

Explanatory Memorandum to the “The Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019”

This Explanatory Memorandum has been prepared by the Welsh Government Education Public Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Cabinet Secretary Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the “The Teachers’ Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019”.

I have made the statements required by the European Union (Withdrawal) Act 2018.

Kirsty Williams, AM
Minister for Education
5 March 2019

PART 1

1. Description

1.1 This instrument makes amendments to:

- The Head Teachers' Qualifications and Registration (Wales) Regulations 2005;
- The School Teachers' Qualifications (Wales) Regulations 2012;
- The Education Workforce Council (Main Functions) (Wales) Regulations 2015;
- The Education Workforce Council (Additional Functions and Revocation) (Wales) Order 2015, and
- The Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015.

1.2 The amendments to the Head Teachers' Qualifications and Registration (Wales) Regulations 2005, the Education Workforce Council (Main Functions) (Wales) Regulations 2015, The Education Workforce Council (Additional Functions and Revocation) (Wales) Order 2015, and the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015 are consequential amendments.

1.3 It also makes amendments to the School Teacher Qualifications (Wales) Regulations 2012 ("the 2012 Regulations") which arise as a result of the amendments to the European Union (Recognition of Professional Qualifications) Regulations 2015 ("the principal Regulations") by the Recognition of Professional Qualification (Amendment etc.) (EU Exit) Regulations 2018 ("the 2018 Regulations").

1.4 These amendments are more detailed as changes made by the 2018 Regulations have amended the substance of the principal Regulations and subsequent changes in Wales regulations have therefore been made to address these. The purpose of the 2018 Regulations, laid in the UK Parliament under EU Withdrawal Act 2018 (20th December 2018) is to correct deficiencies arising as a consequence of the United Kingdom's (UK) withdrawal from the European Union (EU). The deficiencies are primarily those arising from the reciprocal arrangements between the UK and European Economic Area (EEA) States, which will no longer be operable or appropriate after the UK exits the EU.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2.1 This instrument is being made under sections 132 and 135 of the Education Act 2002 and section 11 of and paragraph 1 of Schedule 2 and paragraph 21 of Schedule 7 to, the European Union (Withdrawal) Act 2018 ("the 2018 Act"). As set out in the Ministerial statement in Part 2 of this Explanatory Memorandum it was proposed that the instrument be subject to annulment

procedure. The Instrument was considered for sifting by the CLA Committee on 18 February 2019 who were satisfied that the Regulations should be subject to the annulment procedure. The instrument will therefore remain subject to the negative procedure. A link to the CLA Committee's report can be found at: <http://www.assembly.wales/laid%20documents/cr-ld12192/cr-ld12192-e.pdf>

2.2 The 2018 Regulations have been made and will come into force on exit day. The amendments to this set of regulations are made in consequence to amendments contained within the 2018 Regulations. The SI and accompanying Explanatory Memorandum setting out the effect of each amendment is available here: <https://beta.parliament.uk/work-packages/zdDtZ5ZV>.

2.3 Further Ministerial Statements can be found in Part 2 of this Explanatory Memorandum.

3. Legislative background

3.1 This instrument relates to the withdrawal of the United Kingdom from the European Union and is being made under sections 132 and 135 of the Education Act 2002 and section 11 of and paragraph 1 of Schedule 2 and paragraph 21 of Schedule 7 to the 2018 Act. The Minister for Education has made any relevant statements in Part 2 of the Annex to this Explanatory Memorandum.

4. Purpose and intended effect of the legislation

What did any relevant EU law do before exit day?

4.1 The UK, as an EU Member State, is bound by the EU Mutual Recognition of Professional Qualifications Directive 2005/36/EC ("the MRPQ Directive") (amended by Directive 2013/55/EC). The MRPQ Directive is implemented in the UK through the principal Regulations. The legislation outlined in paragraph 1.1 contained various references to the qualifications required by school teachers within Wales.

Why is it being changed?

4.2 The changes made by this instrument address the failure of retained EU law to operate effectively, and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

What will it now do?

4.3 The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019, in part 2 of the regulations, makes amendments to the Head Teachers'

Qualifications and Registration (Wales) Regulations 2005, the Education Workforce Council (Main Functions) (Wales) Regulations 2015, The Education Workforce Council (Additional Functions and Revocation) (Wales) Order 2015, and the Education (Induction Arrangements for School Teachers) (Wales) Regulations 2015. These amendments are consequential amendments.

4.4 The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 regulations also make amendments to the School Teacher Qualifications (Wales) Regulations 2012 ("the 2012 Regulations") which arise as a result of the 2018 Regulations. The 2018 Regulations amendments are as follows.

4.5 Firstly, there is a shift so that it is the EEA qualification that is recognised (rather than the person) and provides that the competent authority (for teachers in Wales this is the Education Workforce Council) must permit access unless various factors suggest that they should not – generally that the training received to practise covers substantially different matters than in the UK.

4.6 Secondly the ability to offer compensatory measures within the principal regulations has been removed.

4.7 The Teachers' Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 inserts a new paragraph into the 2012 regulations at paragraph 4A. This addition is intended to address two issues:

- a. Firstly to address a potential indirect discrimination issue in that, post Brexit, the Welsh Ministers will recognise EEA qualifications but persons with qualifications from outside the EEA are not capable of having their professional qualifications recognised. To avoid any potential indirect discrimination the regulations are amended to allow persons with qualifications from outside of the EEA a route to have their qualifications considered and recognised if they are judged as being not substantially different from those in Wales (in the same way as EEA qualifications will be assessed).
- b. Secondly, to address a situation where teachers within an EEA state that does not regulate the profession can apply to have their qualifications recognised.

4.8 Paragraph 4A (2) provides that the recognition of qualifications is subject to the Welsh Ministers consideration of the qualifications and them forming the view that the qualifications are not substantially different to those in Wales (similar to the test for recognition of an EEA qualification within the principal Regulations (as amended)). Paragraph 4A (3) is intended to ensure that a teacher 'banned' or 'otherwise prevented' from teaching in any school overseas cannot be recognised as a teacher.

5. Consultation

5.1 No public consultation was undertaken as no significant impact is foreseen from what are in the main technical amendments. However due to the issues outlined in paragraphs 4.4-4.8 above, and the impact on the Education Workforce Council (EWC) we have consulted with them (as required by section 132 (4)) as the competent authority for teachers in Wales. They are content with the approach to extend the ability to recognise qualifications (where appropriate) from areas outside of the EEA. The purpose of the instrument is to enable the current legislative and policy framework to remain operable after the withdrawal of the United Kingdom from the European Union in a fair and consistent manner. Ongoing engagement with EWC as the competent authority responsible for implementing the regulations will continue.

6. Regulatory Impact Assessment (RIA)

6.1 A Regulatory Impact Assessment has not been conducted. The Regulations are technical in nature and intended to enable the current legislative and policy framework to remain effective following the withdrawal of the United Kingdom from the European Union. No, or no significant, impact on the private or voluntary sector is foreseen as a result of the instrument.

6.2 These amending Regulations have no impact on the statutory duties as set out in sections 77 to 79 of the Government of Wales Act 2006 or the statutory partners as set out in Sections 72 to 75 of the Government of Wales Act 2006.

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 CLA 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 8(1), 9 and paragraph 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority.	A statement to explain why it is appropriate to create such a sub-delegated power.

		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	
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 statement

- 1.1 The Minister for Education has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Teachers’ Professional Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 should be subject to annulment in pursuance of a resolution of the National Assembly for Wales (i.e. the negative procedure). This is the case because this instrument provides in the main for necessary technical amendments. Any further changes are made as a result of EU Exit to ensure operability of the regulations after Exit without risk of, for example, operating a system likely to cause indirect discrimination. The power to introduce those changes by way of regulations would also be subject to the negative procedure”.

2. Appropriateness statement

- 2.1 The Minister for Education has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In my view The Teachers’ Professional Qualifications (Amendment) (Wales) (EU Exit) Regulations 2019 does no more than is appropriate. This is the case because the amendments are technical in nature and designed to address failures of retained EU law to operate effectively after exit day”.

3. Good reasons

- 3.1 The Minister for Education 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 this instrument, and I have concluded they are a reasonable course of action. This is because the instrument makes technical amendments in relation to the regulations covering the qualification of teachers in Wales”.

4. Equalities

- 4.1 The Minister for Education has made the following statement:

“The instrument does 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 Minister for Education has made the following statement regarding the use of legislative powers in the European Union (Withdrawal) Act 2018:

“I have had 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.