EXPLANATORY MEMORANDUM TO

THE RECOGNITION OF OVERSEAS QUALIFICATIONS (CHARGES) (ENGLAND AND WALES AND NORTHERN IRELAND) REGULATIONS 2025

2025 No. 256

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education ("DfE") and is laid before Parliament by Command of His Majesty.

1.2 This memorandum contains information for the Secondary Legislation Scrutiny Committee (SLSC) and the Joint Committee on Statutory Instruments (JCSI).

2. Declaration

2.1 Jacqui Smith, Minister for Skills at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

2.2 Oscar Tapp Scotting, Deputy Director for International Evidence and Trade, at the Department for Education confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Sarah Allen at the Department for Education (ukenic.FEESSI@education.gov.uk) can be contacted with any queries regarding this Instrument.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 This Instrument revokes and replaces the Recognition of Overseas Qualifications (Charges) Regulations 2024 (S.I. 2024/942, "the earlier regulations"). The earlier regulations extended and applied to the whole of the UK. However, following discussions with the devolved Governments in relation to matters of competence, this instrument extends and applies only to England, Wales and Northern Ireland.

4.2 This Instrument also updates the services and charges related to the comparability and recognition of UK and overseas qualifications. These services are provided in pursuance of international obligations. The UK's National Information Centre ("UK ENIC") provides these services ("the UK ENIC services"). An external provider, Ecctis Limited, carries out the UK ENIC services through a contract with DfE.

4.3 This Instrument will include the following changes in respect of services and charges:

- **Charges for services:** An increase has been applied to all UK ENIC services to manage increased costs of delivery resulting from inflation.
- **Subscription Package:** The description of the service has been updated to reference the subscriber query support where this is relevant.
- Ancillary Services:
  - The £7.50 charge for the delivery of a 'statement of comparability' or 'qualification reference statement' in electronic format containing an

electronically verifiable signature has been removed as a charging option. A description of a 'statement of comparability' and 'qualification reference statement' are outlined in paragraph 5.3.

- Charges for additional support to subscription package users from the provider of up to 300 additional queries has been added as a charging option.
- Members rate and non-member rate charges for a one day conference and a two day conference have been included as charging options.

Where does the legislation extend to, and apply?

4.4 The extent of this Instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England, Wales and Northern Ireland.

4.5 The territorial application of this Instrument (that is, where the instrument produces a practical effect) is England, Wales and Northern Ireland.

5. Policy Context

What is being done and why?

5.1 The UK is a signatory to two international treaties regarding the recognition of academic qualifications: the Convention on the Recognition of Qualifications concerning Higher Education in the European Region, signed by the United Kingdom on 7th November 1997; and the Global Convention on the Recognition of Qualifications concerning Higher Education, signed by the United Kingdom on 25th November 2019 (together "the Conventions").

5.2 The Conventions aim to facilitate academic and professional mobility between states and enhance international cooperation and trust in higher education. The Conventions oblige signatory states to implement the recognition of qualifications from other signatory states and set out how recognition decisions shall be made. The Conventions also require signatory states each to establish and maintain a national information centre that facilitates access to information about higher education and qualifications. UK ENIC fulfils information and recognition functions for the United Kingdom.

5.3 The UK ENIC services include:

- The issuing of 'statements of comparability' that evidence the comparability of overseas qualifications with UK qualifications. This is useful for access to higher education and to employment in the UK including health and social care, business administration, law, ICT, construction, and engineering.
- The issuing of 'UK qualification reference statements' that provide information about an individual's UK qualification, such as qualification entry requirements, the level of the qualification, progression routes or information about the relevant issuing body. This can be useful to demonstrate the scope of a qualification outside or within the UK.
- The provision of a 'refugee bundle service' and a 'standard bundle service' that provide a specified number of 'statements of comparability' for relevant organisations, charities, and companies. Bundles provide a cheaper and more convenient option for those who make frequent applications for the 'statement of comparability' service.
- The provision of 'subscription packages' allowing subscribers access to a range of services including, but not limited to, access to an online database(s)

for 5 to an unlimited number of users depending upon the subscription package selected.

5.4 The earlier regulations set the charges at cost across the UK ENIC services on an aggregate basis for the whole of the UK. This Instrument revises the services and charges for UK ENIC's services relating to the recognition of international qualifications, aligning them with a new contract the DfE has signed with an external contractor after a competitive bidding process.

5.5 This instrument also revokes and replaces the earlier regulations. Whilst the earlier regulations extended and applied to the whole of the UK, following discussions with the devolved Governments in relation to the extent of reserved / devolved competence, this instrument extends and applies only to England, Wales and Northern Ireland. At the time the earlier regulations were made it was considered by the DfE that the subject matter of the regulations was reserved as relating to both immigration (as its primary purpose) and education. The earlier regulations were shared with the devolved Governments in advance of being made on that basis, and no concerns were raised. However, as a result of subsequent detailed discussions between the DfE, the Scottish Government, Welsh Government and the Department for the Economy, Northern Ireland, it has been concluded that the better view is that the regulations relate to the devolved matter of education.

5.6 The Secretary of State retains the power to make the regulations in a devolved subject area in respect of Wales and Northern Ireland. The Welsh Government and the Department for the Economy, Northern Ireland have been consulted regarding the Secretary of State making these regulations. However, as a result of the operation of section 53 of the Scotland Act 1998 (and given the revised devolution analysis) we now consider that the better view is that the power to make the regulations with regards Scotland has been transferred to the Scottish Ministers. As a result, these regulations make provision for England, Wales and Northern Ireland only, and equivalent provision will be made for Scotland in regulations made by the Scottish Ministers which will come into force on the same date.

What was the previous policy, how is this different?

5.7 The charges for UK ENIC services are set at cost on an aggregate basis. DfE will review the charges by analysing data to compare revenue against costs. This will allow DfE to monitor the situation internally and make adjustments; and where necessary, DfE will propose an amendment Statutory Instrument.

5.8 Under the previous policy and until the contract for the new service is operational on 28 March 2025, the service was and is delivered under a concession contract with an external supplier. Charges set by DfE were (and are) paid to the supplier, 'Ecctis Limited'.

5.9 There is uncertainty as to when fees were first charged for these services, but it is possible that the fees may have been in place from at least 2014.

5.10 We understand that it was not considered that statutory authority was required in relation to these fees, on the basis that the services being provided are 'commercial' as

defined in 'Managing Public Money' [1]. Commercial fees do not require statutory authority.

5.11 However, when the relevant contract was due to expire (with no further extension provisions built into the contract), a routine procurement exercise processed under the Public Contracts Regulations 2015[2] was launched on 9 April 2024. The new contract is a standard services contract with the fees being paid to DfE via a payment portal with a management fee paid by DfE to the supplier.

5.12 In or around the Spring of 2024, as part of an internal review associated with the procurement process described above, it was identified that an alternative fees analysis could be put forward: that these charges are not commercial, such that they do require statutory authority. Following a careful review, it was therefore decided to put the matter beyond doubt and make statutory provision for the UK ENIC services and associated fees.

5.13 Regulations were prepared, made and came into force at the earliest opportunity, being 4 October 2024.

5.14 The revised analysis as to the nature of the fees charged, and as to the devolution position of the relevant functions, create a risk that the historic fees charged, including those charged under the earlier regulations in respect of Scotland, were so charged unlawfully. For that reason, provision is included in the Border Security, Asylum and Immigration Bill ("BSAI Bill") currently before Parliament. This establishes retrospective authority for the charging of fees, including fees charged by the ENIC service, up to the date of the provision coming into force. Subject to parliamentary approval, this provision will remove the possibility of customers requesting refunds for fees paid for services, the benefits of which they have fairly received.

5.15 As set out in the Impact Assessment for the BSAI Bill[3] DfE estimates that the UK ENIC services have generated approximately £45 million in revenue for the period of 2014 to 2024. There is uncertainty as to whether this figure represents an appropriate estimate of liable refunds (in the event that the relevant provisions in the BSAI Bill do not become law) as (for the reasons set out above) there is a plausible argument that the UK ENIC Services are commercial and do not require statutory authority at all. Moreover, in the event that it was concluded that statutory authority is required, given that a reasonable fee was charged for a service duly rendered it is not clear that a court would consider refund of the fee in whole or in part appropriate.

5.16 In paragraph 5.5 of the Explanatory Memorandum[4] of the earlier regulations, DfE committed to keep the UK ENIC services and the level of charges for these services under review.

[1] (paragraph 6.10.1): "*Some public sector services are discretionary, i.e. no statute underpins them. Services of this kind are often supplied into competitive markets, though sometimes the public sector supplier has a monopoly or other natural advantage*."

[2] https://www.legislation.gov.uk/uksi/2015/102/contents

[3] https://publications.parliament.uk/pa/bills/cbill/59-01/0173/HCB173ImpactAssessment.pdf

[4] https://www.legislation.gov.uk/uksi/2024/942/memorandum/contents

6. Legislative and Legal Context

How has the law changed?

6.1 This Instrument revokes and replaces the earlier regulations with the Recognition of Overseas Qualification (Charges) (England and Wales and Northern Ireland) Regulations 2025, in relation to England, Wales and Northern Ireland.

6.2 This Instrument also updates the UK ENIC services and the charges for these services to align with the new contract.

6.3 Finally, the Instrument makes certain drafting changes in response to concerns raised in respect of the earlier regulations by the Joint Committee on Statutory Instruments.

Why was this approach taken to change the law?

6.4 Revoking the earlier regulations and replacing with the Recognition of Overseas Qualification (Charges) (England and Wales and Northern Ireland) Regulations 2025 (as opposed to merely amending the earlier regulations) is considered to be the clearest drafting approach to making the necessary changes in light of the conclusion that the Scottish Ministers must make equivalent regulations in respect of Scotland.

7. Consultation

Summary of consultation outcome and methodology

7.1 No public consultation has been undertaken as there is not a substantial impact on users of the UK ENIC services or fundamental changes to the services offered.

7.2 The DfE has consulted the Devolved Administrations about this Instrument. The Scottish Ministers plan to put in place a separate Scottish Statutory Instrument to apply in its jurisdiction.

8. Applicable Guidance

8.1 No guidance is required for this Instrument.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this Instrument because it was determined that it is out of scope of the Better Regulatory Framework as this Instrument does not directly regulate or deregulate business.

Impact on businesses, charities and voluntary bodies

9.2 There is no, or no significant, impact on business, charities, or voluntary bodies because this Instrument is not creating any new requirements for any of these sectors and does not impact an organisation carrying out its business activities wholly or in part as a private service.

9.3 The legislation does not impact small or micro businesses carrying out their business activities.

9.4 This instrument updates the UK ENIC services and charges for these services, but there is no, or no significant, impact on the public sector because this Instrument does not affect how public sector bodies operate.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 This Instrument will be kept under review to monitor the level of charges to maintain cost recovery and to ensure the services included in the Instrument are those provided through a contract between the external provider and the DfE.

10.2 This instrument does not include a statutory review clause. The instrument will be reviewed and updated as required to maintain cost recovery and to ensure the services included in the Instrument are those provided through a contract between the external provider and the DfE.

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 This Instrument revokes and replaces the earlier regulations due to defects identified, specifically a change to the extent and application of the regulations.

11.2 In light of this defect, the Department will adopt the free issue procedure in relation to this instrument. The Department confirms that it has complied with the requirement stated in paragraph 4.7.6 of Statutory Instrument Practice and consulted the SI Registrar on the use of the free issue procedure in relation to this instrument, who is content that it would be appropriate to apply the free issue procedure in this instance.

11.3 The Secondary Legislation Scrutiny Committee (SLSC) brought the quality of the Explanatory Memorandum which accompanied the earlier regulations to the special attention of the House in a report that they published 24th October 2024[5]. In response to those concerns, additional detail has been provided in the accompanying Explanatory Memorandum for this Instrument to ensure a clear understanding of its policy objectives, effects and intended implementation.

11.4 The Joint Committee of Statutory Instruments (JCSI) drew special attention to the earlier regulations in their report published on 15th November 2024[6]. This Instrument corrects errors identified so that the term "refugee organisation" is no longer superfluous, time periods are specified in relation to the "priority service" and "super priority service", and descriptions of the specific services identified by the JCSI have now been amended.

12. European Convention on Human Rights

12.1 As this Instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

13. The Relevant European Union Acts

13.1 This 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").

[5] SLSC, 4th Report (Session 2024-25, HL Paper 28): https://publications.parliament.uk/pa/ld5901/ldselect/ldsecleg/28/28.pdf

[6] Fifth Report of Session 2024–25: https://committees.parliament.uk/publications/45664/documents/226098/default/

13.2 It does however relate to the withdrawal of the United Kingdom from the European Union because the name of the body providing the services has changed. The services in this Instrument are performed by UK ENIC, the UK national recognition information centre. This function was, prior to the UK's withdrawal from the European Union, called UK NARIC (a designation reserved for agencies in EU countries). The international obligations have not changed.