EXPLANATORY MEMORANDUM TO

THE NURSING AND MIDWIFERY (EUROPEAN QUALIFICATIONS) (AMENDMENT) REGULATIONS 2021

2021 No. 531

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 purpose of this instrument is to address a deficiency in article 13 of the Nursing and Midwifery Order 2001 ("the NMO") (S.I. 2002/253), regarding recognition of professional qualifications ("RPQ"), that was introduced by an amendment made by EU Exit legislation (the European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment etc.) (EU Exit) Regulations 2020 ("the Swiss Regulations") (SI 2020/1394).

2.2 The deficiency is being addressed to ensure the UK regulator for nurses and midwives – the Nursing and Midwifery Council ('NMC') – can fully discharge its public protection function by ensuring that it has a legal basis for refusing admission to its register any individual who is not appropriately qualified

2.3 This instrument achieves this by putting back into effect a legal provision that ensures individuals are only eligible to apply for NMC registration on or after IP completion day if they (i) have a relevant qualification gained outside the UK and EU (Rest of World ('RoW')) and that qualification was awarded within five years of the date of application, or (ii) they hold a relevant qualification gained within the UK or EU (regardless of when that qualification was awarded).

Explanations

What did any relevant law do before exit day?

2.4 Prior to Exit Day, one of the conditions that all applicants to the NMC register were legally required (by Article 9(2) of the NMO) to meet was that they be in possession of a relevant nursing or midwifery qualification.

2.5 Some applicants to the NMC register were also subject to a "five-year rule". This rule required applicants to have obtained their relevant qualification within five years of the date of their application being made.

2.6 The NMO contained a provision determining which applicants to the NMC register could be exempt from the five-year rule. Due to this provision, UK and EU-qualified applicants were exempt, meaning the rule applied to RoW-qualified applicants only.

What does it do now?

2.7 The NMO as altered by the Swiss Regulations permits any individual applying to the NMC register after IP completion day to bypass the requirement to be in possession of a relevant qualification and also exempts them from the five-year rule.

2.8 This is because the Swiss Regulations introduced a deeming provision at the newly inserted article 13(6), which provides that any person applying to be registered after IP completion day is to be taken to satisfy the requirements of article 9(2)(a). That is, any such person is to be treated as if they held a relevant qualification awarded in last the five years. Further detail on the legislative context is provided below.

Why is it being changed?

2.9 The change this instrument introduces is needed to ensure that professional standards and public confidence in the professions the NMC regulates are maintained. The current drafting of the NMO does not allow the NMC to enforce the minimum education and training standards for the practitioners on its register.

What will it do once changed?

2.10 Once changed, the NMC's right to refuse applications from individuals who either do not hold an appropriate EU-awarded qualification, or do not hold an appropriate RoW-awarded qualification obtained within five years of the date of application, will be reinserted into the NMO. This will enable the NMC to fully discharge its public protection function.

2.11 This will be achieved by providing that only individuals holding relevant European qualifications issued in the last five years, which are designated as approved qualifications by other provisions in the legislation, would continue to benefit from the specific provision introduced by the Swiss Regulations. Further detail on the general legislative context is provided below.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is the whole of the United Kingdom.

4.2 The territorial application of this instrument is the whole of the United Kingdom.

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 In 2019 the UK amended its domestic legislation governing the recognition of professional qualifications (RPQ) in order to ensure that RPQ legislation can operate effectively post-exit from the EU, and to correct deficiencies which have arisen as a consequence of the UK leaving the EU.

6.2 The amended "2019 RPQ legislation" – the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/593) – unilaterally provides for an ongoing system of recognition for EEA and Swiss-qualified individuals and provides transitional and saving provisions to ensure those affected by the UK's EU-exit in relation to RPQ are protected after IP completion day.

6.3 Subsequent to passing the 2019 RPQ legislation, the UK Government implemented outstanding RPQ provisions of its international agreements with the EEA and Switzerland and amended the 2019 EU Exit Regulations to give effect to the RPQ provisions of the agreements in domestic law from IP completion day. This was achieved through the passing of the Swiss Regulations.

6.4 The NMO makes provision for the statutory regulation of nurses and midwives.

6.5 One of the corrections included within the Swiss Regulations involved inserting provisions into the NMO in relation to the five-year rule. The amendment was supposed to clarify that holding a qualification that was previously recognised "automatically" (because it was listed in Annex V of Directive 2005/36/EU (as that list existed at IP completion day)) was to be deemed to satisfy the registration requirements in article 9(2)(a). The wording inserted by the 2020 Regulations states:

"13(6) A person who applies, on or after IP completion day, for admission to the register is to be deemed to satisfy the requirements of Article 9(2)(a)."

6.6 The amendment unfortunately did not make any provision for the requirement that an applicant needed to have "a relevant European qualification" to fulfil the deeming provision. This effectively allows anyone that makes an application to bypass section 9(2)(a) without requiring a relevant qualification and to be eligible for registration.

7. Policy background

What is being done and why?

7.1 The principal purpose of this instrument is to reinstate a provision into the NMO that only permits individuals to be eligible to apply to and to be admitted to the NMC register if they are in possession of a relevant qualification.

7.2 The purpose is also to reintroduce a rule for RoW applicants to the NMC register, which requires such applicants to have qualified within five years of the date of their application to that register.

7.3 The changes made by this instrument enable the NMC to fully discharge its patient protection function by ensuring those who are admitted to its register meet the minimum required standards for training and education.

7.4 The provisions are being reinstated as they were erroneously disapplied due to an amendment the Swiss Regulations made to the NMO.

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

8.1 This instrument is being made using the power in section 8 of the European Union (Withdrawal) Act 2018 in order to address failures of retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. The instrument is also made under the Paragraph 21 of Schedule 7 powers in the Withdrawal Act 2018. In accordance with the requirements of that Act 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 Not applicable.

11. Guidance

11.1 Guidance on this instrument is not required.

12. Impact

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

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

12.3 An impact assessment has not been prepared for this instrument because as the SI relates to maintenance of existing regulatory standards.

13. Regulating small business

13.1 The instrument 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 the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Sarah Adams, at the Department of Health and Social Care Telephone: 02079722862 or email: sarah.adams@dhsc.gov.uk can be contacted with any queries regarding the instrument.

15.2 Mark Bennett, Deputy Director for Professional Regulation at the Department of Health and Social Care can confirm that this Explanatory Memorandum meets the required standard.

15.3 The Minister of State for Health, Edward Argar 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 sections 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/Sifting Committees
Appropriate-ness	Sub-paragraph (2) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 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 sections 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 sections 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 sections 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 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.
Criminal offences	Sub-paragraphs (3) and (7) of paragraph 28, Schedule 7	Ministers of the Crown exercising sections 8(1), 9, and	Set out the 'good reasons' for creating a criminal offence, and the penalty attached.

		23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	
Sub-delegation	Paragraph 30, Schedule 7	Ministers of the Crown exercising sections 10(1), 12 and part 1 of Schedule 4 to create a legislative power exercisable not by a Minister of the Crown or a Devolved Authority by Statutory Instrument.	State why it is appropriate to create such a sub-delegated power.
Urgency	Paragraph 34, Schedule 7	Ministers of the Crown using the urgent procedure in paragraphs 4 or 14, Schedule 7.	Statement of the reasons for the Minister's opinion that the SI is urgent.
Explanations where amending regulations under 2(2) ECA 1972	Paragraph 13, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement explaining the good reasons for modifying the instrument made under s. 2(2) ECA, identifying the relevant law before exit day, and explaining the instrument's effect on retained EU law.
Scrutiny statement where amending regulations under 2(2) ECA 1972	Paragraph 16, Schedule 8	Anybody making an SI after exit day under powers outside the European Union (Withdrawal) Act 2018 which modifies subordinate legislation made under s. 2(2) ECA	Statement setting out: a) the steps which the relevant authority has taken to make the draft instrument published in accordance with paragraph 16(2), Schedule 8 available to each House of Parliament, b) containing information about the relevant authority's response to— (i) any recommendations made by a committee of either House of Parliament about the published draft instrument, and (ii) any other representations made to the relevant authority about the published draft instrument, and, c) containing any other information that the relevant authority considers appropriate in relation to the scrutiny of the instrument or draft instrument which is to be laid.

Part 2

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

1. Sifting statement(s)

1.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Nursing and Midwifery (European Qualifications) (Amendment) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure)".

1.2 This is the case because the correction it contains must be made as a matter of urgency to ensure public safety; putting back into place a legal provision that ensures registered professionals hold appropriate qualifications.

2. Appropriateness statement

2.1 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In my view The Nursing and Midwifery (European Qualifications) (Amendment) (EU Exit) Regulations 2021 does no more than is appropriate".

2.2 This is the case because the instrument only reintroduces registration rules for applicants which were disapplied erroneously.

3. Good reasons

3.1 The Minister of State for Health, Edward Argar, 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".

3.2 This is the case because the instrument enables the NMC to discharge fully its patient protection function by ensuring that those who are admitted to its register meet the minimum required standards for training and education.

4. Equalities

4.1 The Minister of State for Health, Edward Argar, 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."

4.2 The Minister of State for Health, Edward Argar, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

"In relation to the instrument, we, the Department of Health and Social Care, 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 section 2 of the main body of this explanatory memorandum.