

EXPLANATORY MEMORANDUM TO
THE EUROPEAN QUALIFICATIONS (HEALTH AND SOCIAL CARE
PROFESSIONS) REGULATIONS 2016

2016 No. 1030

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health (“DH”) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations transpose in part Directive 2013/55/EU, which amends Directive 2005/36/EC (commonly referred to as the “Mutual Recognition of Professional Qualifications Directive” (“the MRPQ Directive”)) in order to support mobility of key, relevant professionals across the EU through more efficient and transparent recognition of their professional qualifications.

2.2 The MRPQ Directive provides the framework for recognising professional qualifications with the aim of enabling individuals to work on a permanent or temporary basis across other Member States. There are two different systems for recognising qualifications:

- the automatic system – which allows the relevant regulators to have a framework in place for dealing with applications. The professions in the automatic system have harmonised qualification standards and these are listed in Annex V of the MRPQ Directive. For healthcare professions these are doctors, dentists, general care nurses, midwives and pharmacists (the “sectoral professions”);
- the general system – all other professions not listed in Annex V, including regulated healthcare professions who are not in a sectoral profession, are covered under the general system and their applications are considered on a case by case basis. In some cases a member of a sectoral profession might have a qualification recognised under the general system (for example a doctor’s specialist qualification).

2.3 These Regulations transpose the amendments specific to the sectoral healthcare professions, in particular for the sectoral professions. The Regulations also make amendments in relation to the introduction of the European Professional Card (“EPC”) for automatic recognition of professionals and make a number of minor amendments in relation to those regulated healthcare professions who come under the general system. DH has been working closely with the health and care professional regulators over the last two years on the detail of the Regulations.

2.4 Policy responsibility for the regulation of a number of healthcare professions is devolved to one or more of Scotland, Wales and Northern Ireland. Social work is completely devolved and the regulation of pharmacists is devolved to Northern Ireland, regulated by the Pharmaceutical Society of Northern Ireland. Officials in the devolved administrations have confirmed that they are content for DH to transpose the amendments for them.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 As these Regulations are subject to the negative resolution procedure and have not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

4.1 These Regulations transpose the amendments made to the MRPQ Directive by Directive 2013/55/EU. Directive 2015/15/EU was adopted by the European Parliament and the Council on 20 November 2013 with a transposition date of 18 January 2016. These Regulations are made under powers in section 2(2) of the European Communities Act 1972.

4.2 The Regulations amend various enactments in order to implement the changes made to the MRPQ Directive. Please see the transposition note annexed to this Explanatory Memorandum for details of the enactments which are amended.

5. Extent and Territorial Application

5.1 The instrument extends to all of the United Kingdom.

5.2 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Health, Philip Dunne, has made the following statement regarding Human Rights:

”In my view the provisions of The European Qualifications (Health and Social Care Professions) Regulations 2016 are compatible with the Convention rights”.

7. Policy background

7.1 The MRPQ Directive is one of the main tools to facilitate the free movement of professionals across the EU. The system is intended to help make labour markets more flexible, encourage more automatic recognition of qualifications and simplify administrative procedures whilst still providing safeguards in particular in relation to health and care professions.

7.2 The Department for Business, Energy and Industrial Strategy (BEIS) has introduced regulations that came into force on 18 January 2016, the transposition deadline set by the European Commission. Those regulations transposed provisions related to the general system of recognition including in relation to the health and care professions, as well as common provisions applying universally across all regulated professions. DH is transposing provisions specifically related to the sectoral professions who are covered by the automatic recognition system and making a number of consequential amendments in relation to the health and care professions covered by the BEIS regulations. These Regulations should therefore be read in conjunction with the BEIS regulations (the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059), “the General Systems Regulations”).

- 7.3 These Regulations implement the revised MRPQ Directive in relation to the sectoral professions and also make a number of additional changes to all the regulated healthcare professions' legislation in relation to the cross sector provisions covered in the BEIS regulations.
- 7.4 The main elements of the Department of Health's Regulations are:
- A new provision setting out criteria for allowing partial exemptions (allowing a doctor to be exempt from a requirement to complete part of a course) on a case by case basis from areas of specialist training for doctors who have already obtained a qualification in another medical specialty.
 - New provisions relating to the consideration of professional traineeships (a period of professional practice carried out under supervision that constitutes a condition for access to a regulated profession) carried out in other countries have been introduced in relation to the General Medical Council, the General Pharmaceutical Council and the Pharmaceutical Society of Northern Ireland.
 - The EPC, a process that enables professionals to apply for recognition of their qualifications through a faster process has been introduced for nurses and pharmacists and physiotherapists. An appeals mechanism is included in the DH Regulations for the four health regulators who cover these professions.
 - The introduction of the Alert Mechanism (a process that enables EEA States and Switzerland to send alerts to each other about professionals who have been prohibited or restricted from practising). Appeals provisions relating to the alert mechanism are included in these Regulations but the provisions concerning the Alert Mechanism itself are set out in the General Systems Regulations.
 - The Directive also makes a number of changes in relation to the minimum length of basic training for doctors, dentists, nurses and midwives; additional acquired rights for certain cohorts of professionals and changes to the required minimum competencies that pharmacy training must cover.
- 7.5 A number of concerns have been raised about the constraints that the Directive places on the ability of UK regulators of health professionals to carry out robust checks of both the clinical and language skills of medical professionals from the European Economic Area (EEA) seeking to practice in the UK. The Government will review the checks that UK regulators are able to apply in light of the EU exit negotiations.

8. Consultation outcome

- 8.1 DH has engaged extensively with the regulators, whose legislation is being amended, over the last two years.
- 8.2 DH ran a public consultation on the health specific amendments from 10 December 2015 to 20 January 2016. In total, 37 responses to the consultation were received. Although many responses were from regulators, who were directly informed of the consultation and are most affected by the administrative provisions, responses were also received from individual professionals, professional bodies and unions.
- 8.3 Following consideration of the consultation responses a number of further changes have been made to the Regulations to ensure that they are effective. Furthermore, following the decision to leave the EU, the Government will work with the regulatory bodies, professional and patient groups across the UK to review the tests that are applied to health professionals seeking to practise in the UK

8.4 An evaluation of the consultation responses can be found at:

<https://www.gov.uk/government/consultations/mutual-recognition-of-professional-qualifications-in-healthcare>

9. Guidance

9.1 DH asked two questions as part of the consultation in relation to whether specific health guidance was necessary.

9.2 BEIS have already published guidance which covers the cross sector changes and these cross sector changes are mainly the ones where respondents suggested providing additional guidance. After further consideration, DH's view is that producing health specific guidance would not provide any additional benefits.

9.3 We will however, continue to monitor the implementation of the revised Directive and reconsider whether additional guidance is necessary in the future.

10. Impact

10.1 In assessing the impact of the changes to the MRPQ Directive for which DH is responsible, DH liaised principally with the five healthcare professional regulators (the General Medical Council, the General Dental Council, the Nursing and Midwifery Council, the General Pharmaceutical Council and the Pharmaceutical Society for Northern Ireland) responsible for the sectoral professions to ascertain whether or not they expected to incur cost impacts as a result of this policy measure. The returns provided did not identify any area where significant costs were expected by any of the regulators.

10.2 The main benefits to businesses and professionals are estimated in terms of the value of time saved from having more efficient access to information, and from using online applications. In addition, healthcare professionals may benefit from a simpler administrative process if they wish to practise in another Member State. Both these factors will serve to increase labour mobility across the EU.

10.3 The main direct costs of the Regulations are likely to be in the form of higher administrative costs for the authorities or bodies empowered by Member States to manage applications and regulate the relevant profession ("Competent Authorities") and from one-off transition costs such as changes to IT systems.

10.4 Any additional incurred costs are expected to be passed on to businesses and professionals through higher EEA application fees. Competent Authorities may also benefit from administrative savings in other areas over the longer term.

11. Regulating small business

11.1 The legislation does apply to activities that are undertaken by small businesses but this is not expected to be significant because the main impact is on checks carried out by the Regulatory Bodies.

12. Monitoring & review

12.1 The European Commission operates a database that aggregates recognition decisions under the MRPQ Directive for each Competent Authority in every Member State. It is possible to conduct analysis following the transposition of the Directive to

determine if there have been any notable changes in the patterns of applications for recognition into the UK for each profession.

- 12.2 The evaluation will measure if there is an impact on small business and is most likely to pick up effects where there have been substantive changes (such as the introduction of the EPC or Alert Mechanism).
- 12.3 Pursuant to sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015, this instrument makes provision for the review, within 5 years, of the amendments made to the following enactments:
- the European Primary and Specialist Dental Qualifications Regulations 1998;
 - the Nursing and Midwifery Order 2001;
 - the Health and Social Work Professions Order 2001;
 - the European Nursing and Midwifery Qualifications Designation Order of Council 2004;
 - the Registration of Pharmaceutical Chemists (Exempt Persons) Regulations (Northern Ireland) 2008;
 - the Pharmacy Order 2010; and
 - the Postgraduate Medical Education and Training Order of Council 2010.
- 12.4 For the purposes of section 31(2)(a) of the Small Business, Enterprise and Employment Act 2015, the Minister determines that it would be disproportionate to include a review provision for the consequential changes made to the following enactments (which simply set out administrative rules for the relevant regulatory bodies):
- the Health Professions Council (Registration and Fees) Rules Order of Council 2003;
 - the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules Order of Council 2004; and
 - the General Pharmaceutical Council (Registration Rules) Order of Council 2010.
- 12.5 No provision has been made for a review of the amendments made to primary legislation by the Regulations, including the Pharmacy (Northern Ireland) Order 1976 (which is considered as primary legislation within Northern Ireland). This was because it was not appropriate to include a review provision for these amendments because they fall outside the scope of the policy objectives as set out in the relevant statutory guidance (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/438068/BEIS-15-327-statutory-review-guidance-SBEE-2015.pdf), which is specific to the inclusion of review provisions in secondary legislation.

13. Contact

- 13.1 Lindsey Proctor at the Department of Health (Telephone: 0113 254 5811 or email: lindsey.proctor@dh.gsi.gov.uk) can answer any queries regarding the Regulations.