EXPLANATORY MEMORANDUM TO

THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS AND IMPLEMENTATION OF INTERNATIONAL RECOGNITION AGREEMENTS (AMENDMENT) REGULATIONS 2023

2023 No. [XXXX]

1. Introduction

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

2. Purpose of the instrument

2.1 This instrument implements into domestic law the provisions relating to recognition of professional qualifications ("RPQ") in the free trade agreement ("FTA") between Iceland, the Principality of Liechtenstein and the Kingdom of Norway ("the EEA EFTA states") and the UK signed in July 2021. Where required, this instrument also provides regulators with the legal powers necessary to meet these terms.

2.2 This instrument also amends UK and devolved legislation consequential to the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015 ("the 2015 Regulations") and revokes other EU law relating to RPQ.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales, Scotland and Northern Ireland, except in relation to consequential amendments, repeals or revocations of sectoral legislation which have the same extent as the provision amended, repealed or revoked.

4.2 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England, Wales, Scotland and Northern Ireland except in relation to consequential amendments, repeals or revocations of sectoral legislation which have the same application as the provision amended, repealed or revoked.

5. European Convention on Human Rights

5.1 The Minister for Enterprise, Markets and Small Business, Kevin Hollinrake MP, has made the following statement regarding Human Rights:

"In my view the provisions of Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023 are compatible with the Convention rights."

6. Legislative Context

Implementation of the FTA

6.1 This instrument is being made to implement into domestic law the RPQ provisions of the FTA. The Government is making regulations requiring regulators of professions regulated by law ("regulated professions") to operate the RPQ system prescribed by the FTA.

6.2 Schedule 3 of this instrument makes amendments to sectoral legislation consequential on the implementation of the FTA. Amendments are being made in respect of sectoral legislation relating to:

- animal welfare professions (with territorial application in Great Britain for and England consequent upon the extent and application of the legislation being amended);
- education professions (with territorial application in England);
- f-gas handler professions (with territorial application in Great Britain);
- food examiners (with territorial application in England and Northern Ireland consequent upon the extent and application of the legislation being amended);
- healthcare professions (with territorial application in the UK);
- professions of statutory auditors and local public auditors (with territorial application in the UK);
- professions in transport (with territorial application in Great Britain, Northern Ireland and England consequent upon the legislation being amended).

6.3 This is the first use of the power in section 3 of the Professional Qualifications Act 2022 (PQ Act) to implement an international recognition agreement.

6.4 The power in the PQ Act to make this 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. This is because of the way professions are regulated across the UK – only a small number are reserved, but even where the regulation of a profession is devolved, there may be UK-wide legislation. The Government is making this instrument so that the RPQ provisions of the FTA are implemented throughout the UK.

Amendments to sectoral legislation consequential to the revocation of the 2015 Regulations and revoking other EU recognition law

6.5 While the UK was a member of the EU, RPQ was underpinned by EU law. The 2015 Regulations implemented part of the EU Directive 2005/36/EC on RPQ in the UK. Following the UK's exit from the EU, the 2015 Regulations were amended to put in place an interim, EU-based system for RPQ where regulators of regulated professions in the UK were required to recognise EEA and Swiss qualifications which were of equivalent standard to UK qualifications in scope, content and level.

6.6 Section 5 of the PQ Act revokes this interim system for RPQ and contains a power to make amendments to legislation consequent upon the revocation of the 2015 Regulations. Section 6(1) of the PQ Act contains a power to modify EU law relating to RPQ. Those amendments are contained in Schedule 4 to this instrument and relate to:

- professions in education;

- professions in transport;
- The Provision of Services Regulations 2009.

6.7 The revocation of the 2015 Regulations will be commenced at the same time as this instrument through separate regulations ("the commencement regulations") commencing section 5(1) of the PQ Act.

7. Policy background

What is being done and why?

Implementation of the FTA

7.1 This instrument implements the UK's obligations on RPQ contained in the FTA at the same time as the interim system for RPQ is revoked. This will ensure that there is a smooth transition for regulators, businesses and professionals through a single set of changes from the old system of RPQ to the new approach set out in the PQ Act and the terms of the FTA with the EEA EFTA states.

7.2 This instrument:

- places a duty on regulators of regulated professions to meet the requirements for RPQ contained in the FTA; and
- enables regulators to meet these requirements, by making amendments to legislation, where necessary.

7.3 The FTA provides for a comprehensive system for RPQ with the aim of enhancing existing trade and investment relationships between the UK and the EEA EFTA states. This system:

- requires regulators of regulated professions to recognise professional qualifications of a professional who applies for recognition and possesses comparable professional qualifications;
- enables regulators to refuse to recognise professional qualifications for the same profession where certain conditions are met;
- prescribes compensatory measures which regulators can require a professional to take in prescribed circumstances;
- prescribes the procedure for applications for recognition.

7.4 The FTA obliges the UK and the EEA EFTA states to put in place necessary measures and require their relevant authorities to operate the RPQ system. The UK and the EEA EFTA states committed to use "best endeavours" to "adopt, where applicable and maintain the necessary measures" that require regulators to deliver the system by 1 December 2023. Legislative implementation of the RPQ provisions of the FTA ensures that they become part of domestic law in the UK. Without legislative implementation of the RPQ provisions of the FTA, a professional would have no legal recourse in the UK if a UK regulator changed its system so that it no longer complied with the obligations in the FTA.

7.5 This instrument does not apply to the regulators listed in Schedule 2 to this instrument. These are regulators in respect of certain aviation, maritime and dangerous goods driver professions where there are existing international RPQ arrangements in place between the UK and the EEA EFTA states, which are not intended to be

affected by the RPQ system in the FTA, and we are discussing with the EEA EFTA states how best to give effect to this intention.

7.6 The obligations set out in Chapter 12 of the FTA have been integrated into the legislation governing healthcare professionals by way of amendment to that legislation. Part 2 of this instrument therefore does not apply to most healthcare professions. This aligns with the approach historically taken to implementing agreements relating to healthcare professions, owing to the detailed nature of legislation governing most healthcare professionals. Only applications to the GP and Specialist Registers kept under the Medical Act 1983 and the Dentists Act 1984 are subject to Part 2 of this instrument, as these procedures are largely set out in rules suited to the approach taken in Part 2 of the instrument.

7.7 Consultation with regulators of regulated professions identified that some regulators do not have the necessary powers to be able to operate the RPQ system outlined in the FTA. This instrument amends sectoral legislation where necessary to enable regulators to operate that system.

7.8 The Government has consulted the devolved authorities as required by section 17 of the PQ Act, and has worked closely with officials in the devolved authorities to ensure that this instrument works effectively across the UK.

7.9 The Secretary of State is satisfied, as required by section 14 of the PQ Act, that this instrument does not remove the ability of any regulator to prevent individuals who are unfit to practise the profession from doing so, and that the instrument will not have a material adverse effect on any regulated profession in terms of the knowledge, skills or experience of the individuals practising it.

Amendments under section 5(2) and section 6(1) of the PQ Act

7.10 The UK is, in the commencement regulations, revoking the interim system for RPQ at the same time as making this instrument to amend legislation consequent upon that revocation.

7.11 The amendments to UK and devolved legislation contained in this instrument tidy up the statute book by removing references to EU-derived legislation for RPQ that are redundant following revocation of the interim system.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 No consolidation is being done.

10. Consultation outcome

10.1 In order to make these Regulations, the Government carried out two consultations to satisfy the requirements of sections 15 and 17 of the PQ Act.

Consultation with Regulators

10.2 Section 15 of the PQ Act requires the Government, when making regulations under section 3 of the PQ Act, to consult regulators likely to be affected by the Regulations,

or where it is otherwise appropriate to consult them. The Department ran a targeted consultation with regulators in early 2023.

10.3 Respondents were generally supportive of the proposed approach to implementation and the Department engaged extensively with regulators on the feedback received. As the consultation was targeted to a specific group, the consultation document and Government response were not published, but are available on request from the Department.

Consultation with Devolved Administrations

10.4 Section 17 of the PQ Act requires the Government to consult the devolved authorities when using PQ Act powers in areas of devolved competence. The Government is also required to publish a consultation report and seek to agree its wording with the DAs before publishing. The Department ran this consultation in mid-2023.

10.5 While the devolved authorities did not raise any specific concerns with the Regulations, they noted their opposition to the inclusion of concurrent powers in the PQ Act. The Department for Infrastructure, Driver and Vehicle Agency Northern Ireland, and the Food Standards Agency in Northern Ireland provided technical amendments to devolved legislation for inclusion in the Regulations, for agricultural analysts, public analysts and food analysts (FSA NI) and for driving instructors (DVA NI). The Scottish Government did not provide technical amendments to devolved legislation for inclusion in the Regulations. However, they noted that there is a requirement for a technical SSI to go through the Scottish Parliament to make small amendments to devolved legislation. The Welsh Government noted that Welsh Ministers will amend the School Teachers' Qualifications (Wales) Regulations 2012, the Food Safety (Sampling and Qualification) (Wales) Regulations 2013, the Welfare of Animals at the Time of Killing (Wales) Regulations 2014 and the Regulation and Inspection of Social Care (Wales) Act 2016.

10.6 As no new issues were raised, the Department continued with its approach to implement the Agreement through a single UK-wide instrument. The outcome of specific considerations is outlined in the Government consultation report which can be found on GOV.UK. The wording of the report was agreed by the DAs.

11. Guidance

11.1 The Government will not produce statutory guidance to accompany the instrument, but will update public communications on GOV.UK once the instrument has been made.

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 The main direct impacts are administrative costs that fall on regulators as a result of meeting new requirements, 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 and there are no direct costs to business. Businesses and consumers who use the services of regulated professionals may benefit indirectly from changes in price, quality or range of services available to

them, and EEA EFTA qualified professionals may benefit from easier administrative processes to start work in the UK, depending on what alternative processes are already in place. UK professionals will benefit from reciprocal arrangements, (although these are not given effect by this legislation).

12.4 A full Impact Assessment has not been produced for this instrument because no, or no significant, impact on the private, voluntary or public sector is foreseen.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. There is no direct cost to small businesses as a result of this instrument.

13.2 No specific action is proposed to minimise regulatory burdens on small businesses.

14. Monitoring & review

14.1 The approach to monitoring of this legislation is that its 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, inter alia:

- data collection on volume of applications from the relevant countries, and the outcomes of these decisions
- structured engagement with regulators on the burdens of implementing and maintaining the new system.

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

14.3 "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."

Contact

14.4 Kahla Niemann at the Department for Business and Trade Telephone: 07741699269 or email: kahla.niemann@businessandtrade.gov.uk can be contacted with any queries regarding the instrument.

14.5 Hannah Riches, Deputy Director for Regulated Professions Policy, at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.

14.6 Kevin Hollinrake MP, Minister for Enterprise, Markets and Small Business at the Department for Business and Trade can confirm that this Explanatory Memorandum meets the required standard.