

EXPLANATORY MEMORANDUM TO

THE EUROPEAN QUALIFICATIONS (HEALTH AND SOCIAL CARE PROFESSIONS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2019

2019 No. 593

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018 amend various pieces of legislation concerned with the regulation of health and care professionals (see Part 3 of the Annex) and make transitional and savings provisions in respect of certain applications and notifications in reliance on the powers conferred by section 8(1) and paragraph 21 of schedule 7 to the European Union (Withdrawal) Act 2018.
- 2.2 These changes are being made to address deficiencies arising as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU).

Explanations

What did any relevant EU law do before exit day?

- 2.3 The European Union Directive 2005/36/EC (“the Directive”) sets out a reciprocal framework of rules for the recognition of professional qualifications. This enables European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised and gain access to the regulated profession in which they are qualified in another EEA State or Switzerland in order to work on a permanent or temporary basis.
- 2.4 There are two different systems for recognising qualifications:
 - the automatic system – in healthcare this applies to doctors, dentists, general care nurses, midwives and pharmacists (the “sectoral professions”). These professions have harmonised training standards across the EEA and Switzerland. Qualifications listed in Annex V of the Directive meet these harmonised standards, and competent authorities of EU member states are obliged to recognise these qualifications on an automatic basis with no further checks on the practical skills of the holder of the qualification.
 - the general system – this covers qualification not listed in Annex V, including those in non-sectoral professions. Applications from holders of such qualifications are considered on a case by case basis against UK standards.

Why is it being changed?

- 2.5 Following the UK's exit from the EU, the Directive and Treaty rights (under the Treaty on the Functioning of the European Union) will no longer apply to the UK.

The domestic legislation implementing the Directive will therefore not operate effectively after exit day and there would be no clear route for holders of EEA and Swiss health and care qualifications to be registered to practise in the UK.

- 2.6 This instrument amends the health and care legislation listed in Part 3 of the Annex to ensure that a system of recognition of professional qualifications continues and that individuals with EEA and Swiss qualifications will have a means to seek recognition of their qualifications (whether listed in Annex V of the Directive or not) after exit day. This will be achieved through regulators' existing international registration systems.
- 2.7 Following the UK's exit from the EU, professional qualifications awarded in the UK will no longer be covered by the Directive. The EU has agreed that holders of UK qualifications that have been registered in EEA countries and Switzerland will continue to be registered. However, the recognition of UK health and care qualifications after exit day will be determined by individual EU member states if there is no EU-wide agreement with the UK on the recognition of qualifications.

What will it do now?

- 2.8 Qualifications included in Annex V of the Directive at exit day will become acceptable overseas qualifications. Regulators will have a power to designate such qualifications as not comparable. The grounds for designating a qualification as not comparable will be determined by the regulator. Qualifications can be designated as not comparable at the level of a course, institution or nation as the regulator determines is appropriate. Such designation of a qualification will require Privy Council consent.
- 2.9 A review of the continued recognition of Annex V qualifications will be conducted by the Secretary of State for the Department of Health and Social Care (DHSC) two years after these regulations come into force.
- 2.10 EEA and Swiss qualifications not listed in Annex V of the Directive will be assessed against the equivalent UK qualification standards. If a qualification is deemed to be comparable to the UK qualification standards, then applicants will have their qualification recognised with no additional tests to an applicant's practical skills. UK regulators will have discretion to decide how to treat EEA and Swiss qualifications that they assess to be non-comparable. UK regulators will still be able check an applicant's language skills and whether there are concerns about their fitness to be registered.
- 2.11 The amended legislation will no longer include obligations on regulators to abide by the Directive training standards when setting standards for UK qualifications, although regulators may use the Directive as a guide when setting standards in the UK.
- 2.12 The instrument contains transitional and savings provisions which: protect recognition decisions already made, allow applications which have been made before exit day to be concluded under current arrangements as far as possible, and allow individuals practising under temporary and occasional status or under the European Professional Card to continue to do so until such registration expires.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument is laid using the powers of the European Union (Withdrawal) Act 2018. It is being made under the affirmative procedure as provisions concerned with the power to legislate are amended by this instrument.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

- 3.2 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business-
- The subject-matter of some provisions in the following schedules would be within the devolved legislative competence of Scotland if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament – Schedule 2 (in respect of pharmacy technicians), Schedule 3 (in respect of dental nurses, dental technicians, clinical dental technicians and orthodontic technicians), and Schedule 8 (in respect of operating department practitioners and practitioner psychologists). Schedule 9 (Social workers in Scotland) makes amendment to Scottish legislation.
 - Schedule 10 (Social workers in Northern Ireland) makes amendment to Northern Ireland legislation.
- 3.3 The Department has reached this view because the instrument would be within the legislative competence of one or more of the devolved legislatures.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.
- 4.3 The territorial application of this instrument is set out in Section 3 under “Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)”.

5. European Convention on Human Rights

- 5.1 The Minister of State for Health at the Department of Health and Social Care, Stephen Hammond, has made the following statement regarding Human Rights:
- “In my view the provisions of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018 are compatible with the Convention rights.”

6. Legislative Context

- 6.1 The Directive facilitates the free movement of professionals across the EEA and Switzerland by establishing rules for the recognition of professional qualifications which enable EEA and Swiss nationals to have their professional qualifications recognised in another EEA state or Switzerland. This allows professionals to practise in other EEA states or Switzerland on an established or temporary basis while simplifying administrative procedures and providing safeguards to patient and public safety.

- 6.2 The Directive is implemented in the UK by the legislation listed in part 3 of the Annex for sectoral professions and the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) (“the General Systems Regulations”) for non-sectoral professions.
- 6.3 This instrument amends the legislation listed in Part 3 of the Annex so that it operates effectively after exit and to correct deficiencies which have arisen as a consequence of the UK leaving the EU.

7. Policy background

What is being done and why?

- 7.1 The UK will no longer be a signatory to the Directive when it leaves the EU. This will cause inoperability in domestic legislation if amendments are not made. This includes the legislation listed in Part 3 of the Annex which applies to EEA and Swiss qualified health and care professionals. As a result, this legislation must be amended to correct deficiencies arising as a consequence of the UK leaving the EU and ensure a system is in place after exit that is effective and proportionate.
- 7.2 The Directive provides the framework for two systems for the recognition of professional qualifications, these are the automatic and general systems. These systems allow for EEA and Swiss nationals to have their professional qualifications recognised for the purposes of providing established or temporary and occasional services with minimal barriers. It also facilitates the movement of some professions via the European Professional Card (EPC), which is an electronic certificate used in recognition procedures under both the automatic and general systems.
- 7.3 The legislation listed in Part 3 of the Annex implements the automatic system; minimum length of basic training for doctors, dentists, general care nurses, midwives and pharmacists; additional acquired rights for certain professionals, and the EPC. Other parts of the Directive are implemented by the General Systems Regulations.

What will change

Scope

- 7.4 The provisions of the legislation listed in Part 3 of the Annex apply to EEA and Swiss nationals or any persons with a right to be treated as such. Under the current system eligibility is primarily based on an applicant’s nationality rather than where a qualification was gained. Once the UK leaves the EU eligibility will be based solely on whether an individual holds a relevant EEA or Swiss qualification.

The automatic system

- 7.5 The automatic system obliges regulators to recognise qualifications listed in Annex V of the Directive for the professions of doctors, general care nurses, dentists, midwives, and pharmacists. Applicants possessing a listed qualification are able to access and pursue the professional activities in the same manner as a national of the territory in which they apply.
- 7.6 The amended legislation will put in place a system for the recognition for EEA and Swiss qualifications listed in Annex V that is similar to the current system. This will oblige UK regulators to recognise such qualifications as being sufficient for practising in the UK. The registration of these qualifications will be handled through regulators’

existing international registration systems. The qualifications listed in Annex V of the Directive will be deemed “acceptable overseas qualifications”. UK healthcare regulators will be able to designate EEA and Swiss qualifications as no longer being comparable. The grounds for designating a qualification as not comparable will be determined by the regulator. Qualifications can be designated as not comparable at the level of a course, institution or nation as the regulator determines is appropriate. Such designation of a qualification will require Privy Council consent.

- 7.7 The continued recognition of Annex V qualifications will be subject to a review by the Secretary of State for Department of Health and Social Care two years after these Regulations come into force.

The general system

- 7.8 If an EEA or Swiss qualification is not listed in Annex V then it falls within scope of the general system. Applications from holders of such qualifications are considered by UK regulators on a case by case basis. The general system currently requires UK regulators to assess such qualifications against UK qualification standards. If a qualification is deemed comparable to the UK qualification standards then it will be recognised with no additional tests to applicant’s practical skills. UK regulators may also offer compensatory measures in the form of adaptation periods, aptitude tests, partial access or professional experience where a qualification does not meet UK standards. If compensatory measures are not suitable a UK regulator can refuse to recognise the qualification.
- 7.9 The current general system is implemented by the General System Regulations 2015. These regulations remove EEA and Swiss health and care qualifications from the scope of the amended General System Regulations. Recognition of qualifications will be carried out under the existing international registration systems of relevant UK regulators.
- 7.10 Under these systems EEA and Swiss qualifications currently in scope of the general system and EEA and Swiss qualifications which become available after exit day will be assessed against the UK qualification standards. If they are found comparable then regulators will be required to recognise the qualification. UK regulators will still be able check an applicant’s language skills and whether there are concerns about their fitness to be registered.
- 7.11 In cases where a qualification is not comparable, UK regulators will have discretion as to how they proceed with the recognition process. There will be no obligation to offer compensatory measures where a qualification is not comparable to the UK qualification standard.

European Professional Card

- 7.12 Professionals may apply for recognition of their qualifications using the European Professional Card (“EPC”). This is an electronic procedure that facilitates recognition of some regulated professions in another EU country. In the context of health and care professionals it applies to nurses, pharmacists, and physiotherapists. In a no deal exit the UK will lose access to the online “Internal Market Information” (IMI) system which facilitates the EPC. This instrument therefore revokes provisions relating to EPC procedures.

- 7.13 Professionals who are currently covered by the EPC will fall under the relevant regulators' international system and be subject to the routes to recognition set out above.

Provision of services on a temporary and occasional basis

- 7.14 The Directive sets out rules which facilitate the temporary and occasional provision of services. This allows EEA and Swiss professionals to practise across the EEA and Switzerland without the need for full registration with the relevant regulator. Providing temporary and occasional service allows the professional to remain established in their home state while practising in another state. Regulators can require professionals to issue a declaration of their intention to provide temporary services in advance. If an applicant is a practising sectoral profession in another EEA state or Switzerland then any temporary and occasional registration requirements must be automatic, and fees cannot be charged.
- 7.15 This instrument revokes the provisions relating to temporary and occasional service provision since they rely on reciprocal arrangements with the EEA designed to facilitate free movement of persons and services which will no longer be appropriate once the UK leaves the EU.

IMI and Alert mechanism

- 7.16 The Internal Market Information system (IMI) is an online tool used by regulators to share information. It allows competent authorities to share details about applicants and qualifications. It also provides an Alert Mechanism which makes EEA and Swiss regulators aware of a professional's compromised fitness to practise or restrictions on their practice. The legislation contains provisions which require regulators to process applications and exchange information through IMI. The UK will no longer have access to IMI when it exits the EU. This instrument therefore revokes provisions which require UK regulators to access and use IMI as part of recognition procedures.

Transitional and Saving provisions

- 7.17 The instrument contains transitional and saving provisions which: protect recognition decisions awarded prior to exit day; allow applications in progress at the time of exit to conclude, as far as possible, under the same rules that applied when they were started; and allow individuals practising under temporary and occasional status or under the European Professional Card to continue to do so until such registration expires.

Legislation Amended Using This Instrument

- 7.18 This instrument amends the following legislation: Medical Act 1983, Pharmacy Order 2010, Dentists Act 1984, Nursing and Midwifery Order 2001, Opticians Act 1989, Osteopaths Act 1993, Chiropractors Act 1994, Health and Social Work Professions Order 2001, Regulation of Care (Scotland) Act 2001, Health and Personal Social Services Act (Northern Ireland) 2001 and Social Workers Regulations 2018.
- 7.19 Other instruments are also being amended, but for the sake of brevity only the most important have been listed above.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

- 8.1 This instrument is being made using the powers in section 8 and Schedule 7 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the UK leaving the EU. In accordance with the requirements of that Act the Minister has made the statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

- 9.1 This Statutory Instrument does not consolidate the relevant legislation and there are no plans to do so at this time.

10. Consultation outcome

- 10.1 Consultation between UK regulators and Government officials took the form of regular meetings and engagement on the amendments made by this instrument, beginning in August 2017. This has centred on technical discussions concerning the proposed amendments to the provisions of the Regulations and how they could impact on the provision of healthcare services.
- 10.2 Policy responsibility for the regulation of a number of health and care professions is devolved to Scotland and Northern Ireland. The regulation of social workers is completely devolved. The Devolved Administrations have been engaged in relation to the changes included in this instrument. The instrument incorporates changes and comments that the Devolved Administrations have proposed. Scotland and Northern Ireland have provided their consent to this instrument being made by the Secretary of State insofar as it makes provisions that could otherwise fall within devolved competence.

11. Guidance

- 11.1 In 2015, the Government published guidance for regulators of health and care professionals on the obligations placed upon regulators by the Directive.
- 11.2 This guidance will be updated to reflect the changes that are made by this instrument.

12. Impact

- 12.1 There is no significant impact on business, charities or voluntary bodies from this instrument. It ensures that a system of recognition of professional qualifications continues and that individuals with EEA and Swiss qualifications will have a means to seek recognition of their qualifications after exit day.
- 12.2 There is no, or no significant, impact on the public sector.
- 12.3 An Impact Assessment has not been prepared for this instrument because the equivalent annual net direct cost to business falls below the £5m threshold as detailed in the Business Impact Target.
- 12.4 No significant impacts on business, or no significant direct impacts, have been identified as a result of these legislative amendments, since they allow for the continued registration of holders of EEA and Swiss qualifications and thus help to maintain UK workforce supply for the health and social care sector.

12.5 Changes to the procedure for recognising qualifications could make access to the health and care profession more difficult. This would impact on the availability of health and care professionals, which would have an impact on public services. However, any such change is at the discretion of the relevant regulator. There is an expectation that such a change would only be made if there was a perceived benefit to doing so.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. There is no evidence to suggest there will be a disproportionate impact on small businesses run by or employing regulated health and care professionals

14. Monitoring & review

14.1 A review clause has been included in article 14 of the instrument. This provision requires the Secretary of State for Health and Social Care to review the recognition arrangements given to EEA and Swiss Qualifications listed in Annex V two years after these regulations come into force.

15. Contact

15.1 Mark Bennett at the Department of Health and Social Care
Telephone: 01132546501 or email: Mark.Bennett@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Claire Armstrong, Deputy Director for Professional Regulation, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 Stephen Hammond, Minister of State for Health, at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required under the 2018 Act.

| Statement | Where the requirement sits | To whom it applies | What it requires |
|-----------------|---|---|--|
| Sifting | Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) to make a Negative SI | Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/Sifting Committees |
| Appropriateness | Sub-paragraph (2) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | A statement that the SI does no more than is appropriate. |
| Good Reasons | Sub-paragraph (3) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | Explain the good reasons for making the instrument and that what is being done is a reasonable course of action. |
| Equalities | Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 | Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010. |
| Explanations | Sub-paragraph (6) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements | Explain the instrument, identify the relevant law before exit day, explain the instrument's effect on retained EU law and give information about the purpose of the instrument, e.g., whether minor or technical changes only are intended to the EU retained |

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| | | alongside all EUWA SIs | law. |
| Criminal offences | Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7 | Ministers of the Crown exercising sections 8(1), 9, and 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence | Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached. |
| Sub-delegation | Paragraph 30, Schedule 7 | Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument. | State why it is appropriate to create such a sub-delegated power. |
| Urgency | Paragraph 34, Schedule 7 | Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7. | Statement of the reasons for the Minister’s opinion that the SI is urgent. |
| Explanations where amending regulations under 2(2) ECA 1972 | Paragraph 13, Schedule 8 | Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument’s effect on retained EU law. |
| Scrutiny statement where amending regulations under 2(2) ECA 1972 | Paragraph 16, Schedule 8 | Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA | Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority’s response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the |

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| | | | instrument or draft instrument which is to be laid. |
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Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statement

- 1.1 These Regulations are being made under the affirmative procedure, for the reasons outlined in Section 3 of the Explanatory Memorandum. It is therefore not necessary to make a sifting statement.

2. Appropriateness statement

- 2.1 The Minister of State for Health at the Department of Health and Social Care, Stephen Hammond, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018 does no more than is appropriate”.

- 2.2 This is the case because the instrument only makes changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union without an agreement.

3. Good reasons

- 3.1 The Minister of State for Health at the Department of Health and Social Care, Stephen Hammond, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.

- 3.2 The instrument makes amendments to United Kingdom’s domestic legislation which establishes the framework for the recognition of professional qualifications. These amendments correct deficiencies arising the United Kingdom’s withdrawal from the European Union without a withdrawal agreement and ensures an operable system for recognition at exit.

4. Equalities

- 4.1 The Minister of State for Health at the Department of Health and Social Care, Stephen Hammond, has made the following statement(s):

“The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018 instrument does not amend, repeal or revoke a provision or provisions in the Equality Act 2006 or the Equality Act 2010 or subordinate legislation made under those Acts.”

- 4.2 The Minister of State for Health at the Department of Health and Social Care, Stephen Hammond has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018 instrument, I, Stephen Hammond,

have had due regard to the need to eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010.”.

5. Explanations

5.1 The explanations statement has been made in section 2 of the main body of this explanatory memorandum.

6. Criminal offences

6.1 No criminal offences are being created in these Regulations. No criminal offences statements are therefore necessary.

7. Legislative sub-delegation

7.1 No new sub-delegation powers are being created by these amendments. No legislative sub-delegation statement is therefore required.

8. Urgency

8.1 These Regulations are not being made urgently. No urgency statement is therefore required.