STATUTORY INSTRUMENTS

2002 No. 2934

The European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002

PART 1

INTRODUCTION

Citation and commencement

1.—(1) These Regulations may be cited as the European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002

(2) These Regulations shall come into force on 1st January 2003.

Application

2.—(1) Subject to paragraph (2), these Regulations shall apply to the practice of a regulated profession whether in an employed or a self-employed capacity.

(2) These Regulations shall not apply to—

(a) any profession the mutual recognition of qualifications in which is the subject of one of the directives of the European Community listed in Part 1 of Schedule 1;

(b) any activity the taking up or pursuit of which in a self-employed capacity or, as the case may be, a self-employed or employed capacity is the subject of one or more of the directives listed in Part 2 of Schedule 1; or

(c) any profession the taking up or pursuit of which is regulated pursuant to an instrument listed in Part 3 of Schedule 1.

Interpretation

3.—(1) In these Regulations the following words and phrases have the following meanings (and cognate expressions shall be construed accordingly)—

"adaptation period" has the meaning given to it by Regulation 15(2);

"another relevant State" means a relevant State other than the United Kingdom;

"appeal body" means—

(a) in relation to a profession listed in the first column of the table in paragraph 1 of Schedule 4 to the First General System Regulations, the body, court or person there specified;

(b) in relation to a profession for the time being listed in Column 1 of the table in Schedule 3 to these Regulations, the body, court or person specified in Column 2 of that table;

(c) in any other case, a county court or a sheriff court;

"aptitude test" has the meaning given to it by Regulation 15(3);

"Attestation of Competence" has the meaning given to it by Regulation 7;

"competent authority" has the meaning given to it by Regulation 8;

"Certificate" has the meaning given to it by Regulation 6;

"designated authority" has the meaning given to it by Regulation 9;

"Diploma" means a First or Second General System Diploma;

"evidence of professional experience" has the meaning given to it by Regulation 15(1);

"First General System Diploma" means a Diploma within the meaning of Regulation 2 of First General System Regulations;

"First General System Regulations" means the European Communities (Recognition of Professional Qualifications) Regulations 1991(**1**);

"holder" means a person to whom a competent authority has awarded evidence of education and training;

"home relevant State" means, as the case requires, the relevant State from which a migrant originates or comes or in which the migrant obtained his evidence of education and training or formerly practised;

"migrant" means a person seeking authorisation to practise pursuant to these Regulations who is a national of a relevant State and whose home relevant State in one or more of the senses of that expression, is not the United Kingdom;

"practice", in relation to any regulated professional activity or regulated profession within the meaning of Regulation 4 includes—

(a) the taking up or pursuit of that activity or that profession in a relevant State, whether in a self-employed capacity or as an employed person; and

(b) in the course of such pursuit—

  (i) the use of a professional title or designatory letters; and

  (ii) the enjoyment of the benefit of the status associated with membership of the profession;

"profession" includes occupation and trade;

"professional association" means an association or organisation, recognised in special form by a relevant State, the purpose of which is, in particular, to promote and maintain a high standard in the professional field with which it is concerned and which, to that end—

(a) prescribes, and enforces respect within its membership for, rules of professional conduct; and

(b) awards evidence of education and training to its members; and

(c) confers on its members the right to use one or more professional titles, or designatory letters or to benefit from a status corresponding to that education and training;

"regulated education and training" has the meaning given to it by Regulation 4(3);

"regulated profession" has the meaning given to it by Regulation 4(1);

"regulated professional activity" has the meaning given to it in Regulation 4(2);

"relevant State" means a member State, Iceland, Norway, Liechtenstein or Switzerland;

"Second General System Diploma" has the meaning given to it by Regulation 5;

"third country" means a country other than a relevant State.

(**1**) S.I.1991/824 amended by S.I. 2000/1960.

(2) A reference in these Regulations to "the United Kingdom" shall, as the context requires, include a reference to any of the following: England and Wales, Scotland, and Northern Ireland.

(3) In these Regulations, the expressions "UK Diploma", "UK Certificate", "UK Attestation of Competence", "UK attestation of general education" and "UK qualification" mean, respectively, the Diploma, Certificate, Attestation of Competence, attestation of general education or qualification to possession of which the practice of the regulated profession in question is subject in the United Kingdom.

(4) For the purposes of these Regulations, an association or organisation established in the United Kingdom shall be taken to have been recognised in special form if the mode of its establishment was incorporation by Royal Charter.

Regulated Profession, Regulated Professional Activity and Regulated Education and Training

4.—(1) For the purposes of these Regulations, a profession is regulated—

(a) in the United Kingdom—

(i) if it is, or a professional title or designatory letters associated with the pursuit of the profession is or are, listed in Schedule 1 to the First General System Regulations or in Schedule 2 to these Regulations; or

(ii) at any time when it is not so listed, if and in so far as any professional activity or range of such activities which constitutes the profession is regulated within the meaning of paragraph (2);

(b) in another relevant State if and in so far as any professional activity or range of such activities which constitutes the profession is regulated within the meaning of paragraph (2).

(2) For the purposes of these Regulations, a professional activity is regulated in a relevant State if and in so far as—

(a) the practice, or any mode of practice, of that activity in that relevant State is subject, directly or indirectly, by virtue of laws, regulations or administrative provisions, to the possession of evidence of education and training or an Attestation of Competence; or

(b) it is practised under a professional title or designatory letters the use of which is reserved to holders of evidence of education and training or an Attestation of Competence governed by laws, regulations or administrative provisions; or

(c) it relates to health and the remuneration or reimbursement received for the practice of the activity in the relevant State in question is, by virtue of national arrangements for the administration of social security, subject to the possession of evidence of education and training or an Attestation of Competence; or

(d) it is practised by members of a professional association.

(3) For the purposes of these Regulations, education and training is regulated if—

(a) it is listed in Schedule 5; or

(b) it is specifically geared to the pursuit of a given profession in a relevant State, and comprises a course or courses complemented where appropriate by professional training or probationary or professional practice the structure and level of which are determined by the laws, regulations or administrative provisions of that relevant State or which are monitored or approved by the competent authority.

Definition of "Second General System Diploma"

5.—(1) In these Regulations, "Second General System Diploma" means any evidence of education and training received in accordance with paragraph (3), or any set of such evidence, which has been awarded by a competent authority in a relevant State and which shows that the holder has successfully completed either—

(a) a post-secondary course such as is described in paragraph (4) and the professional training which may be required in addition to that course; or

(b) one of the courses listed in Schedule 6

and has the professional qualifications required for the practice of a regulated profession in that relevant State.

(2) Any evidence of education and training, or any set of such evidence, which has been awarded by a competent authority in a relevant State and which—

(a) shows that the holder has successfully completed education and training received in the Community and recognised by a competent authority in that relevant State as being at a level equivalent to education and training satisfying paragraph (1); and

(b) confers the same rights in respect of the practice of the regulated profession in that relevant State

shall, for the purposes of these Regulations, be treated in the same way as a Second General System Diploma.

(3) The education and training referred to in paragraph (1) will have been received wholly or mainly—

(a) in the Community; or

(b) outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a relevant State; or

(c) if neither (a) nor (b) is the case, in a third country, provided that the holder has at least three years' professional experience certified by a relevant State which recognised evidence of education and training from that country.

(4) A post-secondary course of the kind referred to in paragraph (1) will have been one—

(a) which, if pursued full-time, was of at least one year's duration or, if pursued part-time, was of equivalent duration; and

(b) one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education,

but will not have been a course of three or more years' duration if pursued full-time, or of an equivalent duration if pursued part-time, completed at a university or establishment of higher education or another establishment of similar level.

Definition of "Certificate"

6.—(1) In these Regulations, "Certificate" means any evidence of education and training received in accordance with paragraph (3), or any set of such evidence, which has been awarded by a competent authority in a relevant State and which shows that the holder either—

(a) followed a secondary course of a technical or vocational nature of a kind which renders it unnecessary to complete any further course of education and training of the kind described in paragraph (4) or probationary or professional practice; or

(b) in any other case, after having followed a secondary course has completed either—

(i) a course of education and training such as is described in paragraph (4) and, where appropriate, the probationary or professional practice which may be required in addition to that course, or

(ii) the probationary or professional practice required in addition to the secondary course;

and that the holder has the professional qualifications required for the practice of a regulated profession in that relevant State.

(2) The education and training referred to in paragraph (1) will have been received wholly or mainly—

(a) in the Community; or

(b) outside the Community at teaching establishments which provide education and training in accordance with the laws, regulations or administrative provisions of a relevant State, or otherwise; or

(c) in a third country, provided that the holder has at least two years' professional experience certified by a relevant State which recognised evidence of education and training from that country.

(3) A course of education and training of the kind referred to in paragraph (1)(a) or (1)(b) will have been provided either—

(a) at an educational or training establishment; or

(b) on the job; or

(c) in a combination of (a) and (b)

but will not be a post-secondary course of the kind evidenced by a First or a Second General System Diploma.

(4) Any evidence of education and training, or any set of such evidence, which has been awarded by a competent authority in a relevant State and which—

(a) shows that the holder has successfully completed education and training received in the Community and recognised by a competent authority in that relevant State as being of equivalent level to education and training satisfying paragraph (1); and

(b) confers the same rights in respect of the practice of the regulated profession in that relevant State

shall, for the purposes of these Regulations, be treated in the same way as a Certificate.

Definition of "Attestation of Competence"

7.—(1) In these Regulations, an "Attestation of Competence" means any evidence of qualifications either—

(a) attesting to education and training not forming part of a set constituting a First General System Diploma or a Second General System Diploma or a Certificate; or

(b) awarded following an assessment of the holder by reference to the personal qualities, aptitudes or knowledge which a competent authority considers essential for the pursuit of a profession, without proof of prior education and training being required.