
W E L S H S T A T U T O R Y
I N S T R U M E N T S

2020 No. 696 (W. 154)

EDUCATION, WALES

**PROFESSIONAL
QUALIFICATIONS, WALES**

SOCIAL CARE, WALES

The European Union (Regulated
Professions Proportionality
Assessment) (Wales) Regulations
2020

EXPLANATORY NOTE

(This note is not part of the Regulations)

The agreement between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union which sets out the arrangements for the United Kingdom's withdrawal from the EU requires the UK to comply with its legal obligations under EU law for the duration of the transition period. This includes transposition obligations.

Under Directive 2005/36/EU (transposed into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)), member States are required to complete proportionality tests when regulating professions.

Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 (“the 2018 Directive”) goes further and establishes a detailed framework for conducting proportionality tests 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 implement the 2018 Directive and require the Welsh Ministers to carry out this proportionality assessment. As the UK’s obligations to comply with transposition obligations only extends until the end of the implementation period, these

Regulations are time-limited and will expire on IP completion day (see the definition in regulation 2).

Whilst section 5A of the European Union (Withdrawal Agreement) Act 2020 (c. 1) (“the 2020 Act”) provides that the fact that anything which continues to be, or forms part of, domestic law on or after IP completion day by virtue of sections 2 to 4 of the 2020 Act has an effect immediately before IP completion day which is time-limited by reference to the implementation period does not prevent it from having an indefinite effect on and after IP completion day by virtue of sections 2 to 4, there is no requirement for these Regulations to have such an indefinite effect, and they will not therefore continue to have effect after IP completion day.

Regulation 3 sets out the scope of these Regulations. These Regulations apply to the regulated professions listed in paragraphs (1) to (3). Paragraph (4) sets out the restrictions on the scope of these Regulations in accordance with Article 2 of the 2018 Directive.

Regulation 4 requires the Welsh Ministers to carry out proportionality assessments and sets out conditions which must be met when doing so.

Regulation 5 requires Welsh Ministers to ensure that professional regulatory provisions are neither directly nor indirectly discriminatory on the basis of nationality or residence.

Regulation 6 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, as listed in Article 6 of the 2018 Directive.

Regulation 7 deals with the principle of proportionality and sets out considerations which must be taken into account when assessing the proportionality of a professional regulatory provision, as well as those which must be considered when relevant to the nature and content of the professional regulatory provision.

Regulation 8 requires the Welsh Ministers to also ensure compliance with the principle of proportionality when imposing specific requirements for the temporary and occasional provision of services.

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

Regulation 10 requires the Welsh Ministers to send a copy of the professional regulatory provision and the

completed proportionality assessment to the European Commission.

Regulation 11 requires the Welsh Ministers to monitor the proportionality of a professional regulatory provision.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

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EDUCATION, WALES

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SOCIAL CARE, WALES

The European Union (Regulated
Professions Proportionality
Assessment) (Wales) Regulations
2020

<i>Made</i>	7 July 2020
<i>Laid before Senedd Cymru</i>	8 July 2020
<i>Coming into force</i>	30 July 2020

The Welsh Ministers, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972⁽¹⁾ and section 58B of the Government of Wales Act 2006⁽²⁾, make the following Regulations.

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- (1) 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 (defined in section 20 of that Act as 31 January 2020 at 11pm), 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).
- (2) 2006 c. 32. Section 58B was inserted by sections 20(1) and 71(4) of, and paragraphs 1 and 6 of Schedule 7 to, the Wales Act 2017 (c. 4) and provides that section 2(2) of the European Communities Act 1972 applies to the Welsh Ministers as if they were a Minister of the Crown or government department designated by Order in Council under that provision.

Title, commencement, expiry and application

1.—(1) The title of these Regulations is the European Union (Regulated Professions Proportionality Assessment) (Wales) Regulations 2020.

(2) These Regulations come into force on 30 July 2020.

(3) These Regulations cease to have effect on IP completion day⁽¹⁾.

(4) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2015 Regulations” (“*Rheoliadau 2015*”) means the European Union (Recognition of Professional Qualifications) Regulations 2015⁽²⁾;

“IP completion day” (“*diwrnod cwblhau’r cyfnod gweithredu*”) has the meaning given in section 39(1) to (5) of the European Union (Withdrawal Agreement) Act 2020⁽³⁾;

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

“professional regulatory provision” (“*darpariaeth reoleiddiol broffesiynol*”) 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” (“*asesiad cymesuredd*”) means an assessment of the proportionality of a professional regulatory provision, carried out in accordance with regulation 4;

“regulated profession” (“*proffesiwn rheoleiddiedig*”) has the meaning given by regulation 8(1) of the 2015 Regulations.

Scope

3.—(1) These Regulations apply to the profession of—

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- (1) These Regulations will cease to have effect on IP completion day despite section 5A of the European Union (Withdrawal Agreement) Act 2020 (c. 1).
- (2) 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.
- (3) 2020 c. 1.

- (a) qualified teacher (within the meaning of section 132 of the Education Act 2002⁽¹⁾) in a school (as defined in section 14(6) of the Education (Wales) Act 2014⁽²⁾) in Wales;
- (b) 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.

(2) These Regulations apply to the profession of teacher at a further education institution (within the meaning of section 140 of the Education Act 2002) in Wales.

(3) These Regulations apply to any profession regulated under Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽³⁾.

(4) These Regulations do not apply to—

- (a) any 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⁽⁴⁾;
- (b) 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

4.—(1) The Welsh Ministers 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 Welsh Ministers must ensure that—

- (a) the professional regulatory provision complies with each of the requirements set out in regulations 5 to 8,
- (b) the extent of the assessment is proportionate to the nature, content and impact of the professional regulatory provision,

(1) 2002 c. 32.

(2) 2014 anaw 5.

(3) 2016 anaw 2.

(4) 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).

- (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

5. A professional regulatory provision must not directly or indirectly discriminate against nationals of an EU member State⁽¹⁾ on the basis of nationality or residence.

Justification by public interest objectives

6.—(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.

(3) Overriding reasons in the public interest include (but are not limited to)—

- (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.

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

⁽¹⁾ Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 has not been adopted by the EEA EFTA states (Norway, Liechtenstein and Iceland) or Switzerland.

Proportionality

7.—(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 Welsh Ministers 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, in particular, whether the objective can be achieved by means that are less restrictive than reserving activities 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 therefore do not negatively affect third parties;
- (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 and whether they 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 Welsh Ministers must assess the effect of the professional regulatory provision when combined with one or more 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 and/or maximum tariff requirements;
- (l) requirements on advertising.

(4) Where relevant to the nature and content of the professional regulatory provision, the Welsh Ministers 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) Where a professional regulatory provision concerns the regulation of healthcare professions and has patient safety implications, the Welsh Ministers must take account of the objective of ensuring a high level of human health protection when carrying out a proportionality assessment of the provision.

(6) In this regulation—

- (a) “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;
- (b) “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

8.—(1) Before a professional regulatory provision takes effect, the Welsh Ministers 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.

Public information and consultation

9.—(1) Before a proposed professional regulatory provision takes effect, the Welsh Ministers must—

- (a) by appropriate means, make information about a 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 they consider 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 Welsh Ministers must send the information listed in paragraph (2) 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⁽¹⁾.

(2) The information required under paragraph (1) is—

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

(1) 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).

Monitoring of professional regulatory provisions

11. After a professional regulatory provision takes effect, the Welsh Ministers 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.

Kirsty Williams

Minister for Education, one of the Welsh Ministers

7 July 2020