

Universities UK – Written evidence (PBS0020)

About Universities UK

Universities UK is the representative organisation for the UK's universities. Founded in 1918, its mission is to be the voice for universities in the UK, providing high quality leadership and support to its members to promote a successful and diverse higher education sector. With 137 members and offices in London, Cardiff (Universities Wales) and Edinburgh (Universities Scotland), it promotes the strength and success of UK universities nationally and internationally.

Executive summary

UK transnational education (TNE) is a success story. Transnational education (TNE) is education delivered in a country other than the country in which the awarding institution is based, eg students based in country Y studying for a degree from a university in country Z. UK HE TNE refers to UK degree programmes delivered outside of the UK. There are 666,815 students studying UK degrees overseas, 82,705 of which are located in the European Union.

The negotiation of the future UK-EU relationship on professional and business services provides an opportunity to devise a system that keeps the UK's position as a competitive partner of choice in the EU and recognises the importance of TNE for the UK economy, with an estimated contribution of £199,808,732 to the UK economy,

In order to do so, during negotiations the UK Government should seek an agreement that:

a) Avoids the cliff-edge situation of falling back on WTO rules, i.e. ensures transnational education services are protected by a comprehensive agreement.

b) Grants market access and national treatment to UK higher education service providers, covering rights of establishment and rights to provide higher education through franchise and validation under as close conditions to those existing in the Single Market as possible

c) Protects the recognition of UK professional qualifications, including where those qualifications have been obtained in third countries.

d) Enables the mobility of professionals, including early career academics and graduate trainees, with minimal administrative barriers.

Universities UK: written submission

How important are the different UK professional and business services sectors to the UK's economy and trade in services? Please include data where possible.

1. Transnational education (TNE), or the provision of higher education services to students based overseas is a vital component of UK universities' international activity. With 82,705 students studying on UK degree programmes for an estimated contribution of [£199,808,732](#) to the UK economy, the EU is a key market for UK transnational education.
2. UK universities operate a range of delivery models for TNE, including supported distance learning, collaborative provision, franchising, validation, dual and joint degrees, and overseas branch campuses or teaching centres.
3. TNE offers an alternative income stream for universities that can help prevent financial overexposure to potentially volatile income streams such as international student fees and government funding. This diversification will be more crucial than ever due to the impact Covid-19 is likely to have on universities' revenue from domestic recruitment of international and UK students.

What preparations (if any) have UK professional and business services providers made, or planned to make, ahead of the end of the transition period?

4. UK universities have worked with their European counterparts to assess where transitional arrangements will be necessary to ensure continuity of provision in the case of UK institutions becoming 'third country providers'. Universities UK International (UUKi) has sought to centralise this insight by surveying UK universities and their EU partners.

5. At the sector level, UUKi has produced a framework tracking regulations applicable to provision of education services from third countries in collaboration with the British Council, and has published [legal guidance](#) on TNE regulation in nine of the top 10 EU destinations for UK TNE activity. It aims to provide practical guidance in respect of the likely issues arising from the UK leaving the EU without a negotiated agreement that covers education services.

What provisions should the Government seek to negotiate to minimise potential barriers to trade, particularly for smaller professional and business services providers? What steps should the Government take to preserve the competitiveness and innovation capacity of the UK's different professional and business services sectors?

6. The Single Market, and particularly the Directive 2006/123/EC on services in the internal market, has greatly facilitated the free provision of higher education services, and the free establishment of UK higher education centres in EU Member States.
7. The UK has removed more barriers of entry to its higher education sector for third countries than most EU Member States and it has more to lose from a restrictive regime of trade in services, or one that excludes higher education from its scope.
8. To avoid a significant negative impact on UK universities' service provision in the EU, the UK Government should seek to:
 - a) Negotiate market access to EU (private) higher education services markets under as close conditions to those existing in the Single Market as possible. This would include guarantees that existing provision can continue, including through franchising and validation of programmes.

b) Grant national treatment to UK higher education providers, and ensure existing discriminatory measures for third countries do not apply to UK higher education services (see below case of Bavaria).

c) Ensure that any agreement includes provisions for the effective removal of administrative barriers, including conditions for authorisation, applications, fees, publication and information, delays and single points of contact.

Example A: The University of Roehampton and University of Derby accredit degrees taught at the EU Business School in Munich, Bavaria. In a letter dated 30 November 2019, the Bavarian State Ministry for Education, Science, Culture and Arts (Germany) stated that 'the right to conduct courses at British universities in Bavaria is a result of the European fundamental freedoms (freedom to provide services and freedom of establishment) and is tied to the EU membership of the UK'. When EU legislation no longer applies, the Bavarian State Ministry intends to revoke the decision declaring that the British universities are entitled to carry out study programmes in Bavaria as one of the requirements of the decision is no longer met (in this case: the place of business of the university in question is not in an EU or EEA member state, Art. 86 Abs 3 S. 2 i.V.m Art 78 Abs 3 BayHschG, relevant article of Bavarian state education law).

What type of arrangements should the Government seek to negotiate with the EU for the mobility of professionals?

9. UUK estimated in 2018 that UK universities had in place in excess of one thousand partnership arrangements with the EU. Each partnership requires multiple and frequent travel of staff for teaching assignments, research collaboration and quality assurance purposes.

10. The mobility of qualified staff is crucial in knowledge-intensive activities, and a departure from the free movement of staff is likely to cause significant disruption to the provision of higher education services, including to graduate trainee schemes run by universities.

11. Potential barriers to the provision of higher education services include nationality or residence requirements, needs tests, recognition of qualifications, minimum requirements for local hiring, authorisations to enter and leave the country, quotas on temporary staff and restrictive employment rules

12. The UK Government should seek an agreement that:

a) Warrants flexibility in the definition of key personnel. Discretion should be permitted in the determination of seniority and minimum time of employment. Early career academics could fall out of the definitions of ARTICLE 11.1 in the UK draft agreement.

b) Applies national treatment to contractual service suppliers and key personnel. This should include higher education services.

c) Extends the conditions of entry and stay for contractual services suppliers. The provisions of ARTICLE 11.10 of the UK 'draft working text for a comprehensive free trade between the United Kingdom and the European Union' agreement are insufficient and should be extended to at least the time necessary to teach an undergraduate degree to a full cohort (36 months).

d) Extends the length of stay for short-term visitors. The provisions of ARTICLE 11.8 of the UK draft agreement (90 days in any six-month period) are insufficient and a longer period should be considered.

e) Trainee intra-corporate transferees should not be subjected to a minimum time requirement in employment by a UK legal person to allow the mobility of early career academics.

f) The agreement should allow the temporary entry and stay of the partner and dependant children accompanying staff. The provisions of ARTICLE 11.9 of the UK draft agreement, applicable only to the partner

and dependant children accompanying intra-corporate transferees, should be adopted and expanded to contractual service suppliers, and other types of key personnel.

How important are arrangements on the mutual recognition of professional qualifications to professional and business services providers in the UK and EU? How could a future UK-EU agreement best allow for this?

13.The EU Directive 2005/36/EC on the recognition of professional qualifications provides certainty and confidence to students and underpins the demand for UK higher education programmes delivered in the EU. Without the protections of the Directive, there is a clear risk to the viability of the provision.

14.The terms of ARTICLE 13.3 of the UK's draft agreement grant national treatment to 'service providers who obtained their professional qualifications in the jurisdiction of another Party'. This construction may leave out a large number of qualifications granted by UK providers outside of the UK.

15.In addition, where in many European countries state recognition of academic qualifications generally implies professional recognition, autonomous professional regulatory bodies exist in the UK for a large number of professions. Any agreement should take into consideration the recognition of accreditations granted by these professional regulatory bodies.

16.A future UK-EU agreement should:

a) Establish a framework for a fair, transparent and consistent regime of recognition that offers protections as close as possible to the EU's Directive.

b) Ensure the framework includes the recognition of qualifications granted by UK higher education providers outside of the UK.

c) Ensure the framework includes the recognition of accreditation granted by UK professional regulatory bodies.

Example B: The University of East London (UEL) has a longstanding partnership with Metropolitan College Greece through which UEL accredits degrees delivered by Metropolitan College. The Greek constitution forbids private colleges from seeking their own degree awarding powers but local regulations allow colleges to run courses accredited by EU higher education providers, which are professionally recognised following EU legislation. Seven regulated professions (e.g. architecture, midwifery, nursing) are not covered by legislation applicable to third countries in Greece and would be affected if the professional bodies do not recognise the qualifications obtained by UEL students studying at Metropolitan College. As such, there is a risk of negative impact post-Brexit period on the professional rights of graduates as part of the TNE provisions affecting approximately 300 UEL students.

What provisions should the Government seek to agree with the EU on cross-border investment and rights of establishment?

17. UK universities have campuses in Belgium, Cyprus, France, Germany, Greece, Malta and Poland. There are also representation offices of UK universities in a number of other EU countries.

18. European legislation (mainly the 2006/123/EC directive on services in the internal market) effectively removed barriers to the freedom of establishment in Member States.

19. Once the transition period ends, the legal basis on which branch campuses and representation offices of UK universities operate in the EU will change and their viability may be compromised once EU legislation is no longer applicable.

20. Ensuing discriminatory measures affecting UK universities could include equity ceilings, nationality requirements, restrictions on the recruitment of foreign teachers, government monopolies, subsidies to local providers, authorisation for establishment, economic needs tests, requirements to use a local partner and taxation of licensing/royalty payments.

21. In order to protect existing provision and to foster future investment in the EU, the UK should seek an agreement that:

a) Prohibits discrimination affecting the establishment of UK higher education providers on grounds of nationality but also discrimination based on other grounds but capable of producing the same results.

b) Avoids overly burdensome authorisation schemes, procedures and formalities that hinder the right of establishment and the creation of new service undertakings therefrom.

c) Ensures there is cooperation to tackle barriers to investment and the right of establishment, including through setting permanent mechanisms to ensure any barriers are identified and addressed.

What lessons, if any, can be learnt from the EU's existing trade agreements with other third countries including services, or negotiations on trade in services?

22. A [study](#) conducted for UUK in 2017 found that, of the 20 legally enforceable free trade agreements in the World Bank dataset that included education, eight referred to the EC Treaty and the subsequent enlargements. None of the non-European legally binding agreements covering education were signed between developed countries, and none of the agreements signed by Canada or the United States included a provision directly on education.

23. The EU's policies towards trade in the internal market and with third countries differ perhaps more in education than in other service sectors. While EU policy has greatly liberalised trade in (private) education services between Member States, the EU's position in third country trade negotiations has not been as supportive of including higher education in free trade agreements.
24. The 2001 [Joint Declaration](#) on Higher Education and the General Agreement on Trade in Services (GATS) by university sector associations in Europe, Canada and the U.S. declared that 'member institutions are committed to reducing obstacles to international trade in higher education using conventions and agreements outside of a trade policy regime'. In 2015 the [EUA](#) responding to negotiations of the Transatlantic Trade and Investment Partnership (TTIP) and Trade in Services Agreement (TiSA), expressed the view that the EU should not make commitments in higher and adult education within free trade agreements.
25. On the other hand, nations which have higher education as a major export sector have been successful in introducing education as an element of their trade negotiations. The [Singapore-Australia Free Trade Agreement](#) (SAFTA) for instance says that 'Both Parties shall encourage and facilitate, as appropriate ... cooperation between educational institutions. This may be achieved through: ... academic credit transfer and mutual recognition of academic and vocational qualifications, between recognised institutions of higher learning ...' and includes concessions in recognition of medical and legal qualifications.
26. Overall, the UK runs a sizable trade surplus in cross-border higher education provision with the EU, that is, the UK exhibits a comparative advantage in higher education provision. Given the relative importance of higher education for the UK, negotiations with

the EU should seek to preserve the conditions that currently sustain this favourable situation.

27. The UK should adopt policy positions similar to those of competing exporting nations such as Australia. The EU on the other hand should be less reluctant to allow market access, national treatment or recognition of professional qualifications, given that the status quo (membership of the Single Market) has proved to be profitable for both sides, at least in higher education terms.

To what extent could UK-EU trade in professional and business services continue in the absence of a UK-EU agreement covering services? How effective would the WTO General Agreement on Trade in Services be in supporting such trade, and what arrangements (if any) could be put in place to go beyond the WTO framework?

28. WTO members of the GATS have made only limited commitments on market access and national treatment. Policies that apply to services trade in the Single Market are also more open than applied policies towards third countries covered by the GATS. An additional feature is that policies applied to third countries vary across EU member states, reflecting the fact that there is not one uniform EU external services trade policy towards non-members.

29. Under WTO most-favoured nation (MFN) rules, in the absence of a unifying comprehensive agreement in trade, EU Member States would be obliged to extend individual conditions granted to the UK to all other WTO members, which is unlikely. Rather, UK higher education service providers would face different sets of market access conditions in each Member State across modes of supply, and there would not be a single set of rules to bring certainty to providers.

30. For UK higher education service providers, trading as an ordinary WTO member would be the worst-case scenario compared to the

Single Market. Developing specific agreements in education services, right of establishment and recognition of qualifications with individual Member States would be a rather complex and burdensome option and, if they fall within trade policy, there is a risk Member States will resist this option on the grounds explained above.

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