

## EXPLANATORY MEMORANDUM

### Title of Instrument

1. The European Qualifications( Health and Social Care Professions and Accession of New Member States )Regulations 2004. No.1947

### The Human Rights Act 1998

2. To the extent that the Regulations may engage Convention rights, no new issues arise in the UK. Their effect is to extend rights already enjoyed by nationals of the 15 existing member States<sup>1</sup> to the recognition of professional qualifications in the field of health and social care to nationals of the 10 new member States<sup>2</sup>, and these must be applied in accordance with the Human Rights Act 1998. Section 19 of the 1998 Act requires the Minister in charge of a Bill to make a statement on the compatibility of its provisions with Convention rights, as defined by section 1 of that Act. The Government has decided to apply this requirement to amendments to primary legislation.

Mr John Hutton has made the following statement :

“ In my view, the provisions of the European Qualifications( Health and Social Care Professions and Accession of New Member States ) Regulations 2004 are compatible with Convention rights. “.

### Legal base

- 3.The Regulations are made by the Secretary of State for Health in exercise of the powers conferred on him pursuant to section 2(2) of the European Communities Act 1972. The 1972 Act was amended by the European Union ( Accessions) Act 2003, which gives effect in UK law to the Treaty of Accession of 16 April 2003<sup>3</sup>. Article 20 of the Act of Accession annexed to the Treaty gives effect to certain permanent technical adaptations of EU secondary legislation, including directives on the mutual recognition of professional qualifications, which are consequential to enlargement. The current regulations introduce the corresponding technical amendments to existing transposed legislation concerning the recognition of professional qualifications in the field of health and social care.

### Legislative implications

- 4.This instrument either amends or affects the application of the following measures; the number of the relevant regulation is shown in brackets :

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<sup>1</sup> Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK. EU Directives on the mutual recognition of professional qualifications also apply, by virtue of separate agreements, to nationals of the non-EU European Economic Area( EEA) States – Iceland, Liechtenstein and Norway – and to Switzerland. Those agreements are being adjusted to take account of the Treaty of Accession.

<sup>2</sup> Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia.

<sup>3</sup> Cm 5805

**(a)primary legislation**

- The Pharmacy Act 1954 ( 16)
- The Medical Act 1983 ( 6)
- The Dentists Act 1984 ( 14 )
- The Nurses, Midwives and Health Visitors Act 1997 ( 2 )
- The Care Standards Act 2000 ( 23 )

**(b)subordinate legislation**

- The Nurses, Midwives and Health Visitors Approval Order 1983 ( 3)
- The Vocational Training for General Medical Practice( European Requirements )Regulations 1994 ( 13 )
- The European Specialist Medical Qualifications Order 1995 ( 7, 12)
- The European Nursing and Midwifery Qualifications Designation Order 1996 ( 5 )
- The National Health Service( Vocational Training for General Medical Practice )1997 ( 7,11 )
- The National Health Service( Vocational Training for General Medical Practice )( Scotland )Regulations 1998 ( 7,10 )
- The Medical Practitioners( Vocational Training )Regulations( Northern Ireland )1998 ( 7, 9 )
- The European Primary and Specialist Dental Qualifications Regulations 1998 ( 15 )
- The General Osteopathic Council( Registration )Rules Order of Council 1998 ( 17 )
- The General Chiropractic Council( Registration )Rules Order of Council 1999 ( 20 )
- The General Chiropractic Council( Registration During Transitional Period ) Rules Order of Council 1999 ( 19 )
- The General Osteopathic Council( Application for Registration and Fees ) Rules Order of Council 2000 ( 18 )
- The Nursing and Midwifery Order 2001 ( 3 , 4 )
- The Health Professions Order 2001 ( 22 )
- The General Chiropractic Council( Registration of Chiropractors with Foreign Qualifications )Rules Order of Council 2002 ( 21 )
- The General and Specialist Medical Practice( Education, Training and Qualifications )Order 2003 ( 7, 8 ).

**Current position**

5. Doctors, dentists, general care nurses, midwives and pharmacists who are nationals of and who qualified in the existing member States are entitled to automatic recognition throughout the Community on the basis of compliance with coordinated minimum training requirements set out in the so-called “ sectoral “ Directives<sup>4</sup> . For health and social care professionals whose training requirements are not coordinated, the general system of recognition<sup>5</sup> applies.

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<sup>4</sup> 77/452 & 453/EEC (OJ L176 of 15.7.77)( nurses); 78/686 & 687/EEC( OJ L233 of 24.8.78) ( dentists ); 80/154 & 155/EEC ( OJ L33 of 11.2.80)( midwives ); 85/432 & 433/EEC( OJ L253 of 24.9.85)( pharmacists); and 93/16/EEC( OJ L165 of 7.7.93 )( doctors).

<sup>5</sup> See Directives 89/48/EEC( OJ L189 of 24.1.89 ) and 92/51/EEC( OJ L209 of 24.7.92 )

This is based on comparative scrutiny of migrants' qualifications and experience against the national requirements of the host member State; in the event of a substantial difference, they may be required to prove additional experience or to pass an adaptation period or aptitude test as a condition of recognition. Migrants who cannot benefit from either the sectoral or general systems are entitled, by virtue of their fundamental rights under the EC Treaty, to an individual assessment.

6. UK legislation is already designed to reflect these rights. In the case of the sectoral group, this is achieved through measures specific to the profession concerned. For others, it is through a combination of profession-specific measures, for which the Secretary of State for Health is responsible, and provision of general application, for which the Secretary of State for Education and Skills has responsibility<sup>6</sup>

### **Purpose of Regulations**

7. The principal aim of the Regulations is to transpose into UK law the technical adaptations which the Act of Accession makes to EU secondary legislation consequential to enlargement. In particular, they provide for

- a. definitions of nationals to include those of the new States;
- b. the listing of qualifications awarded by those States which are eligible for automatic recognition;
- c. the recognition of qualifications awarded for training begun before accession and which does not comply with minimum requirements, on proof of a minimum period – normally 3 out of the 5 preceding years – of professional experience.

This provision is consistent with that made on previous EU accessions.

8. In addition, special provision is made for the recognition of :

- a. qualifications awarded by, or for training begun in, Yugoslavia, the former Czechoslovakia or the Soviet Union before specified dates which are treated by one or more of the Czech Republic, Estonia, Latvia, Lithuania, Slovakia or Slovenia as equivalent to their own qualifications, on proof of a minimum period of professional experience;
- b. dentists who qualified or began training as doctors before accession in the former Czechoslovakia, the Czech Republic or Slovenia, on proof of a minimum period either of experience or of dental training;
- c. specified nursing and midwifery qualifications awarded by Poland ( at a lower academic level than in other new States, entry to which is now closed ), on proof of 5 out of the 7 preceding years' experience

Comparable provision has previously been made, in the case of (a) , on the unification of Germany, and, in the case of (b), to assist Austria, Italy and Spain in developing a distinct training

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<sup>6</sup> The European Communities( Recognition of Professional Qualifications )Regulations 1991( SI 1991/824); the European Communities( Recognition of Professional Qualifications )( Second General System )Regulations 2002( SI 2002/2934 ).

regime for dentistry. Other changes comprise minor corrections and updating to reflect a development in caselaw.

### **Consultation**

9. The Regulations amend legislation which applies equally to England and Wales and for the most part to Scotland and Northern Ireland, and have been agreed with the Devolved Administrations. They have also been developed in consultation with the regulatory bodies responsible for the registration of the health and social care professions in the UK. While the latter have raised no issues of substance about the terms of the instrument, they have expressed concern as to whether the new member States will be able to comply with minimum training requirements.

10. The position is that the new States are obliged to ensure that the qualifications they award for training begun on or after accession comply with applicable training requirements. The European Commission's assessment is that training on the ground in all the new States will meet this requirement, although in the case of the Czech Republic, Latvia and Poland, full transposition of the relevant Directives into national legislation will not have been completed on accession. The Government welcomes the Commission's commitment to continue to closely monitor the progress of the new States after as well as before accession. In the event that safeguards were needed, it would be open to the Government under the terms of Articles 37 and 38 of the Treaty of Accession to make a reasoned request to the Commission to take appropriate measures. The obligation on the existing member States to comply with the Community law remains unaffected.

### **Regulatory impact**

11. The Regulations have no regulatory impact on businesses, charities or the voluntary sector. A partial regulatory impact assessment is attached to this Memorandum. There are no identifiable additional cost implications for the Exchequer or the public.

Department of Health  
July 2004