

pN(5)017 – The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

Background and Purpose

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (“the 2016 Act”) relating to the regulation of social workers and social care managers in Wales. Amendments are also made to the 2016 Act relating to exclusions to the scope of regulated advocacy services, to amend references to European Lawyers, and to the Mental Health Act 1983.

These amendments are required 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 without an agreement.

These Regulations were laid for the purposes of sifting under the EU (Withdrawal) Act 2018 in accordance with Standing Order 27.9A

Committee Recommendation as to Appropriate Procedure

We have considered the criteria set out in Standing Order 21.3C.

For the following reasons, we recommend that the appropriate procedure for these Regulations is the affirmative resolution procedure:

1. Significant amendment of primary legislation

These Regulations repeal and amend significant sections of the Regulation and Inspection of Social Care (Wales) Act 2016. Such a significant amendment of primary legislation is, by itself, enough to require that these Regulations be debated in Plenary under the affirmative resolution procedure.

2. Social care qualifications

The current EU law that facilitates free movement of social care workers (via a reciprocal framework of rules for the recognition of social care qualifications) will, in the event of no deal, no longer apply after exit.

These Regulations set out the rules that will apply to the recognition of social care qualifications of social care workers from the European Economic Area and Switzerland after exit.

Under these Regulations, after exit, social care workers with EEA and Switzerland qualifications will be able to seek recognition of their qualifications through the existing international registration system of Social Care Wales. As stated in paragraph 4.7 of the Explanatory Memorandum to the Regulations:

“As is currently the case for international applicants, EEA and Swiss qualifications will be assessed against the equivalent UK qualification standards for social care professionals, and if they are found to be comparable, SCW will be required to recognise the qualification, with no additional tests to



an applicant's practical skills. SCW will still be able to check an applicant's language skills and whether there are concerns about their fitness to be registered. In cases where a qualification is not comparable, SCW will have discretion as to how it proceeds with the recognition process. There will be no obligation to offer compensatory measures where a qualification is not comparable to the UK qualification standard, as was previously the case under [EU law]."

Therefore, the subject matter of these Regulations, and the unknown impact they may have on social care in Wales (we note that no Regulatory Impact Assessment and no public consultation has been carried out), clearly raise matters of public and political importance.

3. These are not technical amendments

We disagree with the assertion in paragraph 2.2 of the Explanatory Memorandum that the subject matter of this subordinate legislation is "technical in nature and the amendments it makes are minor."

We also disagree with the assertion in paragraph 5.1 of the Explanatory Memorandum that the amendments "involve no substantial policy change".

In our opinion, a move away from mutual recognition of social care qualifications under EU law is a substantive policy change and must not be dealt with under the guise of "technical amendments". Further, whether the Welsh Government has a choice as to what new arrangements should be put in place or not, these Regulations still involve a significant policy change in the crucial and sensitive area of social care.

Government Response

If the Welsh Government does not agree with the Committee's recommendation as to the appropriate procedure for these Regulations, the Welsh Government must explain why it disagrees with the Committee's recommendation in accordance with Standing Order 27.9B.

Legal Advisers

Constitutional and Legislative Affairs Committee

4 February 2019

