

2020 No. 689

PROFESSIONAL QUALIFICATIONS

The European Union (Regulated Professions Proportionality Assessment) Regulations 2020

<i>Made</i>	- - - -	<i>1st July 2020</i>
<i>Laid before Parliament</i>		<i>6th July 2020</i>
<i>Coming into force</i>	- -	<i>30th July 2020</i>

The Secretary of State is designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to measures relating to the access to, or the pursuit of a regulated profession.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation, commencement and expiry

1.—(1) These Regulations may be cited as the European Union (Regulated Professions Proportionality Assessment) Regulations 2020.

(2) They come into onto force on 30th July 2020.

(3) They cease to have effect at the instant immediately before the point immediately before IP completion day.

Interpretation and scope

2.—(1) In these Regulations—

“the 2015 Regulations” means the European Union (Recognition of Professional Qualifications) Regulations 2015(c);

“professional qualifications” has the meaning given by regulation 9(1) of the 2015 Regulations;

(a) S.I. 2020/533. Under section 57(1) of the Scotland Act 1998 (c.46), despite the transfer to Scottish Ministers of functions in relation to implementation obligations under European Union law in relation to certain matters by virtue of section 53 of that Act, the function of the Secretary of State in relation to any matter continues to be exercisable by him as regards Scotland for the purposes specified in section 2(2) of the European Communities Act 1972 (c.68).

(b) 1972 c.68. The European Communities Act 1972 was repealed by section 1 of the European Union (Withdrawal) Act 2018 (c.16) with effect from exit day, but saved with modifications until IP completion day by section 1A of that Act (as inserted by section 1 of the European Union (Withdrawal Agreement) Act 2020 (c.1). Section 2(2) of the European Communities Act 1972 was amended by section 27(1) of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c.7).

(c) S.I. 2015/2059, amended by paragraph 389 of Schedule 19 to the Data Protection Act 2018 (c.12), S.I. 2016/696, 2016/1094, 2016/1030, 2018/166, 2018/838 and 2018/1101.

“professional regulatory provision” means a new, or an amendment to an existing, legislative, regulatory or administrative provision restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title;

“proportionality assessment” means an assessment of the proportionality of a professional regulatory provision, carried out in accordance with regulation 3;

“regulated profession” has the meaning given by regulation 8(1) of the 2015 Regulations; and

“relevant authority” means, in relation to a professional regulatory provision contained in, or proposed to be contained in—

- (a) an Act of Parliament, the Secretary of State;
- (b) an Act of the Senedd Cymru, the Welsh Ministers;
- (c) an Act of the Scottish Parliament, the Scottish Ministers;
- (d) Northern Ireland legislation as defined in section 24(5) of the Interpretation Act 1978^(a), the relevant Northern Ireland department;
- (e) an Order in Council, Order of Council, warrant, charter, or other instrument made under the prerogative, the Secretary of State, unless the instrument is made by—
 - (i) Scottish Ministers, in which case the relevant authority is the Scottish Ministers,
 - (ii) a Minister as defined in section 7(3) of the Northern Ireland Act 1998^(b) or a Northern Ireland department, in which case the relevant authority is the relevant Northern Ireland department;
- (f) any subordinate legislation as defined in section 21(1) of the Interpretation Act 1978 where the definition of that term has effect as if the reference to “Act” included Northern Ireland legislation (as defined in section 24(5) of the Interpretation Act 1978) and Acts of the Scottish Parliament, the person responsible for making the subordinate legislation; or
- (g) any other legislative, regulatory or administrative provision, the person responsible for introducing the provision.

(2) These Regulations do not apply to a professional regulatory provision in respect of—

- (a) any profession regulated under Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016^(c);
- (b) the profession of—
 - (i) qualified teacher within the meaning of section 132 of the Education Act 2002^(d) in a school (as defined in section 14(6) of the Education (Wales) Act 2014^(e)) in Wales,
 - (ii) head teacher within the meaning of section 135 of the Education Act 2002 in a school (as defined in section 14(6) of the Education (Wales) Act 2014) in Wales,
 - (iii) teacher at a further education institution (within the meaning of section 140 of the Education Act 2002) in Wales,
 - (iv) statutory auditor as defined in section 1210 of the Companies Act 2006^(f),
 - (v) notary appointed by an official act of government;
- (c) any regulated profession in relation to which specific arrangements directly related to the recognition of professional qualifications are made in any EU Regulation, EU Directive, EU decision or EU tertiary legislation and the effect of those arrangements exclude the application of Directive 2005/36/EC of the European Parliament and the Council of 7th September 2005 on the recognition of professional qualifications^(g).

(a) 1978 c.30; section 24(5) amended by the Northern Ireland Act 1998 (c. 47).

(b) 1998 c.47.

(c) 2016 anaw 2.

(d) 2002 c.32.

(e) 2014 anaw 5.

(f) 2006 c.46; section 1210 was amended by S.I. 2008/565, 2008/1950, 2012/1809, 2013/3115, 2017/516, and 2017/1164.

(g) OJ No. L 255, 30.9.2005, p.22 as amended by Directive 2013/55/EU (OJ No. L 354, 28.12.2013, p. 132).

(3) These Regulations do not apply to a professional regulatory provision to the extent that it implements EU legislation concerning the regulation of a profession, where there is no choice as to the exact way in which those requirements are to be transposed.

Requirement to carry out a proportionality assessment

3.—(1) The relevant authority must carry out a proportionality assessment in respect of a professional regulatory provision before the provision takes effect.

- (2) When carrying out a proportionality assessment, the relevant authority must ensure that—
- (a) the professional regulatory provision complies with the requirements set out in regulations 4 to 6;
 - (b) the extent of the assessment is proportionate to the nature, content and impact of the professional regulatory provision;
 - (c) the reasons for considering that the professional regulatory provision is justified and proportionate are substantiated by qualitative and, wherever possible and relevant, quantitative elements; and
 - (d) the assessment is carried out in an objective and independent manner.

Non-discrimination

4. A professional regulatory provision must not directly or indirectly discriminate against nationals of an EU member State on the basis of nationality or residence.

Justification by public interest objectives

5.—(1) A professional regulatory provision must be justified by public interest objectives.

(2) A professional regulatory provision is justified by public interest objectives if it is objectively justified on the basis of public policy, public security or public health, or by overriding reasons in the public interest, such as—

- (a) preserving the financial equilibrium of the social security system;
- (b) the protection of consumers, of recipients of services and of workers;
- (c) the safeguarding of the proper administration of justice;
- (d) ensuring the fairness of trade transactions;
- (e) the combating of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision;
- (f) transport safety;
- (g) the protection of the environment and the urban environment;
- (h) the health of animals;
- (i) the protection of intellectual property;
- (j) the safeguarding and conservation of the national historic and artistic heritage;
- (k) social policy objectives;
- (l) cultural policy objectives.

(3) Overriding reasons in the public interest do not include grounds of a purely economic nature or purely administrative reasons.

Proportionality

6.—(1) A professional regulatory provision must be suitable for achieving the objective pursued and must not go beyond what is necessary to achieve that objective.

- (2) When carrying out a proportionality assessment, the relevant authority must consider—

- (a) the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients (including consumers), professionals or third parties;
- (b) whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient to achieve the objective pursued;
- (c) the suitability of the provision as regards its appropriateness to achieve the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and addresses the risks identified in a similar way as in comparable activities;
- (d) the impact of the provision on—
 - (i) the free movement of persons and services within the European Union;
 - (ii) consumer choice; and
 - (iii) the quality of the service provided;
- (e) the possibility of using less restrictive means to achieve the public interest objective, including, where—
 - (i) the provisions are justified by consumer protection only;
 - (ii) the risks identified are limited to the relationship between the professional and the consumer; and
 - (iii) the risks therefore do not negatively affect third parties,
 whether the objective can be achieved by means that are less restrictive than reserving activities; and
- (f) the effect of the professional regulatory provision, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the professional regulatory provision combined with other requirements contribute to, or are necessary for the achievement of, the same public interest objective.

(3) When taking into account the consideration set out in paragraph (2)(f), the relevant authority must assess the effect of the professional regulatory provision when combined with other requirements, including in particular—

- (a) reserved activities, protected professional titles or any other form of regulation of a regulated profession;
- (b) obligations to undergo continuous professional development;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;
- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding specific professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, including where the profession is regulated in parts of the United Kingdom in a manner that is different to the way in which it is regulated in other parts;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;
- (k) fixed minimum or maximum tariff requirements;
- (l) requirements on advertising.

(4) Where relevant to the nature and content of the professional regulatory provision, the relevant authority must also consider—

- (a) the connection between the scope of activities covered by a profession or reserved to it and the professional qualification required;
- (b) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess specific professional qualifications, in particular as regards the level, nature and duration of the training or experience required;
- (c) the possibility of obtaining the professional qualification by alternative routes;
- (d) whether, and why, the activities reserved to certain professions can or cannot be shared with other professions;
- (e) the degree of autonomy in exercising a regulated profession and the impact of organisational and supervision arrangements on the achievement of the objective pursued, in particular where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional; and
- (f) the scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

(5) In this regulation—

“protected professional title” means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;

“reserved activities” means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

Temporary and occasional provision of services

7.—(1) Before a professional regulatory provision takes effect, the relevant authority must ensure compliance with the principle of proportionality of any specific requirement in that provision related to temporary and occasional provision of services, provided under Part 2 of the 2015 Regulations, including—

- (a) automatic temporary registration with or pro-forma membership of a professional organisation or body, in accordance with regulation 14(2) of the 2015 Regulations;
- (b) a declaration to be made in advance in accordance with regulation 15 of the 2015 Regulations, documents to be required in accordance with regulation 16 of the 2015 Regulations, or any other equivalent requirement;
- (c) the payment of a fee, or any charges, required for the administrative procedures related to the access to, or pursuit of, regulated professions which the service provider incurs.

(2) This regulation does not apply to measures designed to ensure compliance with applicable employment terms and conditions applied in accordance with EU law.

Healthcare professions

8. Where a professional regulatory provision concerns the regulation of healthcare professions and has patient safety implications, the relevant authority must take account of the objective of ensuring a high level of human health protection when carrying out a proportionality assessment of the provision.

Public information and consultation

9.—(1) Before a professional regulatory provision takes effect, the relevant authority must—

- (a) by appropriate means, make information about the proposed professional regulatory provision available to the public, service recipients and other relevant stakeholders, including those who are not members of the profession concerned;
 - (b) consult relevant stakeholders and such persons as it considers appropriate.
- (2) A professional regulatory provision must be accompanied by an explanation which is sufficiently detailed to make it possible to assess the proportionality of the provision.

Report

10.—(1) After completing a proportionality assessment, the relevant authority must send to the Secretary of State—

- (a) a copy of the professional regulatory provision; and
- (b) the reasons for considering that the provision is justified and proportionate.

(2) The relevant authority must also send the information required by paragraph (1) to the European Commission and record it in the database of regulated professions referred to in Article 59(1) of Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications.

(3) Paragraph (1) does not apply where the relevant authority is the Secretary of State.

Monitoring of professional regulatory provisions

11. After a professional regulatory provision takes effect, the relevant authority must monitor the compliance of the provision with the principle of proportionality, having due regard to any developments that have occurred since it took effect.

1st July 2020

Nadhim Zahawi
Parliamentary Under Secretary of State
Department for Business, Energy & Industrial Strategy

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions (“the Directive”). The Directive requires an assessment of proportionality to be undertaken before introducing new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions (“a professional regulatory provision”). These Regulations will cease to have effect on IP completion day.

These Regulations require the relevant authority to carry out this proportionality assessment. For primary legislation, the relevant authority is the Secretary of State or the appropriate devolved authority. For subordinate legislation, the relevant authority is the person responsible for making the subordinate legislation. For all other professional regulatory provisions, the relevant authority is the person responsible for introducing the provision.

Regulation 3 places an obligation on the relevant authority to carry out a proportionality assessment and sets out conditions which must be met when carrying out a proportionality assessment. The relevant authority must ensure that the provision complies with regulations 4 to 6 of these Regulations.

Regulation 4 requires a professional regulatory provision to be non-discriminatory in respect of EU citizens on the basis of nationality or residence.

Regulation 5 requires a professional regulatory provision to be justified by public interest objectives. It sets out when a provision will be justified by public interest objectives and gives examples of reasons which could constitute overriding reasons in the public interest.

Regulation 6 sets out the principle of proportionality and sets out considerations which must be taken into account when assessing the proportionality of a professional regulatory provision.

Regulation 7 requires relevant authorities to also ensure compliance with the principle of proportionality when imposing specific requirements for the temporary and occasional provision of services.

Regulation 8 requires relevant authorities to take into account the objective of ensuring a high level of human health protection when a provision relates to regulation of healthcare professions which have patient safety implications.

Regulation 9 requires the relevant authority to make information publicly available about a proposed professional regulatory provision and to consult relevant stakeholders.

Regulation 10 requires the relevant authority to send a copy of the professional regulatory provision and the completed proportionality assessment to the Secretary of State and the European Commission.

Regulation 11 requires the relevant authority to monitor the proportionality of a professional regulatory provision.

An impact assessment has not been produced for this instrument as no, or no significant, impact on the private or voluntary sector is foreseen. An Explanatory Memorandum and a transposition note are available alongside the instrument on the www.legislation.gov.uk website. Copies have also been placed in the Libraries of both Houses of Parliament.

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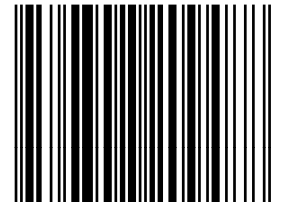
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