

EXPLANATORY MEMORANDUM TO
THE EUROPEAN UNION (RECOGNITION OF PROFESSIONAL
QUALIFICATIONS) REGULATIONS 2015

2015 No. 2059

1. Introduction

- 1.1 This Explanatory Memorandum has been prepared by the Department for Business, Innovation and Skills 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 These Regulations transpose in part Directive 2013/55/EC amending Directive 2005/36/EC on the recognition of professional qualifications. They restate rules for the recognition of professional qualifications enabling qualified persons from EEA States to gain access to the profession in which they are qualified and to practise the profession under the same condition as professions in the United Kingdom where those professions are regulated. They incorporate the existing provisions of the European Communities (Recognition of Qualifications) Regulations 2007 (the 2007 Regulations) and add additional provisions to implement the requirements of the 2013 Directive.
- 2.2 These Regulations do what is necessary to implement the Directive, including making consequential changes to domestic legislation to ensure its coherence in the area to which they apply.
- 2.3 Provision related specifically to the sectorial health professions will be transposed by the Regulations prepared by the Department of Health.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 This instrument applies to all of the UK.
- 3.2 As the Directive affects most regulated professions, policy responsibility for the regulation of some of these is devolved to one or more of Scotland, Wales and Northern Ireland. However mutual recognition between EU Member States is not a devolved matter. Ministers in the Devolved Administrations have agreed that implementation of the general system part of the Directive will be done by means of these Regulations for the whole of the UK.
- 3.3 Following the approach taken in the 2007 Regulations, the government is applying the sectoral approach to transposition where BIS regulations transpose provisions related to the general system of recognition, as well as common provisions applying universally across all professions, and sectoral legislation prepared by the relevant departments (Departments of Health, Communities and Local Government, and for Environment, Food and Rural Affairs) will transpose provisions specifically related to sectoral professions which use the automatic recognition route for their

qualifications (general care nurse, doctor, dentist, pharmacist, midwife, veterinary surgeon and architect).

Other matters of interest to the House of Commons

- 3.4 As this instrument is subject to the negative procedure and has 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 EU Directive on the recognition of professional qualifications (Directive 2005/36/EC as amended by Directive 2013/55/EU). Directive 2013/55/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 Revised Directive has been scrutinised and cleared by the House of Lords and House of Commons scrutiny committees.
- 4.3 A transposition note is attached.

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

7. Policy background

What is being done and why

- 7.1 The Mutual Recognition of Professional Qualifications Directive (PQD) is one of the main tools to facilitate the free movement of persons and is intended to allow individual professionals to market their skills in other Member States on a temporary or established basis. It directly contributes to economic growth by enabling businesses, the public sector and consumers to access the professional services they require more readily and more economically by encouraging stronger competition for professional services. There are also indirect benefits for the UK economy through UK professionals working overseas, gaining wider experience and skills.
- 7.2 A decision was made to revoke and replace the current 2007 Regulations which was widely supported during the consultation. These Regulations replace the European Communities (Recognition of Professional Qualifications) Regulations 2007 and implement in part Directive 2013/55/EU on the recognition of professional qualifications.
- 7.3 These Regulations implement the Revised Directive in relation to all regulated professions other than the sectoral professions (i.e. those which involve harmonised training with minimum training conditions being the professions of doctor, nurse, midwife, dentist, pharmacist, architect, veterinary surgeon). They also implement the

Directive, in part, in relation to the sectoral professions to the extent set out in the Regulations.

- 7.4 The provisions of the Directive that are not implemented by these Regulations relating to the “sectoral professions” (doctors, nurses, midwives, pharmacists, dentists, architects and vets) and to some “non-sectoral” professions in specific sectors involving health and social care, the professions of veterinary nurse and farrier, are implemented in regulations which are the responsibility of other Departments namely the Departments of Health, Communities and Local Government, and for Environment, Food and Rural Affairs.
- 7.5 The new elements of the regulations are:
- 7.6 Introduction of a system of partial access to enable individuals to practise certain aspects of a regulated profession - where this is feasible.
- 7.7 Introduction of an alert mechanism - a proactive system of information-sharing when concerns arise about a health care professional. The alert mechanism will provide Competent Authorities in host member states with a faster and more reliable mechanism for identifying professionals who have been prohibited or restricted from practicing in another EEA state. This should lead to greater security and protection for service recipients.
- 7.8 Obligation to use online procedures – all required procedures and formalities for recognition of professional qualifications are easily completed by electronic means. A number of competent authorities have already established online application forms through their websites.
- 7.9 European Professional Card (EPC) - a proposed e-certificate that facilitates recognition procedures for the most mobile professions. This will be rolled out in phases, the first being from January 2016 – nurses, pharmacists, mountain guides, estate agents and physiotherapists. The EPC provides a faster, online method of recognition for professionals wishing to carry out cross-border professional activities. The EPC is an additional method of recognition, the existing methods of application remain in place.

8. **Consultation outcome**

- 8.1 The department launched a public consultation on the transposition of the revised PQD which ran from 14 August 2014 to 6 November 2014. In total, 44 responses to the consultation were received. Although largely from competent authorities, who were directly informed of the consultation and are most affected by the administrative provisions, responses were also received from professional associations, business representative organisations, trade bodies, devolved administrations and individual professionals. In March 2015 the Government published the response to the consultation where it addressed the concerns raised. It also published the guidance to competent authorities and held a number of workshops where it provided a wider explanation of different parts of the Regulations. A more detailed Response could be found via this link : <https://www.gov.uk/government/consultations/mutual-recognition-of-professional-qualifications-revised-directive>

9. **Guidance**

- 9.1 The Department has published guidance for competent authorities to facilitate the implementation of the Directive and to ensure that administrative processes in

competent authorities are compliant with the Regulations. Competent authorities control access to regulated professions, professional and vocational titles and professional activities which require specific qualifications, and are subject to national law or membership rules of bodies governed by Royal Charter.

- 9.2 A number of interactive workshops were organised in London and Edinburgh to allow competent authorities to share their concerns and answer any questions. Officials from the European Commission were also present at one of the London workshops and were able to provide clarifications on certain aspects of the Directive.

10. **Impact**

- 10.1 The main direct benefits to businesses and professionals are estimated in terms of the value of time saved from more efficient access to information, and from using online applications. The main direct costs of the regulations are likely to be in the form of higher administrative costs for Competent Authorities, from the potentially more complex cases of partial access, and from one-off transition costs such as changes to IT systems or transferring information to a single online point.
- 10.2 In some cases, these Competent Authorities may be charities or voluntary bodies. Any additional incurred costs are expected to be passed on to businesses and professionals through higher application fees and so any possible added net burden on voluntary bodies is likely to be small. These Competent Authorities may also benefit from administrative savings in other areas over the longer term.
- 10.3 The balance of costs and benefits is for the Regulations to be de-regulatory in the sense that the simplification measures introduced outweigh any transitional or ongoing costs. However, the overall scale of the total net direct impacts is expected to be relatively small given the current scale of costs of the existing system.
- 10.4 The main impacts of the Regulations are indirect and relate to improving the movement of professionals across the Single Market, and so improving the functioning of the Single Market itself. These, given their nature, are difficult to quantify.
- 10.5 The UK as a 'net importer' of the relevant professionals should benefit from having access to a larger pool of professionals to provide services in the UK. This should have a positive impact on competition and lead to lower prices and higher quality for both consumers and businesses. There should also be a benefit in terms of reducing any skill shortages in certain professions the UK suffers from currently.
- 10.6 In terms of accessing the Single Market, UK professional should find it easier to apply their skills and knowledge across other Member States as movement is enhanced. This should provide benefit to UK professionals in terms of increased work opportunities, particularly in Member States that have relatively restrictive procedures currently. Further, there could be benefits across the board from greater innovation in the provision of professional services as movement across the Single Market increases further.
- 10.7 The impact on the public sector is estimated to be felt through costs that will fall directly on Competent Authorities (the regulator of each profession). Transitional costs (NPV) that have been monetised are in the range of £100,000-£300,000 over a 10 year period. Some of these costs may be passed onto professionals and businesses through higher application fees charged by Competent Authorities.

- 10.8 An Impact Assessment is submitted with this memorandum and will be published alongside the Explanatory Memorandum on the legislation.gov.uk website.
11. **Regulating small business**
- 11.1 The legislation does not apply to activities that are undertaken by small businesses.
12. **Monitoring & review**
- 12.1 The European Commission operates a database that aggregates recognition decisions under the PQD for each Competent Authority in every Member State. It will be 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 is most likely to pick up effects where there have been substantive changes (such as the introduction of the European Professional Card or Common Training Frameworks). Once it has been determined which professions adopt these new elements.
- 12.3 A review of the effect of the Regulations will be carried out at the latest within 5 years of the implementation of the Regulations.
13. **Contact**
- 13.1 Laura Danilaviciute at the Department for Business, Innovation and Skills (Telephone: 02072155113 or email: laura.danilaviciute@bis.gsi.gov.uk) can answer any queries regarding the instrument.