To: **Professionalism Committee**

From: **MRA Task Force**

Members: Birgit Kaiser (Deutsche Aktuarvereinigung), Yvonne Lynch (Chair) (Society of Actuaries in Ireland) and Suzie Lyons (Institute & Faculty of Actuaries)

Review of MRA and Heubeck letter

1. We have completed our review of the MRA and Heubeck letter and attach proposed re-drafts for your consideration.

Rationale for Review

2. The current MRA came into force in 2011. At the May 2017 Professionalism Committee meeting, the Chair, David Martin, presented conclusions from the first 5-year review of the operation of the MRA. Though there had been a few applications for membership under the MRA where some issues were identified, it was generally agreed that the MRA was working well. However, it was suggested that the MRA should be reviewed and updated in light of Directive 2013/55/EC (which amended Directive 2005/36/EC on the recognition of professional qualifications) and that the Heubeck letter should also be updated, having regard also to some suggestions from member associations (summarised below). The MRA Task Force was set up to take this work forward.

Spirit of the MRA

3. The MRA was implemented in recognition that it is good for actuaries, and good for the actuarial profession (represented in Europe by the AAE), if actuaries who hold valid actuarial credentials in one country can practice in another country, if they wish to do so. The MRA created a framework for mutual recognition of actuarial qualifications among participating associations.

4. The MRA references Directive 89/48/EEC (as amended) on recognition of certain higher education diplomas and Directive 2005/36/EC on recognition of professional qualifications. Under Article 6 of the AAE Statutes, AAE Full Member Associations must sign the MRA if they are situated in a European State which is a signatory to the European Economic Area Agreement of May 1992 or which has otherwise entered into a treaty or other agreement with the EU which extends to that state the benefits of the Directives mentioned. The Statutes do not state that other FMAs may not be party to the Agreement, so presumably it is the intention that they may[1]. However, an amendment to the Statutes could be considered, to be quite clear about this issue (see "AAE Statutes" below). The Statutes specify that Observer Member Associations cannot be party to the MRA, though they may enter into a parallel bilateral agreement on the mutual recognition of qualifications.

[1] Though these associations might not be subject to EU law, they must (under the AAE Statutes) comply with minimum education standards as set out in the AAE's Core Syllabus for Actuarial Training in Europe; this requirement has always been recognised as an important underpin to the mutual recognition framework.

5. The MRA indicates that the participating associations consider the objectives of the Directives to be desirable and that they entered into the MRA to facilitate the achievement of the objectives. Some of the provisions of the MRA are influenced by similar provisions of the Directives. However, the MRA does not specifically seek to impose any of the provisions of the Directives on any participating association.

6. As indicated in a previous update to the Professionalism Committee, we have carried out our review on the understanding that an updated MRA should continue to reflect the spirit of Directive 2005/36/EC (as amended by Directive 2013/55/EC)[2] but should not necessarily seek to bring into effect the detailed provisions of the Directive. In doing so, we are mindful that Directive 2005/36/EC applies only in respect of regulated professions (as defined in the Directive) and the actuarial profession is a regulated profession in only a handful of countries (see paragraphs 10-12 below).

Changes proposed by Member Associations

7. In relation to the MRA, the Institute and Faculty of Actuaries (IFoA) suggested that, in light of Directive 2013/55/EC and proposed changes to the AAE (and IAA) Core Syllabus, it may be necessary for member associations to reconsider the appropriate qualification level(s) to which mutual recognition should apply. However, as this point was not raised by other associations and the full detail of Brexit implications are not yet known, we put this question on hold – it could perhaps be picked up again in the future, if appropriate, as part of another review of the MRA / Heubeck letter.

8. The Society of Actuaries in Ireland questioned some items in the Heubeck letter, which may be summarised as follows:

   (i) The recommendation in Section 2 that "a migrant actuary be asked to report annually to his or her home Association" (what is the migrant actuary expected to report?);

   (ii) Certain notifications from the host association to the home association, mentioned at the last sentence of section 5 (it seems that a home association would not be in a position to do anything with or in relation to the information mentioned);

   (iii) Some of the comments on disciplinary matters in section 14 (questionable / arguable);

   (iv) The obligation set out in the last paragraph of the Heubeck letter for a home association to notify other associations if an actuary lapses his home membership (questionable and potentially onerous in terms of record-keeping and processes).

   We have considered these points and in our proposed edits, we have deleted or varied the relevant text.

9. At the Professionalism Committee's September 2017 meeting, there was mention of some specific issues that had arisen in relation to individual applications for membership made under the MRA. The Chair emphasised that it is important that member associations discuss any issues that arise and it was agreed that this should be borne in mind in the review of the MRA and/or Heubeck letter.

[2] Directive 89/48/EEC was repealed by Article 62 of Directive 2005/36/EC, so it is no longer relevant.

We did not think it necessary to make any change to the MRA, or any substantive change to the Heubeck letter, in this regard, as the very fact that a review of the MRA has been carried out, and associations have been reminded of the need to communicate on specific issues, should improve matters. We have, however, made a minor edit at the closing paragraphs of the Heubeck letter, to reflect that not only initial implementation but also ongoing smooth operation of the MRA require communication between associations.

Directive 2005/36/EC on the recognition of professional qualifications
as amended by Directive 2013/55/EC

10. The purpose of Directive 2005/36/EC is set out in Article 1 as follows:

> "This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.
>
> This Directive also establishes rules concerning partial access to a regulated profession and recognition of professional traineeships pursued in another Member State."

11. Article 2 states that the Directive "shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State . . . other than that in which they achieved their professional qualifications".

12. "Regulated profession":

    (i) Article 3 defines a "regulated profession" as "a professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit . . . ".

    (ii) In addition, Annex I of the Directive lists associations and organisations, the members of which are (under Article 3(2)) treated as a regulated profession for the purposes of the Directive.

    (iii) The actuarial bodies listed in Annex I are the UK Institute of Actuaries and Faculty of Actuaries. Per "The EU Single Market Regulated professions database" published by the EC at *http://ec.europa.eu/growth/tools-databases/regprof/index.cfm*, the EU countries in which the actuarial profession is a regulated profession are Denmark, Italy, Poland, Slovakia, Spain and the UK.

13. As mentioned, we have carried out our review of the MRA on the understanding that an updated MRA should continue to reflect the spirit of Directive 2005/36/EC (as amended) but should not necessarily seek to bring into effect the detailed provisions of the Directive. Therefore, compliance with the MRA will not necessarily constitute compliance with the Directive. Associations that are subject to the Directive will need to satisfy themselves that

they comply with its provisions. The domestic legal obligations that apply in that regard will vary between associations and it is beyond the scope of our review, and indeed (we believe) beyond the remit of the AAE, to consider these. Note that the EC has published a "*User guide - Directive 2005/36/EC - Everything you need to know about the recognition of professional qualifications*"[3], which associations may find useful. For a summary of the key changes arising from Directive 2013/55/EU, please see the update that we provided to the Professionalism Committee for its September 2018 meeting.

14. *Brexit:* The potential impacts of Brexit on mutual recognition of actuarial (/other professional) qualifications between the UK and other countries are as yet unknown. If Brexit proceeds and if the IFoA remains as a non-EU member of the AAE, it seems to us that the IFoA may continue to be a party to the MRA (see paragraph 4 above). We are not in a position to comment on the IFoA's intentions, and relevant EU / UK legislation has yet to be decided.

Proposed changes to MRA

15. A "tracked changes" draft is attached. This includes comments that explain the rationale for changes proposed.

16. Many of the proposed changes are tidy-ups (e.g. to update references to Directives) or clarifications.

17. Paragraph 2b. allows a host association to require an applicant to complete an adaptation period or aptitude test.

    (i) We have removed the words "*at his own choice*". This reflects the reality that not all associations are in a position to offer a choice – e.g. where the host association uses another association's exams for the purposes of its qualification requirements, offering an aptitude test may be very problematic.

    (ii) However, some Associations must by law offer a choice (if they are subject to Directive 2005/36/EC and no derogation applies (Article 14(2) of the Directive)). At Q&A no. 4 of the proposed new Heubeck letter, we draw attention to this; we also encourage other associations to offer a choice where practicable, but associations are not bound by this suggestion. Article 2b. of the MRA is an example of reflecting the spirit of the Directive without imposing all its provisions on Qualifying Associations.

18. Also at paragraph 2b., which refers to "*an adaptation period not exceeding three years*", we have removed the words "*so that the applicant has at least three years' appropriate practical experience in total*".

    (i) The current MRA seems to suggest that, in order to be considered a fully qualified actuary, an individual should have at least three years' appropriate practical experience in total (and that, in the case of someone taking up work in another country, a requirement for experience to be "appropriate" may result in the actuary having to complete a period of practical experience that has regard to the education and training requirements and/or the actuary's intended work in that country).

[3] http://ec.europa.eu/DocsRoom/documents/15032?locale=en

(ii) However, our view is that if the Education Committee in the first instance, and ultimately the General Assembly, considers that, in order to be considered a fully qualified actuary, an individual should have at least three years' appropriate practical experience, that should be in the Core Syllabus – that is where qualification requirements should be set out, rather than in the MRA.

(iii) Directive 2005/36/EC includes a provision that allows for an adaptation period of up to three years. We consider it reasonable to retain the text *"not exceeding three years";* however, we recommend that the words *"so that the applicant has at least three years' appropriate practical experience in total"* be deleted as they are confusing and do not seem to have any basis.

We have drawn these points to the attention of the Education Committee.

Proposed changes to Heubeck letter

19. We have moved the introductory paragraphs to an appendix and we have brought them up to date. In their place, we have added a new section on the context of the (updated) MRA. This clarifies that:

(i) The authority for the MRA lies in Article 6 of the Statutes.

(ii) In preparing the MRA, the AAE had regard to the principles of Directive 2005/36/EC, and the signatories have entered into the Agreement to reflect their support for the spirit and goals of the Directive.

(iii) It is <u>not</u> the purpose or intent of the MRA to bring into effect in any way the provisions of the Directive. Participating associations in countries where the actuarial profession is a regulated profession may be subject to obligations beyond those of the MRA.

(iv) The Questions and Answers set out are intended to provide practical help to participating associations in interpreting and operating the MRA. They are provided as a support and with a view to encourage a harmonised application of the Agreement. However, the letter is non-binding and adopting any of the suggestions set out is not mandatory.

20. At question 2 and elsewhere, we have removed the term "migrant actuary", which we felt was not necessarily clear. In the answer to question 2, some re-ordering and slight editing of the text is proposed in order to improve the flow.

21. The original answer to question 3 says *"We recommend that Associations . . . should require their members"* to inform the associations of specific circumstances relating to the members' work. We have edited the wording here and elsewhere, where similar language is used. This is because we think that recommending requirements, to be applied to individual actuaries, is beyond the remit of a Q&A on the MRA.

22. We have added a new Q&A no. 4 on adaptation period and aptitude tests. Here, as mentioned, we draw attention to the fact that some associations must by law offer a choice; we also encourage other associations to offer a choice, where practicable.

23. At what is now Q&A no. 5, we did not think that this document should provide a view on the content of an individual actuary's terms of engagement, and so we have edited it to instead shift the focus to information that Qualifying Associations should provide when they accept applications for membership under the MRA.

24. The original Q&A no. 5 talked about a situation where an actuary seeks membership of a host association without being a member of a home association. We deleted the Q&A as we did not see its relevance – the MRA would not apply in this situation.

25. At Q&A no. 6, we deleted an additional paragraph about individual actuaries showing qualifications on stationery, visiting cards etc. Of course, we continue to support the principle that a fully-qualified actuary practising in a host country should be able to use the appropriate designatory letters or title of that Association. However, the Heubeck letter is a support to Qualifying Associations in implementing and operating the MRA and we felt that these quite detailed provisions on what individual actuaries "may" do, or "should" or "should not" do, are not appropriate or necessary.

26. We have edited Q&A no. 9 to reflect our interpretation of the MRA, which is that derived membership of an association cannot be used to obtain derived membership of another association, since applications for membership under the MRA are conditional in the first instance on holding membership of the home association.

27. We deleted Q&A no. 10. The MRA provides for mutual recognition of fully-qualified actuaries who are members of the Qualifying Associations, and while it is influenced by the principles and objectives of Directive 2005/36/EC, it is distinct from the Directive. The MRA does not include any conditions or restrictions relating to the nationality of individual actuaries and it does not give associations any right to impose such conditions. Therefore, we feel that the original qt. 10 is not necessary (and we do not agree with the statement in the original answer to the question that associations "should be quite free to refuse membership to those who are not EU, EEA or Swiss nationals").

28. We have edited Q&A no. 12 (now 11) for clarity and to remove an out-of-date reference to Code of Conduct requirements.

29. We have edited Q&A no. 13 (now 12) for clarity.

30. Q&A nos. 14-16: we felt that there was an excessive amount of text about disciplinary matters. More importantly, we also felt that these paragraphs merit review and updating (some of the statements made are at least arguable, if not questionable or even wrong) but with a view to publishing separate guidelines rather than seeking to cover the topic within a Q&A document on the MRA. We suggest that this review could be considered as a further, separate piece of work. We are not, however, suggesting that professional obligations and compliance failures should not be mentioned at all in this documents – we have replaced the existing text with a more concise piece at the new Q&A no. 13.

31. We have added a new Q&A 14 on the five-yearly review described at Article 6 of the MRA.

32. The Committee is aware that we were not tasked with carrying out a "root and branch" review of the Heubeck Letter, as responses to the Questionnaire on the operation of the MRA indicated that associations felt that it was working well. However, having reflected on this document for some time, we suggest that, to maximise its ongoing value and relevance to all member associations, a fuller review could usefully be scheduled into the forward programme of work, perhaps as a medium term priority. This would provide a further opportunity to ensure that the document addresses evolving issues, that it is consistent in its coverage of the issues arising and that it is balanced in terms of the level of detailed information provided in response to those identified issues.

AAE Statutes

33. We suggest that Article 6 of the AAE Statutes may need to be updated.

34. Article 6 says:

    1. *Full Member Associations must sign the AAE Agreement of April 1991 (as amended from time to time) concerning the recognition by each EU actuarial association of members of the other EU associations, (the Mutual Recognition Agreement) if they are situated in a European State which is a signatory to the European Economic Area Agreement of May 1992, or which has otherwise entered into a treaty or other agreement with the EU which, inter alia, extends to that state the benefits of EU Directive 89/48/EEC (as amended by Directive 2001/19/EC) on a general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration, and the Directive on the recognition of professional qualifications 2005/36/EC (as amended by Directive 2013/55/EC).*

    2. *Observer Member Associations cannot be a party to the Mutual Recognition Agreement. They may, however, with the prior approval in each case of the signatories of the principal Agreement, enter into a parallel bilateral Agreement on the Mutual Recognition of Qualifications.*

Directive 89/48/EEC and Article 6

35. As Article Directive 89/48/EEC has been repealed, we suggest that Article 6 should be updated accordingly.

Scope of the MRA – who should be obliged / allowed to join?

36. <u>We suggest that the Professionalism Committee should discuss the Article 6(1) requirement and, if necessary, offer views to the Board regarding possible updating</u> (e.g. such that associations that are not subject to the Directive are not compelled by the AAE Statutes to be party to the MRA, though they might be strongly encouraged to join).

37. The Statutes are silent regarding FMAs that are not signatories to the European Economic Area Agreement and are not directly affected by the Directive but are interested in becoming a signatory of the MRA.

    (i) The Statutes do not state that such FMAs may not be party to the Agreement (whereas they state that Observer Member Associations may not join), so presumably it is the intention that they may join.

    (ii) It is not clear, however, whether they have a right to join, or may join only if all existing signatories agree that they may do so. The latter seems impracticable and unnecessary. Though a non-EU FMA is subject to different EU laws, within the AAE it has the same obligations as any other FMA, including an obligation to have an education system that meets the requirements of the AAE Core Syllabus. It seems logical to make joining the MRA available to any FMA, without a precondition that existing signatories would have to agree. If that was not the case, a logical extension would be that, whenever the MRA is updated, associations could sign up only if they already knew what other associations were going to sign – there would have to be a pre-agreement about the Agreement!

We suggest that the Professionalism Committee should discuss these points, and if necessary recommend a change to the Statutes (or propose "onboarding" procedures for agreement) to remove ambiguities. The topic is a live one as the Aktüerler Derneği Türkiye (Turkey) has joined the AAE as a full member and wishes to join the Agreement.

38. Once decisions are made on which associations should be obliged / allowed to join the MRA and on what basis, decisions can also be made on how associations might terminate their participation ("offboarding").

END