the review process to focus on implementation rather than renegotiation. The process is outlined in article 776:

“The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.”

The UK Government and the EU Commission will both be able to raise issues of concern throughout this process. The main areas that have been raised by members and firms so far are:

1. Transparency and restrictions surrounding the current mobility requirements.
2. Barriers to practice for Scottish Solicitors in the EU.
3. Youth Mobility.

#### **Whether there is an interest in developing the trading relationship further e.g., through an agreement on sanitary and phytosanitary (SPS) measures or on the opportunities for UK nationals to provide services in the EU.**

We would suggest two areas that can be worked on to improve the opportunities to provide legal services in the EU.

1. Full implementation of Article 145 regarding transparency of mobility requirements for each member state to ensure members understand their obligations in each EU country. (Full text of article 145 included in annex after the final question).

Article 145 commits both sides to transparency around procedures and requirements for entry and temporary stay of people. Migration is reserved to EU member state national governments which means there are often different requirements for each member state. Furthermore, the fragmentation resulting from this plethora of different requirements is in itself a barrier to trade as businesses need to understand the impact on their business in each separate jurisdiction, rather than being able to rely on a uniform understanding of the rules

A number of members and firms have expressed some concern that it is still not always clear what is and is not permissible under the current arrangements. Whilst (as we acknowledge) some of this can be put down to the relatively new nature of the TCA there is still clearly room for improving the information provided by member states about what is allowed in each country

2. Expanding Article 126 to include legal services as a permitted activity for short term business visitors. (Full text of article 126 included in annex after the final question)

Article 126 commits both sides to review a number of issues including permitted activities for short term business visitors so long as it is in both sides interest. The mobility of professionals has been severely reduced as a result of withdrawal from the EU. Almost all our firms and members would welcome more flexibility for cross-border working, which has positive impacts for individuals and the economy.

There is widespread agreement from our members that adding legal services to the list of permitted activities would be beneficial for Scottish solicitors and for the UK more generally. It is worth noting that whilst currently other professions can still provide advice (such as parts of the finance sector) solicitors need both the right to enter a country (covered by the 90 day restriction which can be problematic in some cases), the right to practice and legal professional privilege. Competition and arbitration are both areas of practice which would benefit from this change. Whilst there may be other issues that cannot be solved by the TCA (insurance for instance) any steps to reduce the regulatory burden would be welcome

### **Whether EU-UK relations in the future could build on elements of the Windsor Framework to encourage flexible and simple conditions for trade**

We welcome the improvement in UK-EU relations that have come about since then. We hope that relations will continue to improve over the coming years.

**Any other views on the TCA you might want to share with us.**

-Barriers to Practice

Our members and firms working in the EU practice across a wide range of areas covering family, banking commercial, tax, employment, dispute resolution, social welfare and climate law. Of these a majority have faced either challenges or impediments to their ability to work since Brexit. Whilst all recognise that the TCA is not going to be re-negotiated they emphasise that they have faced significant challenges in securing their continued right to practice and that they face other challenges in regard to changing rules and promotion prospects in the future.

In particular, the lack of ability to appear before EU courts was identified as a barrier to continuing their work in many cases.

It is also worth noting there have been specific issues in relation to practicing in certain countries, in particular in Luxembourg and Greece. In the case of the former the Parliament of Luxembourg has recently passed a bill to remove the existing nationality condition for UK Lawyers to work in Luxembourg bringing them in line with the TCA. Whilst we have less direct interest in the latter there has been positive conversations regarding moving to a positive conclusion.

#### -Youth Mobility

A number of our members expressed disappointment that they felt they would often be the last Scottish solicitors to pursue their profession in the EU due to the lack of youth mobility. Ultimately there are a number of factors here and whilst it is too early to comment in much detail on the Turing Scheme it is worth bearing in mind that a number of our future lawyers have taken advantage of programmes to broaden their horizons during their studies, which rely on reciprocal arrangements with other EU universities. The ERASMUS programme, the best-known EU student exchange programme established in 1987, had a number of participants from Scottish law schools. Following the announcement that the UK will rejoin the Horizon programme we would strongly encourage the UK to also consider re-joining ERASMUS.

#### Domestic Advisory Groups

We would like to express our disappointment that we were not chosen to join the Domestic Advisory Group of the TCA. The outcome was particularly surprising to us since our understanding from the published minutes of the DAG meeting (28th April 2022) was that one of the reasons for a second round of applications was to address the geographic imbalances within the current makeup of the DAG:

From the context of the UK legal services sector the jurisdiction of England and Wales is represented by the Law Society and the Bar Council but the Scottish legal sector is unrepresented after the failure of our and the Faculty of Advocate's application.

The legal services market is no less important to Scotland than the equivalent market is to England and Wales, and our experience would fill the obvious geographic gap so far as Scotland is concerned. We also understand that the DAG is to rotate between the four nations of the UK which will result in the curious situation that it will meet in the Scottish legal jurisdiction without any representative of that jurisdiction being present.

Whilst we recognise that there are other channels for stakeholders to give their views on implementation of the TCA (including consultations such as this), we consider the DAG to be the most appropriate forum for our participation and hope that this situation will be resolved in the future.

Annexe:  
Article 126.

#### Review

1. With a view to introducing possible improvements to the provisions of this Title, and consistent with their commitments under international agreements, the Parties shall review their legal framework relating to trade in services and investment, including this Agreement, in accordance with Article 776.

2. The Parties shall endeavour, where appropriate, to review the non-conforming measures and reservations set out in Annexes 19, 20, 21 and 22 and the activities for short term business visitors set out in Annex 21, with a view to agreeing to possible improvements in their mutual interest.

3. This Article shall not apply with respect to financial services.  
Article 145

#### Transparency

1. Each Party shall make publicly available information on relevant measures that pertain to the entry and temporary stay of natural persons of the other Party, referred to in Article 140(1)
2. The information referred to in paragraph 1 shall, to the extent possible, include the following information relevant to the entry and temporary stay of natural persons:
  - (a) categories of visa, permits or any similar type of authorisation regarding the entry and temporary stay;
  - (b) documentation required and conditions to be met;
  - (c) method of filing an application and options on where to file, such as consular offices or online;
  - (d) application fees and an indicative timeframe of the processing of an application;
  - (e) the maximum length of stay under each type of authorisation described in point (a);
  - (f) conditions for any available extension or renewal;
  - (g) rules regarding accompanying dependants;
  - (h) available review or appeal procedures; and
  - (i) relevant laws of general application pertaining to the entry and temporary stay of natural persons for business purposes
3. With respect to the information referred to in paragraphs 1 and 2, each Party shall endeavour to promptly inform the other Party of the introduction of any new requirements and procedures or of the changes in any requirements and procedures that affect the effective application for the grant of entry into,

temporary stay in and, where applicable, permission to work in the former Party.