

# **SL(6)422 – The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023**

## **Background and Purpose**

In July 2021, the UK Government signed a free trade agreement with Norway, Iceland, and Liechtenstein (“the FTA”).

Chapter 12 of the FTA establishes a mandatory system for the mutual recognition of professional qualifications between the UK, Norway, Iceland, and Liechtenstein (“the Party States”). It requires regulators across the UK to recognise the professional qualifications of applicants from the Party States where those qualifications are comparable to the qualifications required to access and pursue the same profession in the UK. The FTA also sets out the way in which applications for recognition of qualifications must be handled and requires regulators to offer adaptation periods and aptitude tests where necessary.

These Regulations implement the FTA in Wales and require Welsh regulators to comply with the provisions for the recognition of professional qualifications in the FTA. These Regulations also amend Welsh legislation as required to take into account the implementation of the FTA and the revocation of previous legislation in this area, namely the the European Union (Recognition of Professional Qualifications) Regulations 2015.

These Regulations impose duties on the following regulators in respect of the twelve regulated professions listed below:

<b>Regulator</b>	<b>Professions</b>
The Welsh Ministers Education Workforce Council Social Care Wales Food Standards Agency Animal and Plant Health Agency	Agricultural analyst Food analyst Food examiner Professional driver and attendant engaged in the transport of livestock, equines and poultry Public analyst School teacher Slaughterer Social care manager Social worker Social care worker in a:- <ul style="list-style-type: none"><li>- care home</li><li>- domiciliary support service</li><li>- residential family centre service</li></ul>



- secure accommodation service
- Youth support worker
- Youth worker

## Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd. The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

## Technical Scrutiny

The following three points are identified for reporting under Standing Order 21.2 in respect of this instrument.

### **1. Standing Order 21.2(v) that for any particular reason its form or meaning needs further explanation**

It is not clear why the word "specified" is defined in regulation 2. Its meaning is given as "specified in regulations", however the word is not used in this context in the body of the Regulations (as opposed to the wording that the Regulations insert into other legislation). It is only used as part of the phrase "specified state", which is defined as a state specified in Schedule 2 to the Regulations, and as part of the phrase "specified state professional" which links back to the definition of specified state. There does not therefore appear to be any use of the word "specified" in the context of "specified in regulations", and its inclusion as a defined term which does not reflect the manner in which it is used in the Regulations may cause confusion for the reader. The Welsh Government is therefore asked to explain why a definition of "specified" is included in regulation 2.

### **2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements**

Regulation 8(6) refers to documents being authenticated in accordance with the law of the United Kingdom. Under the Legislation (Wales) Act 2019, "United Kingdom" means Great Britain and Northern Ireland. It therefore appears that the provision should refer to the laws of England and Wales, and/or Scotland and/or Northern Ireland if applicable.

### **3. Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts**

In the English text, regulation 12(b) requires a Welsh regulator to make available information about the "relevant laws" to be applied regarding disciplinary action, financial responsibility etc. In the Welsh text, the phrase "relevant laws" is written as "deddfau perthnasol".



To us, “deddfau” is associated with “primary legislation”, rather than the broader concept of “laws”. We would welcome clarification from the Welsh Government as to what “laws” are intended to be captured by regulation 12(b) and whether there is any inconsistency between the English and Welsh texts.

## Merits Scrutiny

The following three points are identified for reporting under Standing Order 21.3 in respect of this instrument.

### **4. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The preamble to the Regulations states that consultation has been carried out as required by Article 9 of Regulation (EC) No 178/2002(1) of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (“the Regulation”). This requires open and transparent public consultation, directly or through representative bodies, during the preparation, evaluation and revision of food law, except where the urgency of the matter does not allow it. The Explanatory Memorandum refers to consultation with regulators under the Professional Qualifications Act 2022 (“the 2022 Act”) but contains no detail regarding consultation under the Regulation. The Welsh Government is asked to confirm what consultation it carried out under the Regulation as stated in the preamble.

### **5. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

We note the breach of the 21-day convention (i.e. the convention that 21 days should pass between the date a “made negative” instrument is laid before the Senedd and the date the instrument comes into force), and the explanation for the breach provided by Jeremy Miles MS, Minister for Education and Welsh Language in a [letter](#) to the Llywydd dated 30 November 2023.

In particular, we note the following paragraphs from the letter:

*The UK Government is using the concurrent powers in the Professional Qualifications Act 2022 to make the Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023 (“the UK Regulations”). The UK Regulations implement on a UK wide basis provisions relating to the recognition of professional qualifications contained in the free trade agreement between Iceland, Liechtenstein and Norway and the United Kingdom (“the FTA”), and make provision in subject areas which are devolved to Wales.*

*The Wales Regulations amend the UK Regulations to provide that they do not apply to the Welsh regulators of specified regulated professions in respect of which the Senedd has legislative competence.*



*The Wales Regulations also impose the duties required under the FTA on Welsh regulators and amend sectoral legislation in Wales to reflect the implementation of the FTA and the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015.*

*As the Wales Regulations amend the UK Regulations, it has been necessary to delay making the Wales Regulations until the UK Regulations have been made and exist in law. The UK Government did not lay the UK Regulations until 17 October, and these were not made until 29 November. This meant that the Wales Regulations could not be made until 30 November. As the Wales Regulations must come into force by 1 December in order to comply with the terms of the Free Trade Agreement, it is therefore necessary for them to come into force less than 21 days after they have been made. If the Wales Regulations are not in force by that date, there is a risk that Welsh regulators and Welsh Ministers will be in breach of the Free Trade Agreement and failing to meet international obligations.*

The Welsh Government is asked to provide details of the discussions that it had with the UK Government in relation to these Regulations and the abovementioned UK Regulations with a view to avoiding both sets of regulations being made in such a short timeframe.

#### **6. Standing Order 21.3(ii) - that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd**

The Committee notes that these Regulations are made under the 2022 Act, in relation to which two legislative consent motions were debated in the Senedd before that Act was passed. The Welsh Government recommended that the consent of the Senedd was withheld due to the inclusion of concurrent regulation making powers and such consent was withheld.

### **Welsh Government response**

A Welsh Government response is required in relation to all reporting points save for point 6.

#### **Legal Advisers**

#### **Legislation, Justice and Constitution Committee**

**6 December 2023**

