

EXPLANATORY MEMORANDUM TO
THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS (AMENDMENT
ETC.) (EU EXIT) REGULATIONS 2021

2021 No. XXXX

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Department for Business, Energy and Industrial Strategy and is laid before Parliament by Act.
- 1.2 This memorandum contains information for the Joint Committee on Statutory Instruments and for the Sifting Committees.

2. Purpose of the instrument

- 2.1 The Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021 (“this instrument”) makes specific amendments to provisions concerning the alert mechanism in Part 3 of Schedule 1 of the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019¹ (“the 2019 Regulations”) in order to remove ineffective obligations on designated competent authorities in respect of alerts made before IP completion day. These amendments address deficiencies arising as a consequence of the United Kingdom’s (“UK’s”) withdrawal from the European Union (“EU”).

Explanations

What did any relevant EU law do before exit day?

- 2.2 Before the end of the Transition Period, the UK was subject to EU law on the recognition of professional qualifications (RPQ)². It provided a reciprocal framework of rules which enabled European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised and gain access to the regulated profession in which they are qualified in another EEA State or Switzerland, other than the state in which the qualification was obtained.
- 2.3 Under this RPQ framework, UK regulators exchanged information with regulators in EEA States through the EU’s Internal Market Information (IMI) System, a digital information sharing platform.
- 2.4 The alert mechanism, which this instrument is concerned with, is a specific type of notification that is made through the IMI system. Under EU Law, regulators make alerts in relation to restrictions on the practice of professionals working in specific regulated professions (such as certain health professions and teachers) as part of the RPQ Directive 2005/36/EC. This Directive was implemented into UK law by the European Union (Recognition of Professional Qualifications) Regulations 2015 (“the 2015 Regulations”) and other sector specific legislation.

¹ Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 as amended by S.I. 2020/1038

² The main piece of EU law on RPQ was Directive 2005/36/EC

Why is it being changed?

- 2.5 In preparation for the UK's withdrawal from the EU, the 2019 Regulations were made to address deficiencies in the 2015 Regulations arising as a consequence of leaving the EU and to ensure that they operated effectively after the end of the Transition Period.
- 2.6 One of these deficiencies related to the fact that the UK would no longer have access to the IMI system, including the alert mechanism, at the end of the Transition Period (except in for limited purposes under the terms of the Withdrawal Agreement).
- 2.7 Accordingly, the 2019 Regulations included transitional and saving provisions in Part 3 of Schedule 1 to address the need to update or revoke any alerts made before the end of the Transition Period when UK designated competent authorities (i.e. regulators of professions) would no longer have access to the IMI system to do this. These provisions obliged UK regulators to update the European Commission directly of any changes to existing alerts made by the UK, with a view that the Commission would update the information contained in the alert.
- 2.8 Since then, the Commission has notified the Government that alerts made by UK regulators before the end of the Transition Period have been withdrawn from the IMI system and therefore there is nothing to update. Accordingly, amendments are being made to the alert mechanism provisions to ensure that the deficiency is properly addressed.

What will it now do?

- 2.9 This instrument amends the transitional and saving provisions in Part 3 of Schedule 1 of the 2019 Regulations in respect of the alert mechanism³ including two consequential amendments. The effect of these amendments are to remove any obligation on UK regulators to send information to the European Commission pertaining to alerts made before the end of Transition Period.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments and the Sifting Committees

- 3.1 The instrument is being laid for sifting by the Sifting Committees.

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.

4. Extent and Territorial Application

- 4.1 The territorial extent of this instrument is the United Kingdom.
- 4.2 The territorial application of this instrument is the United Kingdom.

³ At paragraph 47 of Part 3 of Schedule 1 of the Recognition of Professional Qualification (Amendment etc) (EU Exit) Regulations 2019 as amended by S.I. 2020/1038

5. European Convention on Human Rights

- 5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

- 6.1 Specific transitional and savings provisions were made in the 2019 Regulations in order to address deficiencies (see paragraphs 2.5 to 2.7 above) in respect of provisions relating to alert mechanisms in the 2015 Regulations, arising as a consequence of the UK's withdrawal from the EU. Since these provisions were made, it has become apparent that the amendments do not fully address or mitigate the deficiencies. Therefore we are amending the provisions, so to properly address this issue and to remove the ineffective obligation on regulators to provide information in respect of alerts made before the end of the Transition Period. This instrument amends the 2019 Regulations so that the transitional and savings provisions on alert mechanisms function effectively.

7. Policy background

What is being done and why?

- 7.1 As described above in paragraph 2.2 to 2.4, provisions were made in the 2019 Regulations to address deficiencies in provisions concerning the alert mechanism in the 2015 Regulations which were to arise as a consequence of EU Exit, as the UK would no longer have access to the IMI system and therefore would be unable to update or revoke alerts made by regulators before the end of the Transition Period. The intention was to address this issue, by regulators providing information on alerts directly to the European Commission.
- 7.2 Since then, the European Commission has withdrawn all alerts made by UK regulators from the IMI system and therefore there is nothing to update. Accordingly, if UK regulators comply with the current obligations in the 2019 Regulations, they may be sharing personal data without a clear purpose for doing so.
- 7.3 In light of this, it was considered necessary to amend the 2019 Regulations to correct this issue properly and to remove ineffective obligations on regulators.
- 7.4 The changes being made by this instrument do not represent any major change in policy.

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 a retained EU law to operate effectively or other deficiencies arising from the withdrawal of the United Kingdom from the European Union. 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 documents.

10. Consultation outcome

10.1 No formal consultation has been undertaken given the minor and technical nature of the amendments. However, the Department has engaged with its counterparts in the Devolved Administrations to agree the approach and this instrument. Devolved Administrations have confirmed their agreement for the Government to make this instrument in areas which are within their devolved competence. This agreement has been sought under the terms of the Intergovernmental Agreement (2018), as this instrument will make provisions that could be made by the Devolved Administrations in exercise of their powers under the EUWA.

11. Guidance

11.1 No guidance is to be issued in relation to this instrument. In December 2020, the Department issued updated guidance to regulators with regards the 2019 Regulations⁴.

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 An Impact Assessment has not been prepared for this instrument because the equivalent annual direct cost to regulators falls below the £5m threshold as detailed in the Business Impact Target (BIT). However, a De Minimis assessment has been carried out and has concluded that there is no direct costs to business as a result of this legislation.

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 legislation.

14. Monitoring & review

14.1 The amendments made by this instrument are minor and technical with the purpose of correcting deficiencies in retained EU law and ensuring that the legislation will operate effectively following the end of the Transition Period.

14.2 As this instrument is made under the EU Withdrawal Act 2018, no review clause is required.

15. Contact

15.1 Ged Manning at the Department for Business, Energy and Industrial Strategy. Telephone: 020 7215 8041 or email: ged.manning@beis.gov.uk can be contacted with any queries regarding the instrument.

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

15.3 Lord Grimstone at the Department for Business, Energy and Industrial Strategy confirm that this Explanatory Memorandum meets the required standard.

⁴ <https://www.gov.uk/government/publications/recognition-of-professional-qualifications-technical-guidance-for-regulatory-bodies/recognition-of-professional-qualifications-guidance-for-regulatory-bodies>

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
Appropriateness	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, amendments, 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 EUWASIs	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 23(1) or jointly exercising powers in Schedule 2 to create a criminal offence	Set out the ‘good reasons’ for creating a criminal offence, and the penalty attached.
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 14, 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 15, 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)

- 1.0 The Minister for Investment, Lord Grimstone, has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021 should be subject to annulment in pursuance of a resolution of either House of Parliament (i.e. the negative procedure).”
- 1.1 This is the case because: it does not meet the criteria for an affirmative procedure in the European Union (Withdrawal) Act 2018. The instrument contains only minor amendments to UK secondary legislation to ensure that deficiencies are addressed and the law continues to operate effectively following the end of the Transition Period as the substantive rules will remain largely the same.

2. Appropriateness statement

- 2.1 The Minister for Investment, Lord Grimstone has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:
- “In my view the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2021 does no more than is appropriate”.
- 2.2 This is the case because the instrument uses the European Union (Withdrawal Act) 2018 powers only to make changes necessary to address deficiencies arising from the withdrawal of the United Kingdom from the European Union and to ensure that the legislation operates effectively.

3. Good reasons

- 3.1 The Minister for Investment, Lord Grimstone 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 makes amendments to UK legislation to correct deficiencies arising from exit and ensure that the unnecessary requirements placed on UK regulators are removed.

4. Equalities

- 4.1 The Minister for Investment, Lord Grimstone 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 for Investment, Lord Grimstone has made the following statement regarding use of legislative powers in the European Union (Withdrawal) Act 2018:

“In relation to the instrument, I, Lord Grimstone 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.