EXPLANATORY MEMORANDUM TO

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS AND IMPLEMENTATION OF INTERNATIONAL RECOGNITION AGREEMENTS (AMENDMENT) (EXTENSION TO SWITZERLAND ETC.) REGULATIONS 2024

2024 No. [XXXX]

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department of Business and Trade and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 The Rt Hon Douglas Alexander MP, Minister of State for Trade Policy and Economic Policy at the Department of Business and Trade confirms that this Explanatory Memorandum meets the required standard.

2.2 Danielle Bates, Deputy Director for Regulated Professions Policy, at the Department for Business and Trade confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Aneesa Ahmed at the Department of Business and Trade Telephone: +44 (0)7423 813 792 or email: Aneesa.Ahmed2@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 The instrument implements the UK-Switzerland Recognition of Professional Qualifications Agreement ("the RPQ Agreement") into domestic law. The instrument places a legal duty on UK regulators to comply with the RPQ Agreement and provides UK regulators with the legal powers to meet the terms of the RPQ Agreement.

4.2 The instrument requires regulators to take into consideration professional qualifications from Switzerland. How regulators choose to put those requirements into practice is an operational decision. Some of these requirements include:

- Conditions for recognition and sets out conditions where a regulator can refuse to recognise a professional qualification
- The requirement to take an aptitude test or complete an adaptation period where there exists a substantial difference between the professional's qualification and the essential knowledge and skills required to practice
- Procedural requirements such as acknowledgement of an application within one month of receipt, granting the professional adequate time to complete the application process and deal with the professional's application promptly.

4.3 These requirements are detailed in full in the instrument and in the RPQ Agreement.

Where does the legislation extend to, and apply?

4.4 For professions where regulation is reserved for the UK Government, the extent of the instrument (that is, the jurisdiction(s) in which the instrument forms part of the law) is England, Wales, Scotland and Northern Ireland. For professions where regulation is devolved to each devolved government, the instrument extends to England, Scotland and Northern Ireland.

4.5 For professions where regulation is reserved for the UK Government, the territorial application of the instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland. For professions where regulation is devolved to each devolved government, the instrument applies to England, Scotland and Northern Ireland.

4.6 The territorial scope and extent of the instrument, in relation to professions regulated at a devolved government level, does not extend to Wales as the Welsh Government will implement the RPQ Agreement for professions that are regulated in Wales through a separate Welsh instrument.

4.7 Where there have been any subsequent amendments, repeals or revocation of legislation for specific sectors, the extent and territorial application of the instrument is the same as that of the provisions that have been amended, repealed or revoked.

5. Policy Context

What is being done and why?

5.1 Chapter 2 of the RPQ Agreement requires the UK and Switzerland to recognise comparable professional qualifications or experience obtained in each state. UK regulators are required to have processes in place to recognise Swiss qualifications or experience should a professional apply to practice a profession regulated by law in the UK ("regulated profession").

5.2 Legislative implementation of the RPQ Agreement ensures that the UK is fulfilling its obligations to Switzerland. It provides consistency and clarity for professionals holding Swiss qualifications or experience when applying to practice regulated professions in the UK. Legislative implementation ensures that UK regulators have the necessary legal powers to meet the terms of the RPQ Agreement. It also gives Swiss professionals relying on the RPQ Agreement some legal recourse in the UK, were this ever needed.

5.3 The instrument implements the RPQ Agreement using powers in Section 3 of the Professional Qualifications Act 2022 ("PQ Act"). The instrument:

- Places a duty onto UK regulators of regulated professions to recognise Swiss professional qualifications or experience where the professional possesses qualifications or experience that the regulator considers comparable to a UK standard. This includes prescribing procedures regulators must follow.
- Enables UK regulators to refuse to recognise Swiss professional qualifications or experience where certain conditions are met.
- Enables UK regulators to require professionals to take prescribed compensatory measures where certain conditions are met.
- Amends sectoral legislation, where necessary, to allow UK regulators to meet those requirements where current legislation does not allow them to do so.

5.4 Professionals will still be subject to the usual UK visa requirements, irrespective of whether their professional qualification is recognised by a regulator. The RPQ

Agreement also prescribes that regulators can require professionals to complete additional tests, as necessary, in order to meet the requirements to recognise their professional qualifications.

5.5 The department implemented similar provisions in Chapter 12 of the Free Trade Agreement between the UK and Iceland, Norway and Liechtenstein ("EEA EFTA FTA"). This was implemented via secondary legislation which came into force on 1 December 2023: the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) 2023 Regulations ("the 2023 Regulations"). Due to similarities between the two RPQ arrangements, the instrument amends the 2023 Regulations, adding Switzerland as a named country to Schedule 1 of the 2023 Regulations, thus incorporating the obligations of the Swiss RPQ Agreement into the 2023.

5.6 Where there are differences between the obligations in the RPQ Agreement and Chapter 12 of the EEA EFTA FTA, part 2 of the instrument contains amendments to the 2023 Regulations to implement these. This includes provisions for legal professionals contained in an annex to the RPQ Agreement. The amendments to implement this annex are contained in regulations 8 and 9 of the instrument. These amendments require UK regulators of advocates, barristers and solicitors to provide Swiss qualified counterparts specified in the RPQ Agreement with a choice between completing an adaptation period or undertaking an aptitude test.

5.7 The instrument also amends the 2023 Regulations so as to extend the application of Parts 2 and 3 to the regulation of Anaesthesia Associates and Physician Associates. These professions will become regulated professions on 13th December 2024 when the Anaesthesia Associate and Physician Associates Order comes into force. These amendments will mean that the instrument implements both Chapter 12 of the EEA EFTA FTA, and the RPQ Agreement, for these professions.

What was the previous policy, how is this different?

5.8 The current Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Citizens' Rights ("the CRA") contains provisions on RPQ, which apply to UK and Swiss nationals. These arrangements expire on 31 December 2024. The RPQ Agreement was agreed to prevent a cliff edge in UK-Switzerland RPQ provisions from 01 January 2025.

5.9 The key differences between the two agreements are:

- The CRA applies to UK and Swiss nationals. The RPQ Agreement applies to holders of UK and Swiss professional qualifications and experience.
- The CRA covered the list of professions within scope of the MRPQ Directive. The RPQ Agreement covers professions that are regulated by law as defined in the PQ Act.
- The CRA provisions only apply to professionals who started their qualifications before the end of 2020. The RPQ Agreement replaces the CRA for professionals whose qualifications were obtained before and after the end of 2020.
- The CRA also contains provisions to facilitate the practise and recognition of certain legal professionals. These provisions include the right to register and permanently practice under their home professional title and the right to apply for requalification after three years of practice. The right to apply for requalification after three years practice is the only part of the CRA taken forward under the RPQ agreement.

6. Legislative and Legal Context

How has the law changed?

6.1 The instrument is being made to implement the provisions in the RPQ Agreement into domestic law. These regulations require UK regulators of regulated professions to operate accessible routes to recognition, as prescribed under the RPQ Agreement, for Swiss-qualified professionals to practise their profession in the UK without having to requalify or retrain.

6.2 Parts 3 and 4 of the instrument amend sectoral legislation consequential for the implementation of the RPQ Agreement. Amendments are being made in respect of sectoral legislation relating to:

- All regulated healthcare professions including Anaesthesia Associates and Physicians Associates in relation to both the RPQ Agreement and Chapter 12 of the EEA EFTA FTA (with territorial application in the UK).
- Legal services professions (with territorial application in England and Wales).

Why was this approach taken to change the law?

6.3 The power in the PQ Act to make the instrument is a concurrent power, meaning that it can be used by the Secretary of State or the Lord Chancellor or the relevant devolved authority in devolved areas. Concurrent powers were included within the PQ Act and are being used to implement the RPQ Agreement because of the way professions are regulated in the UK – regulations of some professions is reserved and others devolved, but even where the regulation of a profession is devolved the sectoral legislation may be UK-wide legislation.

6.4 The government is making the instrument so that the provisions of the RPQ Agreement are implemented throughout the UK for professions where regulation is reserved to the UK government and for professions where regulation is devolved to England, Scotland and Northern Ireland. Legislation is necessary to ensure that the UK can fulfil its obligation under international law. It provides consistency and clarity for professionals holding Swiss qualifications or experience when applying to practice regulated professions in the UK. Legislative implementation ensures that UK regulators have the necessary legal powers to meet the terms of the RPQ Agreement. It also gives Swiss professionals relying on the RPQ Agreement some legal recourse in the UK, were this ever needed.

7. Consultation

Summary of consultation outcome and methodology

7.1 Section 15 of the PQ Act requires the government to consult regulators that are likely to be affected by the regulations. The department ran a 6-week consultation with regulators in February 2024.

7.2 Respondents were generally supportive of the implementation approach and the department engaged with regulators on the feedback received. The consultation also identified that some regulators do not have the necessary powers in UK law to be able to comply with the RPQ Agreement.

7.3 As the consultation was targeted to the specific relevant group, the consultation document and government response were not published, but the response was shared with regulators and the devolved governments and is available on request from the Department of Business and Trade.

7.4 Section 17 of the PQ Act requires the government to consult the devolved governments when using powers under the PQ Act in areas of their devolved competence. The department ran a 4-week consultation in September 2024.

7.5 Scottish Government responded to the consultation outlining that amendments would be needed to the Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 (SSI 2013/84), which they will be amending through a Scottish Statutory Instrument. Scottish Government also provided amendments to the instrument including appeal rights provisions for professions that are regulated by the Law Society of Scotland and are similar to the provisions for the professions regulated by the Law Society of England and Wales. These amendments have been incorporated into the instrument. The Northern Ireland Executive confirmed that no legislative amendments were required.

7.6 Section 17 of the PQ Act also requires the government to publish a report on the devolved government consultation setting out the views expressed by the devolved governments and an explanation of whether and how these views have been considered. The government must seek to agree the report wording with the devolved governments before publishing or wait 30 days from when the draft report was first sent to the devolved governments. The department is publishing the report on GOV.UK.

7.7 Welsh Government have made their own instrument for professionals that are regulated at a devolved level in Wales. As such, there was no formal consultation requirement. However, the instrument and consultation documents were shared with the Welsh Government for their views.

8. Applicable Guidance

8.1 The government will not produce guidance to accompany the instrument but will update public communications on GOV.UK once the instrument has been made.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been produced for the instrument because there are no direct costs to business as a result of these measures. The costs are administrative costs which fall on regulators, which are either part of central government, local government, or independent bodies. In the latter case, they are "acting on behalf of a public authority" in their capacity as a regulator of a profession and therefore these costs are exempt from the Better Regulation framework. The de minimis impact assessment will not be published given the low impact the instrument will have.

9.2 Where businesses and consumers use the services of a regulated professional, they may benefit indirectly from price changes or changes in the quality and range of services available to them. Swiss qualified professionals may benefit from easier administrative processes to start work in the UK, depending on what alternative processes are already in place.

Impact on businesses, charities and voluntary bodies

9.3 There is no significant impact on business, charities or voluntary bodies because the costs fall on regulators, which are not businesses, they are either part of central government, local government, or independent bodies.

9.4 No specific action is proposed to minimise the regulatory burden on small businesses.

9.5 The impact on the public sector are extra costs to UK regulators that need to adjust their current recognition processes or open new recognition routes to meet the requirements of the Agreement. The de minimis impact assessment sets out the calculations for estimating one-off cost associated with this which, across all regulators required to make changes, we estimate to be under the de-minimis threshold. There may also be some small ongoing costs which are unquantified but we estimate to be small.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The arrangements will be monitored as part of the Department for Business and Trade's ongoing Monitoring and Evaluation plans for the PQ Act. This includes, amongst other things, structured engagement with regulators on:

- the volume of applications and decisions from Swiss-qualified professionals, and
- the burdens of implementing and maintaining the new system.

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Minister Alexander has made the following statement:

"In my view, I consider that any organisations incurring costs are "acting on behalf of a public authority" in their capacity as a regulator, meaning this is not considered "qualifying activity" under Section 28 of the Small Business, Enterprise and Employment Act 2015."

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 None.

12. European Convention on Human Rights

12.1 The Rt Hon Douglas Alexander MP has made the following statement regarding Human Rights:

"In my view the provisions of the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) (Extension to Switzerland etc.) Regulations 2024 are compatible with the Convention rights."

13. The Relevant European Union Acts

13.1 The instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").