NOTIFICATION TO THE SCOTTISH PARLIAMENT

The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2018

A brief explanation of law that the proposals amend

The European Union (Recognition of Professional Qualification) Regulations 2015 implement part of Directive 2005/36/EC on the recognition of professional qualifications in the UK. The Directive sets out a reciprocal framework of rules for recognition of professional qualifications, which enables European Economic Area (EEA) nationals and Swiss nationals to have their professional qualifications recognised and gain access to the profession in which they are qualified in an EEA State or Switzerland, in eligible states other than that in which the qualification was obtained.

The Directive will no longer apply to the UK on its withdrawal from the EU, nor will the UK be part of the single market and bound to facilitate the Treaty rights of free movement of workers, freedom of establishment and the freedom to provide services. Therefore, the European Union (Recognition of Professional Qualification) Regulations 2015 will not operate effectively after exit date.

The UK Government therefore proposes to amend the European Union (Recognition of Professional Qualification) Regulations 2015 to ensure that a system of recognition of qualifications continues and that professionals arriving in the UK with EEA or Swiss qualifications after the Exit date will have the means by which to seek official recognition of their qualifications.

Summary of the proposals and how these correct deficiencies

The amended Regulations will retain a general system for recognition where UK regulators will be required to recognise EEA and Swiss qualifications which are of an equivalent standard to UK qualifications in scope, content and level. This will help to mitigate the disruption to the supply of EEA and Swiss qualified professionals who may wish to work in the UK.

The amended Regulations will leave UK regulators with the discretion to decide how to treat non-equivalent EEA or Swiss qualifications; they may (but are no longer obliged to) offer compensation measures as an avenue to recognition in the event their qualifications were not considered equivalent. While professionals will retain a route of recognition of their professional qualification, they will be subject to any market access requirements that currently apply to international service providers.

The framework which allows EEA and Swiss Nationals to provide services in a regulated profession on a temporary and occasional basis in the UK will not be retained, save for transitional provisions. It is no longer considered appropriate to retain the temporary and occasional service provision in this context as it is based
on a reciprocal relationship with the EU that will no longer exist, and is particularly focussed on facilitating free movement of persons and freedom to provide services.

The amended Regulations are no longer limited to EEA or Swiss Nationals and will apply to anyone holding an EEA or Swiss qualification. In the context of a “no deal scenario”, it is no longer appropriate to continue to give preferential treatment to EEA and Swiss nationals.

Certain professions will not be in the scope of these amended regulations. These are all health and social care professions, Veterinary surgeons, Farriers and architectural professions. They will be subject to separate regulation under each profession’s governing legislation.

Swiss qualifications will now fall within the scope of the amended Regulations, along with EEA qualifications. The European Union (Recognition of Professional Qualification) Regulations 2015 revoked the European Communities (Recognition of Professional Qualifications) Regulations 2007 (which implemented an earlier version of the Directive). This was subject to saving provisions which continued their application in relation to Swiss Nationals seeking recognition in the UK. The 2007 Regulations, however, will now cease to have any effect and Swiss qualifications will be treated the same as EEA qualifications.

An explanation of why the change is considered necessary

The Directive will no longer apply to the UK on its withdrawal from the EU, nor will the UK be part of the single market and bound to facilitate the Treaty rights described above. Therefore, the European Union (Recognition of Professional Qualification) Regulations 2015 will not operate effectively after exit date. Some areas of the Regulations will become inoperable as a consequence of Exit and other areas will no longer be appropriate to retain given that they based on a reciprocal relationship with the EU of which the UK is no longer a member.

Domestic UK legislation therefore requires to be amended, and work will continue on developing a new system for the recognition of professional qualifications for the future.

The proposals are intended to help to maintain workforce supply for businesses and key public services, and to provide certainty for professionals already here that their qualifications will continue to be recognised in the UK after withdrawal from the EU.

Scottish Government categorisation of significance of proposals

The Scottish Government considers the proposals to fall into Category A – lowest level of scrutiny – on the basis that they (a) are minor and technical in detail, (b) ensure continuity of law, and (c) involve limited policy choice.

The Directive facilitates the employability of people exercising Treaty rights of free movement of workers, freedom of establishment and the freedom to provide
services, where people providing services in the UK do so from another country (in this case the EU/EEA and Switzerland) and who must be able to demonstrate that they are suitably professionally qualified. As an EU member, services in the UK are currently subject to the Provision of Services Regulations (2009).

At its meeting on 20 November 2018, the Economy, Energy and Fair Work Committee considered the (category A) proposal by the Scottish Government to consent to the UK Government legislating using the powers under the European Union (Withdrawal) Act 2018 in relation to the Provision of Services (Amendment etc.) (EU Exit) Regulations 2018. The Committee agreed that it was content with the Scottish Ministers’ proposal.

**Impact on devolved areas**

The European Union (Recognition of Professional Qualification) Regulations 2015 apply to certain Scottish regulators and their devolved responsibilities in regulating their respective profession.

Specifically, this includes the legal profession (in Scotland, the regulators are the Law Society of Scotland and the Faculty of Advocates) and the regulation of teachers in Scotland, which are devolved matters. Teachers will continue to be subject to the general system of recognition, as amended by these Regulations. The General Teaching Council for Scotland (GTCS) will retain broad regulatory powers in that regard.

The proposals also disapply certain professions, including the regulation of social workers in Scotland and certain health professions which are devolved. These are subject to certain saving and transitional provisions for pre-existing/pending cases with the effect that applicants with EEA/Swiss qualifications will, on and after exit day, be treated in the same way as any other non-Scottish qualified applicant under the Regulation of Care (Scotland) Act 2001.

**Summary of stakeholder engagement/consultation**

This was conducted by BEIS on a UK-wide basis.

However, the Scottish Government has worked closely with the Scottish Social Services Council (SSSC) to ensure that the proposals concerning social workers in Scotland will work effectively in practice. The SSSC is content with the approach being taken.

There has been no formal consultation on this SI in so far as it relates to teachers. The proposal is to make technical changes to legislation to reflect the UK withdrawal from the EU. However, the General Teaching Council for Scotland (GTCS) is aware and will consider any appropriate measures it may require to take for implementation. The Scottish Government considers that in the circumstances formal consultation is disproportionate and impractical given the timescales.
The UK Government has confirmed that existing recognitions will stand, and the primary impact of this change will be on those people wishing to have professional qualifications recognised in the UK in the future. The Scottish Government will liaise with the UK Government to help ensure that consultation on the future mechanism takes into account any particular concerns for business and the public sector in Scotland.

A note of other impact assessments, (if available)

Not known at this time, but UKG should have followed statutory processes in this regard.

Summary of reasons for Scottish Ministers’ proposing to consent to UK Ministers legislation

BEIS has engaged proactively and cooperatively with the Scottish Government in listening to and addressing issues raised by policy and legal officials throughout the drafting process. As implementation of the Directive was taken forward on UK-wide basis in a UK SI, it is appropriate for the corresponding no-deal EU exit contingencies to be made on the same basis. Concerns in relation to continued recognition of qualifications are common to employers in the public and independent sectors across the four countries of the UK, and it is a pragmatic and consistent approach to continue to legislate in this area on a UK-wide basis.

Intended laying date (if known) of instruments likely to arise

BEIS is the lead UK department for this SI which is due to be laid in draft (affirmative procedure) on 12 December 2018.

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister’s proposal to consent, why not?

The Scottish Government had understood that this SI would be laid for sifting on 12 December (proposed negative procedure) and laid formally on 7 January 2019. However, the UK Government has reclassified the SI as affirmative. The timetable for consideration of this notification does not allow for the full 28 days scrutiny period and it would be very helpful if the Scottish Parliament is able to consider this notification [ ].

Information about any time dependency associated with the proposal

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

Any significant financial implications?

There are no financial implications for the Scottish Government.