

EXPLANATORY MEMORANDUM TO
THE EUROPEAN COMMUNITIES (RECOGNITION OF PROFESSIONAL
QUALIFICATIONS) (FIRST GENERAL SYSTEM) REGULATIONS 2005

2005 No.18

1. This explanatory memorandum has been prepared by the Department for Education and Skills and is laid before Parliament by Command of Her Majesty.

This instrument contains information for the Joint Committee on Statutory Instruments.

2. **Description**

- 2.1 This regulation provides a consolidated version of the principle implementing regulations for Council Directive 89/48/EEC 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.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The original Regulations, the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 1991(S.I.1991/824), were reported on in the 18th Report, Session 1990-1991. The drafting of these Regulations takes account of the issues raised-see regulations 5 (1) (a), 6(1) (b) (i) and 13(6).

4. **Legislative Background**

- 4.1 The above instrument was made in exercise of the European Communities Act 1972.
- 4.2 The Regulations list the professions which the UK deem as regulated professions and the designated authorities which assess appropriate qualifications obtained elsewhere in the EU/EEA. The Regulations impose a duty on the authorities not to refuse, on the grounds of inadequate qualifications, an application from a EU/EEA migrant to practise the relevant profession in the UK if he/she holds the qualification required by another member State to practise the profession in that State.

5. **Extent**

- 5.1 This instrument applies to all of the United Kingdom

6. **European Convention on Human Rights**

- 6.1 The Minister, Dr Kim Howells, has made the following statement under section 19(1) (a) of the Human Rights Act 1998.

In my view the provisions of the European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 are compatible with the Convention Rights.

7. Policy Background

7.1 In most Member States access to certain professions is controlled by laws requiring the possession of a national diploma in the area of work concerned. The General System Directives on the recognition of professional qualifications allow those people who are qualified to practice their profession in one Member State to transfer their qualifications and skills to pursue that profession in another Member State by recognising those diplomas, certificates or other evidence of formal qualifications in their territories.

7.2 These Regulations maintain the UK's compliance with European law on the mutual recognition of qualifications. Compliance takes the form of up-to-date schedules listing the regulated professions, designated authorities, and certain special provisions in the UK.

7.3 A limited comment exercise has been undertaken with those designated authorities that have undergone changes (since the last updating) to their name, changes in professional titles or those authorities that have been included for the first time.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as there is no burden on business. The cost of implementation, in financial terms, will take the form of administrative costs to the designated authorities who administer the process of recognition. These bodies are able to levy an administrative fee for their services

9. Contact

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can answer any queries regarding the instrument

TRANSPOSITION NOTE
RELATING TO THE
EUROPEAN COMMUNITIES (RECOGNITION OF PROFESSIONAL
QUALIFICATIONS) (FIRST GENERAL SYSTEM) REGULATIONS 2005
(“The 2005 Regulations”)

The Department for Education and Skills has responsibility for the implementation of Council Directive 89/48/EEC on the general system for the recognition of higher education diplomas awarded on completion of professional education and training of at least three years' duration as amended by Council Decision 2001/19 EC.

These Directives were given effect in the United Kingdom by:

- The European Communities (Recognition of Professional Qualifications) Regulations 1991 (S.I.1991/824) – (“the 1991 Regulations”),
- The European Communities (Recognition of Professional Qualifications) (Amendment) Regulations 2000 (S.I.2000/1960) – (“the 2000 Regulations”), and
- The European Communities (Recognition of Professional Qualifications) (Amendment) Regulations 2002 (S.I.2002/3051) - (“the 2002 Regulations”).

The 2005 Regulations revoke the above three implementing Regulations, and at the same time consolidate and substantially re-enact their provisions and form the body of these Regulations and the Schedules.

Summary of the implementation of the main provisions of Directive 89/48/EEC by SI 1991/824.

a. The 1991 Regulations (subject to certain conditions and exceptions) impose a duty upon the designated authorities not to refuse, on grounds of inadequate qualifications, an application from a migrant to practise the relevant profession in the United Kingdom if he holds the qualification required by another member State to practise the profession in that State. (Regulation 5 implementing Article 3 of Directive 89/48 and re-enacted in regulation 5 of the 2005 Regulations).

b. The 1991 Regulations further provide for the designated authorities, in certain cases, to require a migrant applicant to complete an adaptation period or to pass an aptitude test. (Regulations 6, 7 and 8 implementing Article 4 of Directive 89/48 and re-enacted in regulations 6, 7 and 8 of the 2005 Regulations)

c. The 1991 Regulations also make provision for a migrant applicant, who has been granted authorisation to practise, to have the right to use the professional title and designatory letters applicable to that profession in the United Kingdom. (Regulation 10 implementing Article 7 of Directive 89/48 and re-enacted in regulation 10 of the 2005 Regulations).

d. An appeals procedure is provided for migrant applicants to challenge decisions of the designated authorities made under the 1991 Regulations. (Regulation 13 implements Article 8 of Directive 89/48 and is re-enacted in regulation 13 of the 2005 Regulations)

e. The 1991 Regulations apply to regulated professions listed in Schedule 1 being professions which are regulated by law or public authority or by membership of a chartered

body and for which the entry qualification is of degree level or equivalent. Schedule 1 also designates a body (a "designated authority") in respect of each of the listed regulated professions. The designated authorities have the function of processing applications from migrant applicants having qualifications obtained wholly or partly in another member State of the Economic Community and wishing to practise the relevant profession in the United Kingdom. (Regulations 2, and 4 implementing Articles 1, 2 and 9 of Directive 89/48 and re-enacted in regulations 2, and 4)

Implementation of Article 1 of Directive 2001/19/EC amending Directive 89/48/EEC by S.I. 2002/3051

Article 1 of Directive 2001/19 EC was implemented by regulation 2 and the Schedule of the 2002 Regulations. The 2002 Regulations amended regulations 2, 5, 6, and 9 of the 1991 Regulations.

Article 1 of Directive 2001/19 is re-enacted in the 2005 Regulations by regulations 2, 5, 6 and 9. In addition, the 2002 Regulations extended the application of the 1991 Regulations to the EEA and Switzerland which again has been re-enacted.

For the sake of completeness, the purpose of the 2000 Regulations was to amend regulation 4 of the 1991 Regulations to clarify the term "designated authority", re-enacted by regulation 4 of the 2005 Regulations, and also to update the Schedules.

The 2005 Regulations.

In addition to the above re-enactments, the 2005 Regulations have included a wider definition of "regulated profession" in the United Kingdom. Designated authorities are therefore authorities listed in Schedule 1, or when not so listed, the competent authorities for any regulated profession or regulated professional activity. This could include new professions established after the Regulations are in force to ensure continued effective implementation of EU obligations (regulations 2 and 4). Schedules 1, 3 and 4 have also been updated.

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