EXPLANATORY MEMORANDUM TO

THE EUROPEAN QUALIFICATIONS (HEALTH AND SOCIAL CARE PROFESSIONS) (EFTA STATES) (AMENDMENT ETC.) (EU EXIT) REGULATIONS 2020

2020 No. [XXXX]

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department of Health and Social Care and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The main purpose of the European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 is to implement parts of the Swiss Citizens' Rights Agreement[1] and EEA EFTA Separation Agreement[2] concerning recognition of professional qualifications ("RPQ") of health and care professionals that are not covered by existing 'no deal' RPQ legislation.

2.2 This will be achieved by making amendments to the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/593) and the European Qualifications (Pharmacists) (Amendments etc.) (EU Exit) Regulations (Northern Ireland) 2019 (S.I. 2019/585), collectively referred to as "the 2019 EU Exit Regulations".

2.3 The amendments made by this instrument in relation to implementing provisions of the Swiss Citizens' Rights Agreement and EEA EFTA Separation Agreement are transitional and savings provisions, and will not affect any ongoing system of recognition contained in various other pieces of RPQ legislation.

2.4 In addition, this instrument will make minor corrections to the 2019 EU Exit Regulations. As a result of this instrument containing corrections, having consulted with the SI Registrar, this instrument is being published under the free issue procedure.

Explanations

What did any relevant EU law do before exit day?

2.5 There are a number of Directives and connected agreements ('Directives') that apply within and between the states party to the European Economic Area (EEA) and Switzerland in respect of the recognition of professional qualifications.

2.6 The various Directives put in place mutual recognition arrangements between EEA and Swiss states which facilitate free movement of persons and services between the

[1] Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens' rights following the withdrawal of the United Kingdom from the European Union and the Free Movement of Persons Agreement.

[2] Agreement between the United Kingdom of Great Britain and Northern Ireland and the European Economic Area European Free Trade Association member states on citizens' rights, as well as on resolving a small number of other issues arising from the UK's exit from the EU.

states. These Directives enable EEA and Swiss nationals to have their professional qualifications recognised and to gain access to the regulated profession (or to carry out regulated professional activities) for which they are qualified, in Switzerland or an EEA state other than the state in which their qualification was obtained. They also provide a system which allows professionals to provide temporary and occasional services in other EEA states or Switzerland with minimal barriers.

2.7 These Directives have been implemented in UK domestic law by various pieces of domestic legislation led by the Department so that the systems of recognition provided for by the Directives apply within the UK to health and care professionals.

Why is it being changed?

2.8 This framework of Directives and mutual recognition will cease to apply to the UK once the implementation period (IP) ends. Therefore, domestic legislation implementing the Directives will not operate effectively after the end of the IP. Some parts of the legislation will be inoperable as a consequence, and other parts will no longer be appropriate to retain given that they are based on reciprocal relationships with the EU, the EEA EFTA states (Norway, Iceland and Liechtenstein) and Switzerland. Consequently, there was a risk that there may not have been an effective route of recognition for professionals from these countries.

2.9 For this reason, the Department has already made the 2019 EU Exit Regulations to make amendments to or revoke the various pieces of RPQ legislation in order to ensure that it operates effectively after the end of the IP, and to correct any deficiencies arising from EU Exit.

2.10 This legislation maintains an ongoing system of recognition in the health and care sector, based on equivalence of qualifications, which applies to those holding EEA or Swiss qualifications.

2.11 Transitional and savings provisions have been made in respect of health and care RPQ legislation to ensure that individuals affected by EU exit in the area of RPQ are protected and provided with certainty about their future. This is achieved by: preserving recognition decisions already made; allowing applications for recognition which have been started before IP completion day to be concluded; and allowing individuals to complete temporary and occasional service provisions that were started before IP completion day.

2.12 In order to protect the rights of UK, EEA EFTA and Swiss nationals who have chosen to call each other's countries home, the UK has signed Citizens' Rights Agreements with Switzerland and the three EEA EFTA states (together the EFTA states). These Agreements include transitional provisions for RPQ. The Government has publicly committed to honouring both these Agreements regardless of the terms under which the IP ends.

2.13 The RPQ provisions in these Agreements align with the transitional and savings provisions in the 2019 EU Exit Regulations. However, the Agreements, particularly the Swiss Citizens' Rights Agreement, contain a number of provisions that are not provided for by the 2019 EU Exit Regulations. This instrument implements these provisions of the Swiss Citizens' Right Agreement and the EEA EFTA Separation Agreement by amending the 2019 EU Exit Regulations.

What will it do now?

2.14 This instrument will implement the RPQ provisions from both Agreements that are not already covered. This instrument will also implement additional transitional provisions from the Swiss Citizens' Rights Agreement, namely: an extended period to apply for recognition decisions for the purpose of establishment under the pre-exit rules; and an extended period in which certain service providers can continue to rely on the pre-EU Exit RPQ arrangements to provide temporary and occasional services into the UK.

2.15 The significant amendments made by this instrument are to give effect to provisions from the Swiss Citizens' Rights Agreement which:

i. Allow a 4-year period for Swiss and certain UK nationals who have a professional qualification or are in the process of obtaining a qualification before TP completion, to apply for recognition under pre-exit rules. This includes those with 'third country' qualifications which have been recognised, or are in the process of being recognised in Switzerland upon the end of the TP;

ii. Continue to apply the pre-exit rules for temporary and occasional service providers for up to 5 years for certain Swiss or UK service providers who have both a contract and who have started providing that contractual service before TP completion day

2.16 The minor administrative amendments made by this instrument in respect of the RPQ provisions in both Agreements will:

i. Ensure that UK regulators cooperate with their EFTA counterparts to facilitate the completion of applications for recognition covered by the Agreements;

ii. Give effect to non-discrimination and equal treatment for EFTA professionals covered by the RPQ provisions of the Agreements.

iii. Ensure that GP qualifications obtained before the reference date specified in the MRPQ Directive are recognised in the same way as specialist medical qualifications obtained before that date and are not eligible for near-automatic recognition.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Changes made between first laying and re-laying of this Statutory Instrument

3.2 The first draft of this SI, with the same title, was laid before Parliament on 22nd July 2020 and published on 28th July 2020. This revised version was laid before Parliament on 17th September 2020.

3.3 In summary the amendments are:

i. A new commencement provision – regulation 1(2) – page 1. This removes ambiguity around the date of commencement of the regulations.

ii. Amend Article 4(1) of the Postgraduate Medical Education and Training Order of Council 2010 concerning recognition of EEA GP qualifications to introduce consistency between the wording for the Specialists/GPs and ensure that GP qualifications obtained before the reference date specified in the MRPQ Directive are recognised in the same way as specialist medical qualifications obtained before that date and are not eligible for near-automatic recognition.

iii. Amend the "saving of old law" provisions for each of the professions (as appropriate) to ensure that the “establishment provisions” exclude the definition of “General Systems Regulations” and “the Directive”, but that these definitions are saved for savings purposes.

iv. Reverting to wording originally used in the BEIS EFTA Regs at the end of 2019 for Reg 12(2) - page 31 – in order to clarify how these Regulations interact with the “five year rule” for recognising qualifications in the Nursing and Midwifery Order.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Law)

3.4 The territorial application of this instrument varies between provisions:

3.5 The territorial application of amendments to Schedule 4 (nursing associates) and Schedule 11 (social workers in England) of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 is England only.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is as follows:

i. Amendments to provisions concerning pharmacists and pharmacy technicians extend to England and Wales and Scotland.

ii. Amendments to provisions concerning social workers in England and nursing associates extend to England and Wales.

iii. Amendments to provisions concerning social workers in Scotland extend to Scotland.

iv. Amendments to provisions concerning social care workers and pharmacists in Northern Ireland extend to Northern Ireland.

4.2 The territorial application of amendments to Schedule 4 (nursing associates) and Schedule 11 (social workers in England) of the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 is England only. The territorial application is the same as the extent for all other schedules.

5. European Convention on Human Rights

5.1 The Minister of State at the Department of Health and Social Care, Edward Argar has made the following statement regarding Human Rights:

“In my view the provisions of the European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 are compatible with the Convention rights.”

6. Legislative Context

6.1 Within the EEA and Switzerland the recognition of professional qualifications is governed by multiple pieces of EU legislation. The European Union Directive 2005/36/EC (‘the 2005 Directive’) covers recognition for most professions within the EEA.

6.2 The 2005 Directive contains a number of recognition routes for establishment purposes. This includes: a general system which compares the equivalence of qualifications; automatic recognition on the basis of coordination of minimum training conditions or professional experience; and the European Professional Card, which is an electronic certificate that facilitates recognition procedures of the most mobile professions. The other Directives governing specific professions have their own frameworks for recognition.

6.3 Most of these Directives fully apply to the EU members states, but also partially apply to Switzerland by virtue of the Swiss Free Movement of Persons Agreement[3] ("FMOPA") and Norway, Iceland and Liechtenstein ("the EEA EFTA states") by virtue of the EEA Agreement.

6.4 Parts of the 2005 Directive have been implemented in the UK in respect of the EU and the EEA EFTA states by European Union (Recognition of Professional Qualifications) Regulations 2015 ('the 2015 Regulations'). An earlier version of the 2005 Directive was originally implemented by the European Communities (Recognition of Professional Qualifications) Regulations 2007, which have since been revoked by the 2015 Regulations except in relation to Switzerland.

6.5 Parts of the Directive which provide for automatic recognition for specific professions have been implemented by sector specific legislation within the responsibility of the Department, the Ministry of Housing, Communities and Local Government and the Department for the Environment, Food and Rural Affairs.

6.6 Given the UK's exit from the EU the Government has amended the domestic RPQ legislation in order to ensure that the RPQ legislation can operate effectively post-exit, and to correct deficiencies which have arisen as a consequence of the UK leaving the EU.

6.7 The amended 2019 RPQ legislation already unilaterally provides for an ongoing system of recognition for EEA and Swiss-qualified individuals and provides transitional and saving provisions to ensure that those affected by exit in relation to RPQ are protected after IP completion day. This is achieved by: preserving recognition decisions which have already been made; allowing applications that have been made but not concluded before IP completion day to be completed under the pre-EU Exit rules as far as possible; and allowing individuals to complete temporary and occasional service provisions that were started before the end of the IP.

6.8 Because the EEA Agreement and FMOPA will no longer apply to the UK, the UK has reached Agreements with the EEA EFTA states and Switzerland on citizens' rights. These Agreements include provisions on RPQ.

6.9 The RPQ provisions in these Agreements are transitional in nature and intended to wind down the current establishment RPQ arrangements between the UK and these states. The RPQ provisions in these Agreements are similar to what is already provided for in the 2019 EU Exit Regulations. However, there are minor differences because of the reciprocal nature of the Agreements such as mandatory regulator cooperation and equal treatment. There are also additional provisions that have been agreed with Switzerland that are not provided for in the current 2019 EU Exit Regulations.

[3] Agreement between the European Community and its Member States, of the one part, and the Swiss Confederation, of the other, on the free movement of persons.

6.10 Accordingly, in order to implement the outstanding RPQ provisions of these international agreements we are amending the 2019 EU Exit Regulations to give effect to the RPQ provisions of the Agreements in domestic law from IP completion day.

7. Policy background

What is being done and why?

7.1 The principal purpose of this instrument is to give effect in domestic law to our RPQ commitments in the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement, and to ensure that nationals in scope of these Agreements can rely on these rights when seeking recognition of their qualifications in the UK.

7.2 The changes made by this instrument do not affect what will be the ongoing RPQ system that has been created by the 2019 EU Exit Regulations.

7.3 The understanding is that provisions made under these Agreements will be reciprocated by Switzerland and the EEA EFTA states for the benefit of UK nationals.

7.4 This instrument will support Swiss and EEA EFTA nationals affected by EU exit to practise their profession in the UK by providing winding down provisions to minimise disruption to individuals and businesses.

8. European Union (Withdrawal) Act 2018/Withdrawal of the United Kingdom from the European Union

8.1 This instrument is being made using the powers in sections 12, 14 and 41(1) of, and paragraph 12 of Schedule 4 to, the European Union (Withdrawal Agreement) Act 2020 in order to implement the Swiss Citizens' Rights Agreement. This instrument is also being made under the powers in section 8(1) of, and paragraph 21 of Schedule 7 to, the EU (Withdrawal) Act 2018 relating to consequential, transitional and saving provisions. Further, this instrument is made under section 2(2) of the European Communities Act 1972 to make a minor transposition amendment.

8.2 In accordance with the requirements of the European (Withdrawal) Act 2018 the Minister has made the relevant statements as detailed in Part 2 of the Annex to this Explanatory Memorandum.

9. Consolidation

9.1 This instrument does not make any consolidation of other legislation.

9.2 There are no plans to consolidate the legislation amended by this instrument at this time.

10. Consultation outcome

10.1 Consultation between Devolved Administration officials and Government officials took the form of engagement specific to the amendments made by this instrument. This consultation has centred on how the policy approach and proposed amendments could impact service provision in devolved nations, and the regulation of professions in areas where this is devolved. There were some technical discussions concerning the proposed amendments to the 2019 EU Exit Regulations.

10.2 Devolved Administrations have confirmed their agreement for the Government to make the relevant provisions within this legislation which are within devolved competence UK-wide. This agreement has been sought under the terms of the Intergovernmental Agreement, as this instrument will make provisions that could be made by the Devolved Administrations in exercise of their powers under the EU (Withdrawal Agreement) Act 2020.

10.3 Consultation between Government officials and Competent Authorities took the form of regular meetings and engagement to discuss the policy and operational implications concerning the proposed amendments to the Regulations.

11. Guidance

11.1 The Department has not yet provided any specific guidance on the amendments provided for by this instrument.

12. Impact

12.1 There is no significant impact on businesses, charities or voluntary bodies. These amendments made by this instrument are intended to comply with the UK's international obligations and provide for the implementation of the EEA EFTA Separation Agreement and the Swiss Citizens' Rights Agreement with respect to professional qualifications, which on the most part wind down the current provisions.

12.2 There is no significant impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument. UK regulators may incur costs if they are obliged to run two systems for recognition in parallel: a new one for EU and EEA EFTA citizens, and their current one for a further 4 (establishment cases) and 5 years (temporary and occasional service provisions with possibility for renewal) for certain Swiss, UK and third country citizens who fall within the additional transitional provisions. However, our research showed that many regulators are already running parallel systems for applicants from third countries and EEA and Swiss citizens; regulators did not anticipate incurring significant costs.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 The approach to monitoring this legislation is for it to be monitored in the course of normal departmental business.

14.2 As this instrument is made under European Union (Withdrawal) Act 2018 powers, no review clause is required

15. Contact

15.1 Anna Cook at the Department of Health and Social Care can be contacted with any queries regarding the instrument. Email Anna.cook1@dhsc.gov.uk telephone 0113 254 6377

15.2 Mark Bennett, Deputy Director in the Professional Regulation Branch of the Department of Health and Social Care can confirm that this explanatory memorandum

meets the required standard. Email mark.bennett@dhsc.gov.uk telephone 0113 254 6501

15.3 Edward Argar MP, Minister of State for Health at the Department of Health and Social Care can confirm that this explanatory memorandum meets the required standard.

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 under the 2018 Act.

Statement	Where the requirement sits	To whom it applies	What it requires
Sifting	Paragraphs 3(3), 3(7) and 17(3) and 17(7) of Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) to make a Negative SI.	Explain why the instrument should be subject to the negative procedure and, if applicable, why they disagree with the recommendation(s) of the SLSC/ESIC.
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly 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	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain the good reasons for making the instrument and that what is being done is a reasonable course of action.
Equalities	Sub-paragraphs (4) and (5) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2.	Explain what, if any, amendment, repeals or revocations are being made to the Equalities Acts 2006 and 2010 and legislation made under them. State that the Minister has had due regard to the need to eliminate discrimination and other conduct prohibited under the Equality Act 2010.
Explanations	Sub-paragraph (6) of paragraph 28, Schedule 7	Ministers of the Crown exercising clauses 8(1), 9 and 23(1) or jointly exercising powers in Schedule 2 In addition to the statutory obligation the Government has made a political commitment to include these statements alongside all EUWA 2018 SIs	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.

Part 2

Statements required when using enabling powers under the European Union (Withdrawal) 2018 Act

1. Appropriateness statement

1.1 Edward Argar MP, Minister of State at the Department of Health and Social Care has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view the European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 does no more than is appropriate."

1.2 This is the case because the instrument makes only changes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union in a scenario in which the UK leaves the EU without an agreement.

2. Good reasons

2.1 Edward Argar MP, Minister of State at the Department of Health and Social Care 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."

2.2 This is the case because the instrument enables the UK to comply with its international obligations and ensure that individuals who benefit from the Agreements can exercise their rights from the date that this statutory instrument comes into effect.

3. Equalities

3.1 Edward Argar MP, Minister of State at the Department of Health and Social Care has made the following statement(s):

"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."

3.2 Edward Argar MP, Minister of State at the Department of Health and Social Care has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, I 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. As decision maker, I am satisfied that this legislation does not discriminate against any group of people with a protected characteristic. I believe this legislation is a proportionate means of implementing the RPQ provisions of the EEA EFTA and Swiss Agreements. This Act does not extend to Northern Ireland."

4. Explanations

4.1 The explanations statement has been made in paragraph 2 of the main body of this explanatory memorandum.