

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

This Explanatory Memorandum has been prepared by Social Services and Integration Directorate and is laid before Senedd Cymru 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) 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

24 November 2020

PART 1

1. Description

- 1.1 The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 (“the Regulations”) make 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 the Regulations 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.
- 1.3 As the amendments made by the Regulations to the principal Regulations (which will come into force on IP completion day on 31 December 2020) are required to come into force immediately before IP completion day, the Welsh Ministers have consulted the relevant UK Government Secretaries of State, in this case the Secretaries of State for Health and Social Care and Justice together with the Lord Chancellor⁽⁴⁾ (“the relevant Secretaries of State”) in accordance with the requirement in paragraph 4(a) of Schedule 2 to the European Union (Withdrawal) Act 2018.
- 1.4 The letters that were issued to the relevant Secretaries of State indicated that if no formal response was received by 6 November, it would be assumed that no comments were deemed to be necessary by the relevant Secretaries of State. No comments have been received.

2. Matters of special interest to the Legislation, Justice and Constitution Committee

- 2.1 In accordance with paragraph 1(9) of Schedule 7 to the European Union (Withdrawal Act) 2018 (“the 2018 Act”) and paragraph 3(5) of Schedule 4 to the European Union (Withdrawal Agreement) Act 2020 (“the 2020 Act”) the Regulations are subject to the affirmative procedure because they make amendments to primary legislation.

⁽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⁾ It was necessary to consult the Lord Chancellor and Secretary of State for Justice because the Regulations also include an amendment to description of the qualifications of certain lawyers within the definition of “advocacy services” in paragraph 7 of Schedule 1 to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2).

3. Legislative background

3.1 The Regulations are being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act 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. They are also made under powers with sections 12 and 14 of, and paragraph 12 of Schedule 4 to, the 2020 Act, which enable the making of additional transitional provision relating to the mutual recognition of professional qualifications and the temporary and occasional provision of professional services arising from the agreements concerning citizens' rights between the United Kingdom and Switzerland and the United Kingdom and the EEA EFTA Countries.

3.2 In accordance with the requirements of the 2018 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.

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"⁽⁵⁾) and the European Communities (Recognition of Professional Qualifications) Regulations 2007⁽⁶⁾ (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⁽⁷⁾

⁽⁵⁾ S.I. 2015/2059.

⁽⁶⁾ S.I. 2007/2781; these Regulations continue to apply before exit day by virtue of regulation 78 of the 2015 Regulations and by regulation 155 of the 2016 Regulations.

⁽⁷⁾ S.I. 2016/1030.

("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⁽⁸⁾ ("the 2016 Act").

4.3 The framework of Directives and the domestic legislation through which mutual recognition of professional qualifications currently operates 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 IP completion day.

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 EU exit are protected and provided with certainty about their future ability to practise their profession in Wales.

Why is it being changed?

4.5 The amendments made by the Regulations will mirror for social workers and social care managers who provide services in Wales the effect of 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 mandatory co-operation 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.

4.6 They also correct some minor errors in the 2019 Regulations.

What will it now do?

4.7 The purpose of the Regulations is to make the changes required to correct the deficiencies arising from the United Kingdom's withdrawal from the European Union and to ensure that the existing regulatory framework for the mutual recognition of professional qualifications and the temporary and occasional provision of professional services as a social worker or a social care manager in Wales will continue to operate effectively in Wales; in so far as they relate to the provision of such services by persons covered by the

⁽⁸⁾ 2016 anaw 2.

Agreements that the United Kingdom has entered into with Switzerland and the EEA EFTA countries to protect citizens' rights during the transitional periods specified in the said Agreements, they make additional transitional provision.

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 to enable the current legislative and policy framework to remain operable and enforceable following IP completion day and the withdrawal of the United Kingdom from the European Union and to give effect to the transitional provisions required as a result of the international agreements referred to in paragraph 4.7.
- 5.2 No technical discussions concerning the proposed amendments and transitional modifications to the provisions of the 2016 Act made by the Regulations were held with Social Care Wales. However, the Regulator has been made aware of the provision made by the Regulations.
- 5.3 Consultation on the Regulations with the relevant Secretaries of State which was required by paragraph 4(a) of Schedule 2 to the 2018 Act was undertaken as detailed in paragraphs 1.3 and 1.4.

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 for social workers and social care managers who work in Wales continues and that individuals with EEA and Swiss qualifications will have a means to seek recognition of their relevant professional qualifications after IP completion 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 LJC Committee (as sifting committee)
Appropriate-ness	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 Not applicable.

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:

“In my view the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 do no more than is appropriate”.

2.2 This is the case because the Regulations largely make changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union and to ensure that the existing regulatory framework for the mutual recognition of professional qualifications and the temporary and occasional provision of professional services as a social worker or a social care manager in Wales will continue to operate effectively in Wales; in so far as it relates to the provision of such services by persons covered by the Agreements that the United Kingdom has entered into with Switzerland and the EEA EFTA countries to protect citizens’ rights during the transitional periods specified in the said Agreements. This is in line with Welsh Government policy.

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:

“In my view there are good reasons for the provisions in the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020, and I have concluded they are a reasonable course of action”.

3.2 This is because the Regulations make amendments to Welsh legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies in that legislation arising from the United Kingdom’s withdrawal from the European Union and ensure an operable system for recognition of professional social care qualifications in Wales following IP completion day. They also give effect

to the protection for citizens' rights in respect of the mutual recognition of professional services and the provision of temporary and occasional services in accordance with the international agreements referred to in paragraph 2.2.

4. Equalities

- 4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statement.

“The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020 do 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.”

- 4.2 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.

“In relation to the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2020, 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 Not applicable

7. Legislative sub-delegation

- 7.1 Not applicable.

8. Urgency

- 8.1 Not applicable.