
EXPLANATORY NOTE

(This note is not part of the Regulations)

^{M1}These Regulations, which are made under powers contained in the European Communities Act 1972, implement, in part, Directive 2005/36/EC (“the Directive”) which concerns the recognition of professional qualifications. The essential aim of the Directive is to facilitate the free movement of persons between member States of the European Community, by setting out principles and procedures which member States are to apply in determining the rights of migrants to pursue professions which require professional qualifications.

The Directive repeals and replaces a number of previous Directives dealing with the recognition of professional qualifications. The Directive restates the majority of the provisions contained in those repealed Directives, but adds significant new provisions and makes many other minor changes to the existing regimes. Accordingly, the Regulations make amendments to a large number of Acts and statutory instruments which implement the existing regimes, in order to reflect the changes and additions made by the Directive.

The Regulations implement the majority of the Directive in relation to a first group of health professions (the “sectoral professions”), namely, doctors (including specialists and general practitioners), pharmacists, dentists (including specialist dentists), nurses responsible for general care and midwives. (However the Regulations do not implement the Directive in relation to the pharmacy profession in Northern Ireland, where implementation is the responsibility of the Northern Ireland department).

The Regulations implement certain provisions of the Directive in relation to a second group of health and social care professions (the “general systems professions”), namely, opticians, osteopaths, chiropractors, social workers, professions complementary to dentistry, certain specialist nurses and those professions regulated by the Health Professions Council. The Directive is also implemented in relation to the profession of pharmacy technician from 1st April 2008, when it is expected that that profession will become subject to statutory regulation in Great Britain. These professions are not subject to the system of automatic mutual recognition of qualifications which applies in relation to the sectoral professions.

Those provisions of the Directive relating to health and social care professions which are not implemented by these Regulations are implemented by the European Communities (Recognition of Professional Qualifications) Regulations 2007 (S.I. 2007/2781) (“the General Systems Regulations”).

The Regulations apply in relation to the member States of the European Community and also in relation to the other EEA States, Iceland, Liechtenstein and Norway. The Regulations also apply in relation to Switzerland. The Regulations use the term “relevant European State” to describe the member States of the European Community plus Iceland, Liechtenstein, Norway and Switzerland. The main changes to existing legislation made by the Regulations may be summarised as follows.

(1) Article 10 cases

Article 10 of the Directive is a new provision which describes certain cases (“article 10 cases”) in which migrants wishing to establish themselves in the practice of a sectoral profession in a different relevant European State are subject to the recognition regime set out in the General Systems Regulations.

The details of that regime are implemented in Part 3 of the General Systems Regulations, and these Regulations implement article 10 by referring to persons who are entitled to practise their profession by virtue of that Part of the General Systems Regulations. See, for example in relation to doctors, regulations 8 and 14 (sections 14A and 19A Medical Act 1983).

(2) Provision of services on a temporary basis

Title II of the Directive sets out a regime for the provision of professional services on a temporary basis in a host relevant European State by a migrant who is established in the practice of the relevant profession in a different relevant European State. Such a regime already exists for the professions of doctor, dentist, nurse and midwife. However it is new for the profession of pharmacist and for all the general systems professions. The Regulations make provision to implement the details of the regime set out in Title II of the Directive, whose key features are:

- the provision by the migrant of a declaration before provision of services in a host relevant European State;
- the provision by the migrant of accompanying documents proving nationality, qualifications and lawful establishment in another relevant European State;
- in the case of the general systems professions, and the sectoral professions in article 10 cases only, the possibility for the competent authority to require verification of the migrant's qualifications;
- automatic registration of the eligible service provider in the competent authority's register.

For an example of implementation of Title II of the Directive in relation to a sectoral profession, see, in relation to dentists, regulation 132 (Schedule 4 Dentists Act 1984).

In relation to the general systems professions, implementation is largely achieved by Part 2 of the General Systems Regulations, but certain provisions relating to registration in the regulatory body's register are included in these Regulations. For an example of implementation in relation to a general systems profession, see, in relation to osteopaths, regulation 207 (section 5A Osteopaths Act 1993).

(3) Training conditions for the sectoral professions

The Directive harmonises training conditions for the sectoral professions, and there are few changes from the previous regime in this respect. However the mode of implementation has in some cases changed. Previously, in some cases, the training conditions were set out in full or in part in the domestic legislation. The Regulations make amendments so that the approach now adopted is to refer to the training conditions set out in the relevant provision of the Directive, and ambulatory references to the Directive ensure that any amendments to the training conditions in the future will be picked up.

See, for an example of implementation of the training conditions in relation to dentists (article 34 of the Directive), regulation 110 (section 12A Dentists Act 1984).

(4) Automatic recognition of qualifications and acquired rights for the sectoral professions

The Directive makes some changes to the regime of automatic recognition of listed European qualifications for the sectoral professions, and to the acquired rights provisions in relation to those professions. In particular, a certificate is now required to accompany a listed qualification, where the Directive requires this (see, for example, in relation to doctors, regulation 11(3)(b) (section 17(1)(a) Medical Act 1983)).

More generally, the provisions of existing legislation relating to the sectoral professions which deal with listed European qualifications and acquired rights are substantially altered by the Regulations in order to update terminology and references. Notably, references are now made to the qualifications listed for each sectoral profession in Annex V of the Directive, and the Regulations, in many cases, repeal existing provisions which set out the listed qualifications in domestic legislation. This approach has been facilitated by the ambulatory references to the Directive which are included in the Regulations.

(5) Competent authority functions

Article 56(3) of the Directive requires relevant European States to designate competent authorities which will deal with applications and the provision of certificates etc. under the Directive. For the sectoral professions, the Regulations make the required designations and set out, in a Table, various Directive functions conferred on the competent authority.

For an example of the implementation of article 56(3) and other relevant Directive provisions, see, in relation to nurses and midwives, regulations 170 and 172 (article 40 of, and Schedule 3 to, the Nursing and Midwifery Order 2001).

(6) Third-country qualifications meeting minimum training conditions

Article 2(2) of the Directive requires that, where a migrant has a qualification obtained otherwise than in a relevant European State, and which has not previously been recognised by a relevant European State, the qualification may be given recognition only if it meets the minimum training conditions set out in the Directive. This is a new provision. See, for example in relation to pharmacists, regulation 75 (article 12(1A) Pharmacists and Pharmacy Technicians Order 2007).

(7) Documentation requirements

Article 50(1) and Annex VII of the Directive specify documents which a competent authority may require where a migrant seeks to establish himself in a profession in a different relevant European State. Two new documents are described: firstly a proof of nationality, and secondly, in the case of the sectoral professions only, a certificate attesting to the conformity of the professional qualification with that listed in the Directive. Further changes are made to the existing regime, particularly in relation to the documents which may be required giving evidence of good character and good health.

For an example of implementation of these requirements, see, in relation to pharmacists, regulation 78 (article 17 of the Pharmacists and Pharmacy Technicians Order 2007) and regulation 107 (rule 6 of the Royal Pharmaceutical Society of Great Britain (Registration) Rules 2007).

(8) Acknowledgement of applications and time-limits

Article 51(1) of the Directive requires relevant European States to acknowledge receipt of applications within one month of receipt. There is also minor amendment to the time-limits within which competent authorities must deal with applications for establishment. See, for example in relation to nurses and midwives, regulation 159 (article 9 of the Nursing and Midwifery Order 2001).

(9) Appeals

The Regulations make certain changes in relation to appeals, notably relating to a specific right of appeal against a compensation measure imposed under the General Systems Regulations, and a right of appeal against a decision by a competent authority as to a migrant's entitlement to registration as a service provider.

For an example of implementation of these provisions, see, in relation to dentists, regulation 131 (Schedule 2A Dentists Act 1984), and in relation to professions complementary to dentistry, regulation 134 (Schedule 4A Dentists Act 1984).

(10) Accession of Bulgaria and Romania

^{M2}The Directive has been amended by Council Directive [2006/100/EC](#), which makes amendments in connection with the accession of Bulgaria and Romania to the European Community. The Regulations implement the changes by making some amendments to the acquired rights provisions concerning certain professionals who qualified in those countries.

A transposition note is available from the Department of Health, Quarry House, Quarry Hill, Leeds LS2 7UE, and appears on the following website, <http://www.dh.gov.uk/en/Consultations/Responsestoconsultations>. The transposition note gives further information about the implementation of the Directive, in so far as it is implemented by these Regulations.

An impact assessment of the effect that this instrument will have on the costs of business is available from the same address, and on the same website, as the transposition note.

Changes to legislation:

There are currently no known outstanding effects for the The European Qualifications (Health and Social Care Professions) Regulations 2007.