

EXPLANATORY MEMORANDUM TO

THE EUROPEAN QUALIFICATIONS (HEALTH AND SOCIAL CARE PROFESSIONS) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2022

2022 No. 82

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care (“DHSC”) and is laid before Parliament by Command of Her Majesty.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

- 2.1 The purpose of this instrument is to correct errors within the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/593) (“the 2019 EU Exit Regulations”) and to correct an error created by these regulations in the National Health Service (Performers List) (England) Regulations 2013 (S.I. 2013/335) (“the 2013 Performers List Regulations”).

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument was laid for sifting on 6 January 2022 and considered by the European Statutory Instruments Committee and the Secondary Legislation Scrutiny Committee on 18 January 2022. The Sifting Committees agreed that this instrument should follow the negative resolution procedure.

4. Extent and Territorial Application

- 4.1 The extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

5. European Convention on Human Rights

- 5.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 In 2019 the UK amended its domestic legislation governing the recognition of professional qualifications (“RPQ”) in order to ensure that RPQ legislation can operate effectively post-EU exit, and to correct deficiencies which have arisen as a consequence of the UK leaving the EU.
- 6.2 The EU Exit Regulations unilaterally provide for an ongoing system of recognition for EEA and Swiss-qualified individuals and provide transitional and saving provisions to ensure those affected by the UK’s EU exit in relation to RPQ are protected after Implementation Period (“IP”) completion day.

- 6.3 Subsequent to passing the 2019 RPQ legislation, the UK Government implemented RPQ provisions of its international agreements with the EFTA and Switzerland and amended the 2019 EU Exit Regulations to give effect to the RPQ provisions of the agreements in domestic law from IP completion day. This was achieved through the passing of The European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 (the “Swiss Regulations”).
- 6.4 The 2013 Performers List Regulations and the National Health Service (Performers Lists) Regulations 2004 (“the 2004 Regulations”) provide Primary Care Trusts with a framework for managing medical, dental and ophthalmic practitioners undertaking primary care services in their area.

7. Policy background

What is being done and why?

- 7.1 The changes made by this instrument will:
- i. ensure that the General Medical Council Regulations (Form and Content of the Registers) 2015 – “the 2015 GMC Regulations” no longer requires the register to include a list of visiting medical practitioners from relevant European States. This is because that requirement was removed from section 2(2) of the Medical Act 1983.
 - ii. ensure that the UK courts do not have the power to enforce obligations on the UK health and care professional regulators that are impracticable as of IP completion day, by removing provisions requiring them to do so.
 - iii. remove the requirement to update the European Commission on open IMI1 alerts, as this is impractical following IP completion day.
 - iv. amend erroneous references to ‘pharmacist’ to ‘dentist’ so that the provisions correctly apply to visiting EU dental practitioners rather than pharmacists.
 - v. re-instate an exemption for EU-qualified dentists to conduct foundation training prior to admission onto the NHS-held Dental Performers List. This is a transitional measure requested by regulators.

Explanations

What did any law do before the changes to be made by this instrument?

- 7.2 Prior to IP completion day, there would have been a need for the General Medical Council (“GMC”) register to identify persons who are registered in the list of visiting medical practitioners from relevant European states. However, after IP completion day, the requirement for the GMC to keep lists of visiting medical practitioners from relevant European states was removed from section 2(2) of the Medical Act 1983. This left redundant references to the list of visiting medical practitioners from

¹ IMI refers to the Internal Market Information system used by EEA (and Swiss) member state regulators to securely transfer information regarding applications and status of individuals. It allows regulators to send and receive fitness to practise alert notifications when action is taken against a doctor on the UK register/on a European register.

European states within the GMC Regulations 2015. It was intended that the 2019 EU Exit Regulations would remove these however this is yet to be done.

- 7.3 Prior to the changes to be made by this instrument, UK courts had the power to order UK health and care professional regulators to inform the European Union of any updates to fitness to practice alerts made to the IMI system.
- 7.4 Prior to the changes made by this instrument, the amendments to the 2019 EU Exit Regulations contained two errors. Firstly, ‘pharmacy’ was incorrectly inserted in place of ‘dentist’ meaning the legislation incorrectly referred to pharmacists instead of dentists. Secondly, a reference to article 71 of the Pharmacy Order 2010 had been removed from a list of provisions relating to pharmacists for removal. This meant it was unintentionally retained and consequently placed a requirement for regular reviews by the Secretary of State for the duration of the UK-Switzerland agreement.
- 7.5 Furthermore, prior to IP completion day, applicants holding EU qualifications were exempt from undertaking the foundation training required as part of registration on the Dental Performers List. Under 34(4)(a) of the Performers Lists Regulations any applicant registered under the Dentists Act 1984 s15(1)(b) those with a relevant European qualification obtained this exemption.

Why is it being changed?

- 7.6 The need to remove the redundant references to European medical practitioners within the 2015 GMC Regulations remains.
- 7.7 As of IP completion day, the UK no longer has access to the IMI system and UK-made alerts to the IMI have now been removed. Therefore, an amendment is being made to ensure that the courts do not have the power to enforce an impracticable obligation on UK health and care professional regulators.
- 7.8 Erroneous references to ‘pharmacist’ instead of ‘dentist’ in the amendments to the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 meant that the legislation was incorrectly applied to pharmacists. It now needs to be changed so that the provisions correctly apply to visiting EU dental practitioners rather than pharmacists.
- 7.9 The insertion of article 71 of the UK-Switzerland agreement into amendments to the 2019 EU Exit Regulations is required. This will remove the requirement for the Secretary of State to conduct regular reviews of the impact of provisions inserted into the Pharmacy Order 2010 by the European Qualifications (Health and Social Care Professions) Regulations 2016 for the duration of the UK-Switzerland agreement. However, these regulations were removed by 2019 EU Exit Regulations and the requirement to review was retained unintentionally.
- 7.10 The amendment to 2013 Performers Lists Regulations is required to re-instate an exemption for EU-qualified dentists to conduct foundation training prior to admission onto the NHS-held Dental Performers List. This is a transitional measure requested by regulators.

What will it now do?

- 7.11 This instrument will:
- ensure there are no redundant references to European medical practitioners within the 2015 GMC Regulations;

- remove the power of the courts to order UK health and care professional regulators to inform the European Union of updates made to IMI alerts from IP completion day;
- remove the impractical requirement to update the European Commission on open IMI alerts;
- replace the reference to ‘pharmacy’ with ‘dental’ to ensure that the savings provisions are applied to visiting EU dental practitioners instead of pharmacists; and
- ensure that EU-qualified dentists are once again exempt from the requirement to have undertaken foundation training in order to be admissible onto the NHS-held Dental Performers List.

8. European Union Withdrawal and Future Relationship

8.1 This instrument is being made using the power conferred by section 8(1) 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 withdrawal of the United Kingdom from the European Union. The instrument is also made using the power in paragraph 21 of Schedule 7 of the Withdrawal Act 2018. In accordance with the requirements of that Act the Minister has made the relevant statements as detailed in Part 2 of the Annex to this explanatory memorandum.

9. Consolidation

9.1 This instrument does not consolidate any legislation.

10. Consultation outcome

10.1 No consultation took place as it was not deemed necessary due to the technical nature of the changes.

11. Guidance

11.1 No guidance is required.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

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 instrument relates to the maintenance of existing regulatory standards and no significant impact on the private or voluntary sector is foreseen.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This legislation will be monitored in the course of normal departmental business.

14.2 As this instrument is made under the European Union (Withdrawal) Act 2018, no review clause is required.

15. Contact

- 15.1 Tara Tharmytagé at the Department of Health and Social Care, or email: tara.tharmytagé@dhsc.gov.uk, can be contacted with any queries regarding this instrument.
- 15.2 Mark Bennett, 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 Edward Argar MP, the 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 and the European Union (Future Relationship) Act 2020

Part 1A

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) or 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.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or 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) or 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) or 23(1) or jointly exercising powers in Schedule 2	Explain what, if any, amendment, repeals or revocations are being made to the Equality 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) or 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 alongside all EUWA 2018 SIs	Explain the instrument, identify the relevant law before IP completion 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 law.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1) or	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising section 8 or 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 5 or 19, Schedule 7	Statement of the reasons for the Minister's opinion that the SI is urgent.
Scrutiny statement where amending regulations under s. 2(2) ECA 1972	Paragraph 14, Schedule 8	Anybody making an SI after IP completion day under powers conferred before the start of the 2017-19 session of Parliament which modifies subordinate legislation made under s. 2(2) ECA 1972	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 instrument or draft instrument which is to be laid.
Explanations where amending regulations under s. 2(2) ECA 1972	Paragraph 15, Schedule 8	Anybody making an SI after IP completion day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA 1972	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA 1972, identifying the relevant law before IP completion day, and explaining the instrument's effect on retained EU law.

Part 1B

Table of Statements under the 2020 Act

This table sets out the statements that may be required under the 2020 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraph 8 Schedule 5	Ministers of the Crown exercising section 31 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.

Part 2

Statements required under the European Union (Withdrawal) Act 2018 or the European Union (Future Relationship) Act 2020

1. Sifting statement(s)

- 1.1 The Minister of State for Health 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 2022 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)”.

- 1.2 This is the case because the provisions contained within this instrument do not constitute policy changes. The instrument fixes administrative errors, removing:
- i. redundant references to European medical practitioners within the General Medical Council (Form and Content of the Registers) Regulations 2015, which were not removed due to error in the Healthcare Qualifications Regulations 2019; and within the Amendments to the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019;
 - ii. provisions relating to UK alerts that were held on the European Union’s Internal Market Information, which the UK no longer has access to;
 - iii. provisions for health and care professional regulators to inform the European Commission of updates to fitness to practice alerts made to the IMI system;
 - iv. the word ‘pharmacy’ and replacing it with ‘dental’ in the schedule relating to dentists and by inserting a reference to article 71 of the UK-Switzerland agreement into the definition of establishment provisions which list provision not to be saved in the schedule relating to pharmacists; and
 - v. a provision into 34(4)(a) of the 2013 Performers List Regulations that provides an exemption for holders of relevant European qualifications.

2. Appropriateness statement

- 2.1 The Minister of State for Health 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 2022 does no more than is appropriate”.

- 2.2 This is the case because the provisions contained within this instrument do not have effects beyond those described in paragraph 1.2 of this Annex.

3. Good reasons

- 3.1 The Minister of State for Health 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 In the case of Regulation 2, this is because, due to a drafting error, defunct references to European medical practitioners within the General Medical Council (Form and Content of the Registers) Regulations 2015, the need to remove the redundant references thus remains.
- 3.3 In the case of Regulation 3 this is because the courts should not have the power to enforce UK health and care regulatory bodies to inform the European Union of updates to alerts made to the Internal Market Information System database when there is no appropriate mechanism for them to do so and those alerts no longer exist. Also, in the case of Regulation 3, the words ‘dental’ should appear instead of ‘pharmacist’ and a review clause is not required for the regulation of Swiss pharmacists.
- 3.4 In the case of Regulation 4, it is the policy intent that holders of relevant European qualifications remain exempt from the requirement to conduct foundation training.
- 3.5 The Minister of State for Health has made the following statement(s):
“The draft 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. Equalities

- 4.1 The Minister of State for Health has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
“In relation to the draft instrument, I, Edward Argar, 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 7 of the main body of this explanatory memorandum.