

Explanatory Memorandum to The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019

This Explanatory Memorandum has been prepared by Social Services and Integration Directorate and is laid before the National Assembly for Wales 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 2019

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

5 March 2019

PART 1

1. Description

- 1.1 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. Minor 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.
- 1.2 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.

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

- 2.1 The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 were laid for sifting on 29 January 2019. The Constitutional and Legislative Affairs Committee considered the Regulations on 11 February and laid their report on 12 February. The report can be found at: <http://www.assembly.wales/laid%20documents/cr-ld12151/cr-ld12152-e.pdf>
- 2.2 The report recommends that these Regulations should be subject to the affirmative procedure because the Regulations raise matters of public, political or legal importance in three respects:
- They involve significant amendment of primary legislation
 - The sensitive nature of the sector to which these Regulations relate,, and the unknown impact the amendments may have on social care in Wales
 - The amendments are not technical.
- 2.3 The Deputy Minister for Health and Social Services accepts the recommendations of the Committee that The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to the affirmative procedure because they amend primary legislation.
- 2.4 The Committee’s concerns about the potential impact of the Regulations are noted but assurance is provided that any impact has been assessed as being very limited. No European workers have ever been registered on the visiting social care workforce registers maintained by Social Care Wales (SCW) which relate to the provision of temporary and occasional services by social workers and social care managers. It should also be noted that as at February 2019 there were fewer than 100 EU nationals registered as

social workers or social care managers with SCW. Those who are already registered with SCW will be continue to be so registered post- exit day, and new applicants for registration from the EEA or Switzerland will be able to make the same application for registration as currently applies to international social care professionals.

3. Legislative background

- 3.1 This instrument is being made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 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.
- 3.2 In accordance with the requirements of that 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 resolution 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”) 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 (“the 2016 Regulations”). The 2016 Act makes express reference to the mutual recognition of professional qualification arrangements as provided for in the 2015 Regulations, as amended by the 2016 Regulations. Following exit day, the provisions of the 2015 Regulations which are currently referred to in the 2016 Act will no longer apply, as the UK will fall outside the remit of the 2005 Directive. The UK Government has already made amendments to the 2015 Regulations to reflect this fact and to correct any deficiencies which will arise in that legislation once the UK leaves the EU. .

4.3 Lawyers of EU states are permitted to practice in the UK in certain circumstances under the Establishment of Lawyers Directive 98/5/EC. The UK Government implemented the Directive through the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000 No. 1119). A lawyer of an Establishment Directive state also has the right to provide services in the UK on a temporary or visiting basis, under the Services of Lawyers Directive 77/249/EEC and the European Communities (Services of Lawyers) Order 1978. Both orders give effect to European Directives designed to facilitate the free movement of workers and mutual recognition of professional legal qualifications.

4.4 This instrument makes amendments to the 2016 Act relating to the regulation of EEA and Swiss social workers and social care managers in Wales, and to exclusions affecting the scope of regulated advocacy services, so that it operates effectively after exit date and corrects deficiencies which have arisen as a consequence of the UK leaving the EU.

Why is it being changed?

4.5 Following the UK's exit from the EU, the 2005 Directive will no longer apply to social workers and social care managers in the UK. The domestic legislation implementing the Directive, namely the 2015 Regulations, will therefore not operate effectively after exit day. The provisions within the 2016 Act which rely on the mutual recognition arrangements under the 2015 Regulations will also be inoperable after exit day.

4.6 After exit day, in the event of no deal, individuals with EEA and Swiss qualifications who are already registered with Social Care Wales (SCW), the social care workforce regulator in Wales, will have their registration maintained. New applicants will be able to seek recognition of their EEA and Swiss qualifications through the existing international registration system of SCW.

4.7 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 the 2005 Directive.

What will it now do?

4.8 The purpose of these Regulations is to ensure that the provisions of the 2016 Act which relate to the regulation of social workers and social care managers will continue to be operable in Wales after the UK leaves the EU.

- 4.9 Regulations 4 -13 of these Regulations revoke the sections in the 2016 Act which relate to temporary and occasional service provision in Wales by social care professionals, as they rely on reciprocal arrangements with the EEA which will no longer apply once the UK leaves the EU. The 2005 Directive sets out rules which facilitate the temporary and occasional provision of services, which allow EEA and Swiss professionals to practise across the EEA and Switzerland without the need for full registration with the relevant regulator. Providing temporary and occasional service allows the professional to remain established in their home state while practising in another state. However, none of these arrangements will apply to the UK following exit day. These changes are being made to reflect that and to remove from the 2016 Act references to the 2015 Regulations which will be revoked on exit day.
- 4.10 The 2016 Act does not define what advocacy services are but gives power to Welsh Ministers to do this in regulations. However the 2016 Act does provide some parameters within which the definition in regulations must fall. The 2016 Act excludes from the scope of regulation a service provided by a person in the course of a legal activity (within the meaning of the Legal Services Act 2007) and this includes where the person is a European lawyer within the meaning of the European Communities (Services of Lawyers) Order 1978. The preferential rights for European lawyers to practise in the UK after exit day are being revoked but a transitional period is being provided for European Lawyers who registered before exit day to continue to practise in England, Wales and Northern Ireland until 31 December 2020. Regulation 14 of these Regulations makes minor consequential amendments to the exclusions from the scope of regulated advocacy services, to reflect that for the transitional period (to 31 December 2020) the exclusion will extend to cover services provided by a European Lawyer in the course of a legal activity (within the meaning of the Legal Services Act 2007). Regulation 14 also includes wording to reflect the enhanced transitional arrangements which will apply to Swiss lawyers in the UK pursuant to the UK-Swiss Separation Agreement for lawyers.
- 4.11 Regulations 16 and 17 contain transitional and savings provisions relating to temporary and occasional service provision. Regulation 16 allows applications which have been made before exit day to provide services as a social worker or a social care manager in Wales on a temporary or occasional basis to be concluded under current arrangements as far as possible. Regulation 17 allows individuals already practising under temporary and occasional status in Wales to continue do so for up to one year. Under regulation 15 of the 2005 Directive, individuals seeking to provide temporary or occasional services in the UK had to make a declaration of their intention to do so to Social Care Wales every 12 months. Regulation 17 allows those individuals who made such a declaration before exit day to continue to provide temporary and occasional services until the expiry of the declaration.

4.12 The Internal Market Information system (IMI) is an online tool used by regulators to share information. The 2005 Directive allows regulators within the EEA and Switzerland to share details about applicants and qualifications. It also provides an Alert Mechanism which makes EEA and Swiss regulators aware of a professional's compromised fitness to practise or restrictions on their practice. The UK will no longer have access to IMI when it exits the EU. Regulation 19 provides that where before exit day an alert was issued in respect of a person, that person will still be able to bring an appeal against the decision to issue the alert in certain circumstances.

5. Consultation

5.1 As these amendments are technical in nature and only correct deficiencies which will arise in the 2016 Act as a result of the 2005 Directive no longer applying to the UK following the withdrawal of the United Kingdom from the European Union, no public consultation was undertaken. The purpose of the instrument is solely to make such changes as are required to enable the current legislative and policy framework to be able to continue to operate following exit day. The 2016 Act currently makes express reference to provisions of the 2015 Act, which will be revoked on exit day, and these Regulations make amendments to the 2016 Act to enable that Act to continue to operate effectively post-exit day.

5.2 Technical discussions concerning the proposed amendments to the provisions of the 2016 Act under these Regulations were held with Social Care Wales to ensure the amended registration procedures are operable.

6. Regulatory Impact Assessment (RIA)

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 go no further than simply correcting deficiencies which will arise in the 2016 Act when, post exit day, the 2005 Directive no longer applies to the UK. These amendments made by these Regulations will have minimal impact on the sector because no European workers have ever been registered on the visiting social care workforce registers maintained by SCW, and the limited number of EU nationals who are registered as social workers or social care managers with SCW will not be affected by these Regulations and will have the right to continue working in Wales post-exit 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 CLA Committee (as sifting committee) |
| Appropriateness | 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. |

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| | | 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. |

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| | | 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 statements

- 1.1 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:
- 1.2 “I accept the recommendation of the Constitutional and Legislative Affairs Committee that the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 should be subject to the affirmative resolution procedure as they make amendments to primary legislation”.

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:
- 2.2 “In my view The Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019 do no more than is appropriate”.
- 2.3 This is the case because the instrument only makes changes required to correct the deficiencies arising from the United Kingdom’s withdrawal from the European Union without an agreement.

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:
- 3.2 “In my view there are good reasons for the provisions in this instrument, and I have concluded they are a reasonable course of action”.
- 3.3 These are: The instrument makes amendments to domestic legislation relating to the recognition of qualifications of social care professionals. These amendments correct deficiencies arising from the United Kingdom’s withdrawal from the European Union without a withdrawal agreement and ensure an operable system for recognition at exit.

4. Equalities

- 4.1 The Deputy Minister for Health and Social Services, Julie Morgan, has made the following statements.
- 4.2 “This statutory 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.
- 4.3 In relation to the statutory instrument, 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 No criminal offences are being created in these Regulations. No criminal offences statements are therefore necessary.

7. Legislative sub-delegation

- 7.1 No new sub-delegation powers are being created by these amendments. No legislative sub-delegation statement is therefore required

8. Urgency

- 8.1 This statutory instrument is not being made urgently. No urgency statement is therefore required.