

Explanatory Memorandum to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) (Amendment) Regulations 2020

This Explanatory Memorandum has been prepared by Social Services and Integration Directorate and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister/Deputy Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) (Amendment) Regulations 2020

I have made the statements required by the European Union (Withdrawal) Act 2018. These statements can be found in Part 2 of the annex to this memorandum.

Julie Morgan

Deputy Minister for Health and Social Services

10 December 2019

PART 1

1. Description

- 1.1 The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) (Amendment) Regulations 2020 (“this instrument”) makes amendments to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019() (“the principal Regulations”). (“this instrument”) makes amendments to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019⁽¹⁾ (“the principal Regulations”).
- 1.2 The amendments made by this instrument are necessary to reflect commitments made in respect of the recognition of professional qualifications in an agreement between the UK Government and the Swiss Confederation on citizen’s rights⁽²⁾ following the withdrawal of the UK from the European Union and the free movement of persons agreement and an agreement between the UK Government and EFTA States⁽³⁾ on arrangements regarding citizens’ rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 This instrument is being made under the EU (Withdrawal) Act 2018 and is required to be laid for sifting by the Constitutional and Legislative Affairs Committee under that Act.
- 2.2 The affirmative procedure is appropriate for this instrument although the subject-matter of the subordinate legislation is technical in nature and the amendments it makes are minor.

3. Legislative background

- 3.1 This instrument is being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.
- 3.2 In accordance with the requirements of that Act the Deputy Minister for Health and Social Services has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.
- 3.3 These Regulations are being made under the affirmative procedure.

⁽¹⁾ S.I. 2019/761 (W. 144).

⁽²⁾ Agreement signed at Berne on 25 February 2019.

⁽³⁾ Iceland, the Principality of Liechtenstein and the Kingdom of Norway; agreement was signed in London on 2 April 2019.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

- 4.1 The European Union Directive 2005/36/EC (“the 2005 Directive”) facilitates the free movement of prescribed professionals across the European Economic Area (EEA) and Switzerland by setting out a reciprocal framework of rules for the recognition of professional qualifications. This enables European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised and gain access in an EEA State or Switzerland to the regulated profession in which they are qualified in another EEA State or Switzerland, in order to work on a permanent or temporary basis.
- 4.2 The 2005 Directive is currently implemented via a main set of the regulations which set out the general approach, namely, the European Union (Recognition of Professional Qualifications) Regulations 2015 (“the 2015 Regulations”⁽⁴⁾) and the European Communities (Recognition of Professional Qualifications) Regulations 2007⁽⁵⁾ (which continue to apply in relation to Switzerland), and then sectoral specific regulations. For the social care professions, the sectoral specific legislation is the European Qualifications (Health and Social Care Professions) Regulations 2016⁽⁶⁾ (“the 2016 Regulations”), which introduced a range of amendments relating to EEA and Swiss social workers and social care managers into the Regulation and Inspection of Social Care (Wales) Act 2016⁽⁷⁾ (“the 2016 Act”).
- 4.3 The framework of Directives and the domestic legislation which mutual recognition of professional qualifications will cease to apply to the UK when the UK leaves the EU. Therefore the domestic legislation implementing the Directives will not operate effectively after exit.
- 4.4 The principal Regulations make amendments to the 2016 Act to ensure that in the event of a “no deal” exit from the EU that the Act would continue to operate effectively and to correct any deficiencies. The principal Regulations made savings and transitional provision to ensure that the professional qualifications of social workers and social care managers in Wales affected by exit are protected and provided with certainty about their future ability to practise their profession in Wales.

⁽⁴⁾ S.I. 2015/2059.

⁽⁵⁾ S.I. 2007/2781; these Regulations continue to apply before exit day by virtue of regulation 78 of the 2015 Regulations and by regulation 115 of the 2016 Regulations.

⁽⁶⁾ S.I. 2016/1030.

⁽⁷⁾ 2016 anaw 4.

Why is it being changed?

4.5 The amendments made by the this instrument will mirror the UK Government's proposed amendments to its legislation; they add additional transitional provision to the principal Regulations arising from both agreements to deal with matters that are not already covered in the principal Regulations, some of which affect all four EFTA states: such as equal treatment and mandatory cooperation required by regulators. They also makes additional transitional provision arising from the Swiss agreement, namely: an extended period to apply for a recognition decision under the pre-exit rules; and an extended period in which social workers and social care managers can continue to rely on the pre-exit recognition of professional qualification arrangements to provide temporary and occasional services in Wales.

What will it now do?

4.6 The purpose of these Regulations is to ensure that we reduce the risk of legal challenge and to reflect this new arrangement and reinstate the "temporary and occasional" provisions.

5. Consultation

5.1 As these amendments are technical in nature and involve no substantial policy change, no public consultation was undertaken. The purpose of the instrument is solely to enable the current legislative and policy framework to remain unchanged by the withdrawal of the United Kingdom from the European Union.

5.2 In light of the urgency to make these amendments prior to the extension of the EU exit date, no technical discussions concerning the proposed amendments to the provisions of the 2016 Act under these Regulations were held with Social Care Wales to ensure the amended recognition procedures are operable. However, the regulator has been made aware of these proposals.

6. Regulatory Impact Assessment (RIA)

6.1 No RIA has been undertaken as there is no significant impact on business, charities, voluntary bodies or the public sector resulting from this instrument. The changes are technical in nature and ensure that a system of recognition of professional qualifications continues so that individuals with EEA and Swiss qualifications will have a means to seek recognition of their qualifications after exit day.

Annex

Statements under the European Union (Withdrawal) Act 2018

Part 1

Table of Statements under the 2018 Act

This table sets out the statements that may be required of the Welsh Ministers under the 2018 Act. The table also sets out those statements that may be required of Ministers of the Crown under the 2018 Act, which the Welsh Ministers have committed to also provide when required. The required statements can be found in Part 2 of this annex.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(7) and 4(3), Schedule 7 <i>Paragraph 3(7) (anticipated to be a requirement on Welsh Ministers in Standing Orders)</i>	The Welsh Ministers exercising powers in Part 1 of Schedule 2 to make a Negative SI Paragraph 3(7) applies to Ministers of the Crown, but Welsh Ministers have committed to make the same statement	A statement to explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation of the CLA Committee (as sifting committee)
Appropriateness	Sub-paragraph (2) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have	A statement to explain the good reasons for making the instrument and that what is being done is a reasonable course of action.

		committed to make the same statement when exercising powers in Schedule 2	
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	<p>A statement to explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them.</p> <p>A statement that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.</p>
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement to explain the instrument, identify the relevant law before exit 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	Applies to Ministers of the Crown exercising powers in sections 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2. Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2	A statement setting out the 'good reasons' for creating a criminal offence, and the penalty attached.
Sub-delegation	Paragraph 30, Schedule 7	Applies to Ministers of the Crown exercising powers in sections 18(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved	A statement to explain why it is appropriate to create such a sub-delegated power.

		<p>Authority.</p> <p>Welsh Ministers have committed to make the same statement when exercising powers in Schedule 2 or paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority</p>	
Urgency	Sub-paragraph (2) and (8) of paragraph 7, Schedule 7	Welsh Ministers exercising powers in Part 1 of Schedule 2 but using the urgent procedure in paragraph 7 of Schedule 7	A statement that the Welsh Ministers are of the opinion that it is necessary to make the SI using the urgent procedure and the reasons for that opinion.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Sifting statements

- 1.1 The Deputy Minister for Health and Social Services, Julie Morgan has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:
- 1.2 “In my view the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2018 should be subject to a resolution of the National Assembly for Wales (i.e. the affirmative procedure)”.
- 1.3 This is the case because the amendments being made are technical in nature and they are required to correct deficiencies in domestic legislation arising from the United Kingdom’s withdrawal from the European Union without an agreement.

2. Appropriateness statement

- 2.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:
- 2.2 “In my view The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) (Amendment) Regulations 2020 do no more than is appropriate”.
- 2.3 This is the case because the instrument only makes changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union without an agreement.

3. Good reasons

- 3.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are: The instrument makes amendments to domestic legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies arising from the United

Kingdom's withdrawal from the European Union without a withdrawal agreement and ensure an operable system for recognition at exit.

4. Equalities

- 4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statements.
- 4.2 "This statutory 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.
- 4.3 In relation to the statutory instrument, I, Julie Morgan, 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 paragraph 4 (Purpose & intended effect of the legislation) of the main body of this explanatory memorandum.

6. Criminal offences

- 6.1 No criminal offences are being created in these Regulations. No criminal offences statements are therefore necessary.

7. Legislative sub-delegation

- 7.1 No new sub-delegation powers are being created by these amendments. No legislative sub-delegation statement is therefore required

8. Urgency

- 8.1 This statutory instrument is not being made urgently. No urgency statement is therefore required.