

**Health Professions Council
Education and Training Committee Meeting, 12th June 2007**

Draft regulations for the implementation of 2005/36/EC (Professional Qualifications Directive) – Consultation response

Executive Summary and Recommendations

Introduction

Directive 2005/36/EC establishes rules for holders of a professional qualification in a Member State to have access to and allow the pursuit of the profession in which they are qualified in another Member State.

HPC currently operates under the General Systems directive. The aim of directive 2005/36/EC is to reorganise, rationalise and harmonise all 15 rules (including the General Systems directive) relating to professional recognition. All existing European legislation is brought together so that the principles of recognition are standardised across all professions.

European law ensures that the UK is bound to implement the directive. There are elements of the directive that must be transposed into domestic law but there are also some elements that discretionary. It is these elements that the UK government is consulting on and which we are responding to.

Decision

The Committee is invited to provide comment and feedback to our draft response to the consultation. Following the discussion by the Committee, this will be re-drafted as appropriate, and submitted as HPC's formal response to the consultation.

Background information

The consultation period ends at midnight on the 3rd August 2007.

Directive 2005/36/EC will come into force on 20th October 2007.

A full copy of the directive text:

http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf

Resource implications

Work on the project to implement the Professional Qualifications Directive forms part of the workplan for the Policy and Standards department, the Projects workplan and the Registration workplan for this financial year.

Financial implications

The financial implications of implementing the Directive are contained within the assumptions for this financial year's budget.

Background papers

None

Appendices

- 1) Overview of the provisions of the regulations
- 2) Paper considered by the Council at its meeting on 31st May 2007, on the Professional Qualifications Directive.

Date of paper

31st May 2007

Consultation response to draft regulations for the implementation of 2005/36/EC
(Professional Qualifications Directive)

Overall

We are currently taking legal advice in response to the draft regulations and will compile a final consultation response taking into account the legal advice alongside the views of the Council.

We accept that there are many parts of directive 2005/36/EC that must be transposed into UK law and are happy to respond to the discretionary elements. The majority of the proposed regulations are rules and best practice that we currently follow so in the main the regulations are formalising our current practices.

The following are ideas for responses to specific regulations:

We stress our support for regulation 5 about the formal requirement for competent authorities to share and exchange information. We have been an integral member of the Healthcare Professionals Crossing Borders agreement 2005 since it began. One of the agreements is to facilitate information exchange between competent authorities.

We have concerns about the temporary provision of services covered in regulations 8-19 regarding but accept that the UK is bound by European law to implement this part of the directive. We feel that service providers should be required to submit a written declaration in advance of the provision of services along with documentation proving their nationality, identity, attestation of legal establishment, evidence of qualification or experience, evidence of insurance, a list of countries in which they are registered and a photograph.

We will not be providing automatic temporary registration as stated in regulation 10 but will comply with the directive by assessing the application and responding within one month of receipt of all documentation as stipulated in regulation 16.

Under regulation 13 we will require the service provider to use the UK professional title. We feel that this is vital so that it is clear to the public what profession the service provider is providing and that they are subject to our fitness to practise (or 'disciplinary') regulations.

We are unhappy that there is no definition of temporary and occasional and that checking if a service provider has established themselves retrospectively after 52 weeks could lead to the public being put at risk. However, we accept that it is clear in the directive that it is not possible to have a fixed definition of temporary and occasional.

We are content with regulation 9(4) that allows the service provider to appeal using the existing appeal routes available to those seeking establishment.

We are pleased that the wording for common platforms (regulation 27) allows us to continue assessing applications under the general rules unless a common platform is agreed by ourselves.

Although we would like to be able to stipulate that language competence should be tested we accept that it cannot be a condition of registration. We think that article 53 of directive 2005/36/EC is clear on this point.

We will be designing a proforma stipulating the type of registration and scope of practice that will the service provider will have to make available to anyone receiving services from them.

We are happy with the conditions requiring any decision to be made within 3 months of the receipt of a complete application for establishment.

Appendix 1

Background Information

Proposal COM (2002)119 final

1. The proposal for a Directive on the recognition of professional qualifications was introduced at the Barcelona Summit in March 2002 and presented to the Internal Market Consumer and Tourism Council on 21 May 2002. The Commission presented the draft legal text to Member States on 4 June 2002.
2. Consultation on the draft Directive was launched in the UK on 1 July 2002 and closed on 30 September 2002. There was general support for the proposal's intent to rationalise and simplify the directives covering the recognition of professional qualifications. Concerns were limited to new provisions which went beyond consolidation of existing legal text. A number of respondents welcomed the relaxations proposed for service providers allowing a service provider to operate for sixteen weeks in a year on home state registration without having to seek and secure formal authorisation or registration in the host Member State, but there was strong reaction to the relaxations in some quarters, on grounds of public safety and protection and animal welfare. There was general support for the introduction of common platforms, subject to clarification of the means by which they would operate. The ability of a single committee to reflect the full range of professional interests covered by a single directive was also a cause for concern.
3. Discussion during the negotiation phase of the Directive primarily centred on the new elements – temporary provision of service, common platforms and the single committee. As expected, the provisions relating to temporary provision of service raised the most concerns and as a result the most contentious issues were displaced by safeguards. Article 15 of the Directive contains further clarification on common platforms and Article 59 gives reassurance about consultation with expert groups of professionals.

Directive 2005/36/EC

4. Directive 2005/36/EC was adopted on 7 September 2005 and is in the main a consolidating measure. All Member States must transpose the Directive into law by 20 October 2007, when it comes into force. The Directive makes it easier for qualified professionals to practise their professions in European countries other than their own by simplifying the recognition procedures. It repeals and replaces a number of existing Directives relating to the recognition of professional qualifications, and in many cases the provisions in the current and new Directive are very similar if not identical.
5. The Directive covers the five so-called sectoral health professions: doctors, dentists, pharmacists, nurses and midwives; and the two other sectoral professions of architects and veterinary surgeons. These professions are so named because currently

each of them is subject to a separate Directive. Directive 2005/36/EC brings together all of these separate regimes into the one Directive, and repeals all the individual Directives. The essential feature of the regime for the sectoral professions is that the training conditions in Member States have been harmonised, so that if a qualification is listed in the Directive, that qualification is subject to mutual automatic recognition¹.

6. Directive 2005/36/EC also covers the general system regime for which in general the principles, guarantees and conditions have been carried forward - Directives 89/48/EEC, 92/51/EEC and 99/42/EC will be revoked. Regulations SI 2005/18, SI 2002/2934 (as amended by SI 2005/882 and SI 2006/3214) and SI 2002/1597 (as amended by SI 2002/2036 and SI 2006/2228) will be revoked and replaced by the attached draft Regulations, which are UK wide.

Implementing the Directive in the UK

7. This Department (DfES) leads on the implementation of the Directive. As the Directive covers both the general and sectoral systems, it has been agreed between the relevant government departments that DfES implement all the provisions relating to the general system professions and general provisions on contact points and provision of information. DfES will also implement the general and establishment provisions for the new category of specific cases (Article 10 cases) where the general system will apply.

8. The Department of Health, the Department of Environment, Food and Rural Affairs and the Department of Communities and Local Government will be implementing the Directive for their respective sectoral professions, cross referencing to DfES Regulations where appropriate. Also those Regulations will implement the temporary service provisions for Article 10 cases except for the provision of verifying qualifications, which is implemented through DfES Regulations.

9. Health Departments will also make specific amendments to legislation covering health and social care professions, for example opticians, osteopaths, chiropractors, social workers, and professions regulated by the Health Professions Council; however as these professions fall into the general system regime DfES Regulations also apply.

10. Gibraltar will also prepare implementing legislation as UK legislation will not cover them.

THE REGULATIONS

11. The Directive is European law that the UK is bound to implement; we cannot revisit the underlying principles or those provisions whose transposition into domestic law leaves no room for discretion at national level. But where we, as a Member State, have discretionary powers then we can decide on the action to be taken; it is in these areas where we are seeking your comments. You will also see that we have adopted a

¹ These draft regulations do not contain the provisions concerning the automatic recognition of sectoral qualifications

different style with these draft Regulations; we have not reproduced in the Regulations the Annexes, which form part of the Directive although we have referred to them so it is important that these Regulations are read in conjunction with the Directive.

12. At the outset we have clarified the terms used within the Regulations. The majority you will recognise as being carried forward from the existing legislation while others have been taken straight from the Directive.

13. Regulation 3 provides a ‘road map’ of the Regulations. It details how and in what circumstances the Regulations will be applicable (a) to an individual seeking recognition; (b) to the different provisions; (c) obligations on competent authorities for sectoral professions and (d) the procedure competent authorities are obliged to operate in specific cases (largely a copy out the terms used in Article 10 of the Directive).

PART 1 - GENERAL PROVISIONS

14. The definition of a competent authority and its main functions are contained in Regulation 4; basically this is unchanged.

15. A number of aspects previously considered good practice have now been formally incorporated in to the Directive. Regulation 5 takes forward these. There is now a formal requirement for all competent authorities to share and exchange information; in practical terms this is not new, as networking and cooperation between competent authorities across Europe has always been an essential part of the effectiveness of the recognition procedures. Member States are required to set up a “contact point” which can consist of a network of contacts. The contact point provides the migrant with information about the profession, its professional rules and codes of ethics; such information is the domain of the regulator and again in practical terms this is not new. Therefore it is proposed that competent authorities are best placed to act as the contact point for their profession in the interests of accuracy of information and the accessibility of such information².

Do you agree that competent authorities should act as the contact point for their profession?

16. The interpretation of ‘regulated profession’ and ‘regulated education and training’ in Regulation 6 is unchanged.

17. In Regulation 7 the meaning of ‘professional qualifications’ encompasses the different regimes covered by the Directive; the basic principle is unaltered. A new term of ‘evidence of formal qualifications’ is introduced; this is not a new concept as it brings together existing designations within the auspices of the general system regime.

PART 2 - FREEDOM TO PROVIDE SERVICES

² DfES to act as the UK central point of contact for the network and contact point for queries concerning professions which are unregulated in the UK

18. Regulations 8 through to 19 introduce a major change relating to the provision of services by nationals of Member States who come to the UK to provide services on a temporary and occasional basis. This regime has to be distinguished from the mainstream provisions which concern migrants seeking to establish themselves in the UK on a more settled or permanent basis.

19. The temporary service regime is entirely new for the general system professions. It will not, however, apply to the professional titles regulated by Chartered Bodies ie those professions listed in Schedule 1 Part 2. Anyone can practice, as an accountant or an engineer for example, without having a chartered title and would not be subject to chartered body professional rules. To introduce a requirement for an EU service provider to be subject to host state professional rules (in this case chartered body rules) would put in place rules which currently do not exist and therefore would be contrary to the aim of these provisions.

20. A major change is introduced by these Regulations allowing professionals from one Member State to provide services in another Member State on a “temporary and occasional” basis, with the minimum of checks and formalities; and without having to pay a registration fee.

21. The substantive basis of temporary service provision in Regulation 8 is that the service provider has to be legally established in that profession in their own Member State or where the profession is unregulated then he must be able to attest to at least two years professional experience during the last ten years in that Member State.

22. On the first provision of service, service providers wishing to operate in a regulated profession may be required to supply a written Declaration and may be asked to supply certain documents to the competent authority. These are areas within temporary service provision where Member States have been given discretionary powers. As a result of discussions with stakeholders Regulation 11 states that on the first provision of service all service providers wishing to practice temporarily in the UK will supply the Declaration and will have to provide the documentation specified in Regulation 12. The Declaration may be provided by any means – email, fax, post. For administrative coherence the European Commission’s Implementation Group is currently discussing the format of a Declaration that service providers could use to inform competent authorities. The UK has input extensively to this process.

- (i) Do you agree that service providers should be required to submit a written Declaration in advance of provision of services?
- (ii) Do you agree that service providers should be required to supply the UK competent authority with documentation accompanying the Declaration which provides proof of the service provider’s nationality, legal establishment, professional qualifications and for the security sector evidence of no criminal convictions?

23. Regulation 9 states that all service providers will be subject to the professional rules and disciplinary provisions relevant to the profession. However it would not be

reasonable and proportionate to expect a temporary service provider to fulfil all the conditions applicable to permanent providers; a prime example being CPD requirements.

24. A key aspect of the temporary services regime is the exemption from the requirement for service providers to be registered. However, the Directive does allow competent authorities to provide for automatic temporary or pro-forma registration to make it easier to apply disciplinary provisions to temporary service providers. Discussions revealed that while some competent authorities wanted automatic temporary registration, others did not. Hence, Regulation 10 leaves it to the discretion of the competent authority whether to have registration requirements in respect of disciplinary provisions. Registration has to be automatic and competent authorities cannot charge for this. Regulation 17 states in brief terms the circumstances in which a service provider may no longer be able to operate temporarily.

Do you agree that the Regulations should give the choice to the competent authority to require automatic registration for temporary service providers?

25. Regulation 13 explains the regime applicable to the use of titles. Only where the service provider's qualifications have been verified, under Regulation 14, will the service provider be required to use the UK's professional title.

26. Regulation 15 states that on the first provision of service, Member States can check the qualifications of service providers and require the individual to pass an aptitude test; the alternative could be a very short adaptation period as long as it complies with the time limits set out in the Regulations. This only applies to the general systems professions which have a high degree of risk to the health or safety of the service recipient – Schedule 4 lists the cases. It also covers the sectoral professions, in the cases specified in Article 10 (cases in which sectoral applicants are subject to the general system). Strict time limits apply to this checking process as set out in Regulation 16; there is no flexibility.

27. The Declaration has to be renewed annually if the service provider intends to operate temporarily during the following year (see Regulation 11). The principle of automatic registration applies equally to the renewal stage as does the relaxation of charges.

Do you agree that service providers should be required to submit a written Declaration in advance of provision of services on renewal?

28. There is no provision for competent authorities to impose time limits of less than 52 weeks on service providers; this is not an option according to the Directive. It is of course open to competent authorities to review cases periodically to assess whether or not the service provision is genuinely temporary and occasional. Regulation 9 states that the temporary and occasional nature of the service provided should be assessed by the competent authority, on a case by case basis, of the combined criterion of duration, frequency, regularity and continuity of the service provision. The assessment will

therefore be a matter of judgement of the competent authority in each case. The Directive is silent about what happens if the service provider contests the outcome of such an assessment. Therefore Regulation 9(4) allows the service provider to appeal using the existing routes applicable to the establishment regime.

Do you agree that a service provider's appeal mechanism should be the same as those relating to establishment?

29. The service provider cannot be required to supply any further information or details other than those set out in Regulation 12. Competent authorities can obtain additional information through administrative cooperation with authorities in other Member States as stated in Regulation 18.

30. In those cases where the service provider's qualification is not verified and therefore the service provider operates under their home State title, Regulation 19 allows the competent authority to stipulate, if so required, that the service provider supplies certain information to the service recipient.

Do you agree that service providers operating on home State titles may be required, by competent authorities, to provide specified information to service recipients?

PART 3 – FREEDOM OF ESTABLISHMENT

Chapter 1: Application of the General System

31. Essentially the mechanisms of recognition established by Directives 89/48, 92/51 and 99/42 remain unchanged. However, due to the consolidation and rationalisation of provisions across the regime inevitably some changes have occurred.

32. One substantial change which has been made is to give enhanced rights to migrants. For the first time, certain sectoral profession cases will be subject to the general system regime (instead of the automatic recognition regime). These cases are listed in Regulation 3.

33. Regulation 20 details the five levels of education and training, which is a consolidation of the various levels taken from Directives 89/48 and 92/51. The formal introduction of five levels does not modify the substantive rights of migrants in comparison to existing legislation. It is not a change of substance to the existing law. It is a different representation of the same information.

34. Rationalisation and simplification of the recognition regime has brought the level of "Attestation of Competence" within the general rules and procedures. As a result, competent authorities have to operate within the common provisions, including the application of compensation measures.

35. The clauses relevant to equal treatment (Regulation 21), conditions of recognition (Regulation 22) and compensation measures (Regulations 23 & 24) have not changed. Regulation 26 clarifies the rules regarding the migrant's right of choice of compensation measure; no change to the general principles. A change has been introduced in Regulation 25 which requires competent authorities to take account of all professional experience whether it has been gained within the EU or internationally.

36. Directive 2005/36 introduces the concept of common platforms. The only aspect which requires transposition is the exemption of a compensation measure; Regulation 27 states that where a platform has been agreed and the individual fulfils the criteria of that platform then automatic recognition will apply. For those cases, where the individual does not meet the criteria of the platform an individual assessment under the general rules will be necessary. To date, no platforms exist.

Chapter 2: Recognition of Professional Experience

37. Regulation 28 takes over the existing principle governing the automatic recognition of qualifications on the basis of the migrant's professional experience in the case of craft, industrial and commercial activities in the restrictive list shown in Annex IV of the Directive; no change to the principle of Directive 99/42/EC. However, the groupings of activities relating to periods of professional experience have been reduced to three lists.

Chapter 3: United Kingdom Certificates of Experience

38. Concerns the delegation of the function, to ECCTIS Ltd, of the issuing of "Certificates of Experience" to people with relevant UK experience; no change to the existing operational system.

Chapter 4: Common provisions

39. When deciding on an application to become established in a regulated profession, the competent authorities can ask only for the specified documents set out in Annex VII of the Directive; this remains basically unchanged. Regulation 32 introduces new provisions where in cases of justified doubt the competent authority is able to undertake specific checks on qualifications, for example where the training has been undertaken as part of a franchised arrangement.

40. An addition to the recognition procedure in Regulation 34 is that competent authorities have to inform the migrant within one month of any missing documents; this enhancement to the system has been taken from the agreed Code of Conduct. As a result of discussions with stakeholders, Regulation 34 states that the time period for dealing with applications under the general system regime will remain as a maximum of four months (this includes the Article 10 cases in Regulation 3). It is also considered that applications for recognition under Chapter 2 of Part 3 be three months in line with the sectoral automatic regime.

Do you agree that the time period for dealing with applications for recognition under the general system regime should be a maximum of four months?
Do you agree that a period of three months be granted for Part 3 Chapter 2 cases?

41. The migrant's right of appeal has not changed and neither has the appeal routes; as you will see in Regulation 35 and Schedule 3.

42. The provision in respect of the use of professional titles remains the same.

PART 4 – SUPPLEMENTARY

43. The provision concerning the use of academic titles is unchanged from existing legislation.

44. Provision of information and statistical data relating to applications in Regulation 38 is also unchanged. However, this provision will also encompass information and data in respect of temporary service provision. Data concerning contact point queries is a new provision – it is envisaged this will be collated via the central point for the network - but as yet the European Commission has not detailed how this data collection will work practically.

Language competence

45. These Regulations do not address the question of language competence. Article 53 of the Directive does not alter the existing law, whereby individuals moving under either the sectoral or general system Directives cannot be required to take a language test as a condition of registration in the host Member State.

The profession of 'Company Auditor'

46. At this stage these Regulations do not carry forward the special provisions for the profession of Company Auditor as currently set out in SI 2005/18. Negotiations are ongoing at European and UK level about the relationship between Directive 2005/36 and the Statutory Audit Directive 2006/43³.

Your views as to the impact Directive 2005/36 has on Directive 2006/43 would be welcomed.

47. We would be grateful if you could bring to our attention any factual errors or omissions in the draft Regulations or the accompanying Schedules which require correction for example title of the profession or professional title; name of your organisation; appeal information; and where applicable, derogation information etc.

³ Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Directives 78/660/EEC and 83/349/EEC and repealing Directive 84/253/EEC.

Are there any factual errors or omissions that you wish to correct?

Please send comments to Carol Rowlands at carol.rowlands@dfes.gsi.gov.uk by 3 August 2007

STATUTORY INSTRUMENTS

2007 No. 0000

PROFESSIONAL QUALIFICATIONS

The European Communities (Recognition of Professional Qualifications) Regulations 2007

Made - - - - 2007
Laid before Parliament 2007
Coming into force - - 2007

The Secretary of State, being a Minister designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to recognition of higher education diplomas, formal qualifications, or experience in the occupation, required for the pursuit of professions or occupations, in exercise of his powers conferred under section 2(2) of, and read with paragraph 1A of Schedule 2 to, the European Communities Act make the following Regulations.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Secretary of State that it is expedient for the references to provisions of Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications (c) to be construed as references to those provisions as amended from time to time.

PART 1

GENERAL PROVISIONS

Citation and commencement

1.—(1) These Regulations may be cited as the European Communities (Recognition of Professional Qualifications) Regulations 2007.

(2) These Regulations come into force on 19th October 2007.

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- (a) The European Communities (Designation) Order 2002, S.I. 2002/248. Under section 57 of the Scotland Act (1998 c.46), despite the transfer to Scottish Ministers of functions in relation to implementing obligations under Community law in relation to devolved matters, the function of the Secretary of State in relation to implementing those obligations continues to be exercisable by him as regards Scotland.
- (b) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (c.51). By virtue of the European Communities (Definition of Treaties) (Agreement Between the European Community and its Member States and the Swiss Confederation on the Free Movement of Persons) Order 2000 (S.I. 2000/3269) the Agreement between the European Community and its Member States, of one part, and the Swiss Confederation, of the other, on the Free Movement of Persons, dated 21st June 1999 (Cm 5639) is to be regarded as a Community Treaty.
- (c) OJ No. L255, 30.09.2005, p.22, as amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141 [and instruments by which EEA States and Switzerland adopt 2005/36].

Interpretation

2.—(1) In these Regulations the following words and phrases have the following meanings—

“adaptation period” has the meaning given to it by Regulation 23;

“another relevant European State” means a relevant European State other than the United Kingdom;

“appeal body” has the meaning given to it by Regulation 35;

“applicant” means—

- (a) a person who seeks access to or pursuit of a regulated profession either on a temporary or occasional basis, or by way of establishment pursuant to these Regulations and is a national of a relevant European State whose home state is not the United Kingdom, or
- (b) a person who is not a national of a relevant European State, but is, by virtue of any enforceable Community right, entitled to be treated, for the purposes of access to or pursuit of a regulated profession, no less favourably than a national of such a State;

“aptitude test” means a test required by a competent authority pursuant to Regulation 24;

“common platform” means a set of criteria of professional qualifications which are suitable for compensation for substantial differences which have been identified between the training requirements existing in relevant European States for a given profession referred to in Article 15(1) of the Directive and adopted as a measure pursuant to Article 58(2);

“competent authority” —

(a) in relation to the United Kingdom, has the meaning given by regulation 4, and

(b) in relation to a relevant European State other than the United Kingdom, has the meaning given by regulation 4(4);

“compensation measure” means either an aptitude test or adaptation period;

“contact point” has the meaning given to it by regulation 5(6) and (7);

“the Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications (OJ No. L255, 30.09.2005, p.22)(a), as amended from time to time;

“enactment” means any Rules, Orders, Acts or Regulations;

“evidence of formal qualifications” has the meaning given to it in regulation 7;

“home State” means the relevant European State from which an applicant originates or comes or in which the applicant obtained his evidence of education, training, qualifications or formally practised;

“holder” means a person to whom a competent authority has awarded evidence of education and training;

“host state” means the relevant European State to which the applicant applies for access to or pursuit of a regulated profession in its territory and which is contingent on possession of specific professional qualifications;

“manager of an undertaking” means any person who in any undertaking in the occupational field in question has pursued an activity:

(a) as a manager of an undertaking or a manager of a branch of an undertaking;

(b) as a deputy to the proprietor or the manager of an undertaking where that post involves responsibility equivalent to that of the proprietor or manager represented; or

(c) in a managerial post with duties of a commercial and/or technical nature and with responsibility for one or more departments of the undertaking;

(a) The Directive was amended by Council Directive 2006/100/EC of 20th November 2006, OJ No. L363 of 20.12.2006, p.141 [and instruments by which EEA states & Switzerland adopt 2005/36].

“native applicant” means an applicant applying to a competent authority for authorisation to practice, whose qualifications were obtained wholly within the United Kingdom;

“personal data legislation” means national legislation implementing Directives 95/46/EC (O.J. L281, 23.11.1995, p. 31(a)) and 2002/58/EC (O.J. L201, 31.07.2002, p.37)

“practice” in relation to any regulated profession includes—

(a) the taking up or pursuit of that profession in a relevant European State, whether in a self employed or as an employed person; and

(b) in the course of such pursuit—

(i) the right to use a professional title or designatory letters; and

(ii) the enjoyment of the benefit of the status associated with membership of the profession;

“profession” includes occupation or trade;

“professional association” means an association or organisation recognised in a special form, the purpose of which is, in particular, to promote and maintain a high standard in the professional field with which it is concerned and which, to that end—

(a) prescribes and enforces respect within its membership for, rules of professional conduct; and awards professional qualifications to its members; and

(b) confers on its members the right to use one or more professional titles or designatory letters or to benefit from a status corresponding to that professional qualification;

“professional experience” means the actual and lawful pursuit of the profession concerned in a relevant European State;

“professional qualifications” has the meaning given to it in regulation 7;

“professional rules” means rules of a professional, statutory or administrative nature which are directly linked to professional qualifications, such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host state to professionals who pursue the profession in that state;

“regulated education and training” has the meaning given to it in regulation 6;

“regulated profession” has the meaning given to it by regulation 6;

“relevant European State” means an EEA State or Switzerland;

“same profession” means the profession for which the applicant is qualified in his home state if the activities covered are comparable;

“sectoral professions” means one or more of the following regulated professions namely that of medical practitioner, nurse responsible for general care, dental practitioner, veterinary surgeon, midwife, pharmacist and architect;

“third country” means a country other than a relevant European State.

(2) A reference in these Regulations to the United Kingdom shall, as the context requires, be taken to include a reference to any one or more of: England; Wales; Scotland; and Northern Ireland.

(3) For the purposes of these Regulations, an association or organisation established in the United Kingdom shall be taken to have been recognised in special form if the mode of its establishment was incorporated by Royal Charter.

Application

3.—(1) Subject to paragraphs (3) to (9), the provisions listed in paragraph (2) apply to applicants who wish to access and pursue a regulated profession (which may include a liberal

(a) This Directive was amended by Regulation (EC) No 1882/2003 (O.J. L284, 31.10.03, p1).

profession) in the United Kingdom on a temporary or permanent basis whether in an employed or self employed capacity, and who have obtained their qualifications:

- (a) in a relevant European State; or
- (b) in a third country if—
 - (i) the applicant has three years professional experience in the profession concerned on the territory of a relevant European State which recognised that evidence of formal qualifications, and
 - (ii) such evidence was certified by that State permitting the applicant to pursue a regulated profession on its territory in accordance with its rules.

(2) Those provisions are—

- (a) regulation 5;
- (b) Part 2;
- (c) Chapters 1, 2 and 4 of Part 3; and
- (d) regulation 37.

(3) The provisions listed in paragraph (2) apply to the sectoral professions only as mentioned in paragraphs (4) and (5).

(4) Regulation 5(6) and (7) (contact points) applies to the sectoral professions.

(5) The following provisions apply to the sectoral professions in cases within any of subparagraphs (a)-(f) of paragraph (9) where the applicant for specific or exceptional reasons does not satisfy the requirements for automatic recognition or recognition on the basis of acquired rights, namely—

- (a) regulations 9(1) and (2), and 14 to 16;
- (b) regulation 9(4) and, so far as having effect for the purpose of appeals under regulation 9(4), regulation 35;
- (c) regulations 20 to 26;
- (d) Chapter 4 of Part 3; and
- (e) regulation 37.

(6) Regulation 5 applies to, and Chapter 2 of Part 3 applies only to, professions listed in Part 3 of Schedule 1.

(7) The provisions listed in paragraph (2) apply to the professions listed in Part 3 of Schedule 1 only as mentioned in paragraphs (6) and (8).

(8) The provisions listed in Part 2, Chapters 1 and 4 of Part 3 and regulation 37 apply to the professions listed in Part 3 of Schedule 1 in cases where the applicant does not meet the requirements set out in Schedule 5.

(9) The cases mentioned in paragraph (5) are—

- (a) for medical practitioners, with basic training, specialised medical practitioners, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects when the applicant does not meet the requirements of effective and lawful professional practice required in Articles 23, 27, 33, 37, 39, 43 and 49 of the Directive,
- (b) for architects, when the applicant holds evidence of formal qualifications not listed in Annex V point 5.7 of the Directive,
- (c) without prejudice to the provisions of Articles 21(1), 23 and 27 of the Directive, for the professions of medical practitioners, nurses, dental practitioners, veterinary surgeons, midwives, pharmacists and architects holding evidence of formal qualifications as a specialist, which must follow the training leading to the possession of a title listed in Annex V of the Directive, points 5.1.1, 5.2.2, 5.3.2, 5.4.2, 5.5.2, 5.6.2, and 5.7.1 of the Directive, solely for the purposes of the recognition of the relevant speciality,

- (d) for nurses responsible for general care, and specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of a title listed in Annex V, point 5.2.2, of the Directive, where in the United Kingdom the relevant professional activities are pursued by specialised nurses without training as general care nurses,
- (e) for specialised nurses without training as a general care nurse, where, in the United Kingdom, the relevant professional activities are pursued by nurses responsible for general care, specialised nurses without training as general care nurses or specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of the titles listed in Annex V, point 5.2.2 of the Directive, and
- (f) for applicants holding evidence of formal qualifications issued in a third country, which have been recognised, in a relevant European State other than the United Kingdom, as mentioned in paragraph (1)(b) and the applicant has three years professional experience in a regulated profession in that relevant European State, as certified by the competent authority of that State.

Competent Authorities

4.—(1) In the case of a regulated profession that is listed in any of Parts 1 to 3 of Schedule 1, the competent authority in the United Kingdom for the purposes of the Directive so far as relating to that profession is the body or authority specified in relation to that profession in that Part of that Schedule.

(2) In the case of a regulated profession that is regulated in the United Kingdom but is not listed in Schedule 1, the competent authority in the United Kingdom for the purposes of the Directive so far as relating to that profession is the governing body of that profession in the United Kingdom.

(3) In these Regulations “competent authority”, in relation to a profession listed in Part 4 of Schedule 1, means the body or authority specified in relation to that profession in that Part of that Schedule.

(4) For the purposes of these Regulations, the competent authority in a relevant European State, other than the United Kingdom, in relation to —

- (a) any document, certificate, attestation of competence, diploma or qualification,
- (b) any period of professional experience, or
- (c) any application, action or decision,

is the authority, body or person who under laws, regulations or administrative provisions is authorised in that State to issue, award or recognise the document or information concerned or (as the case may be) to certify the period of professional experience, to receive the application or to take the action or decision.

Functions of competent authorities in the United Kingdom

5.—(1) Without prejudice to its other powers and functions, a competent authority shall have the function of receiving and considering applications by applicants and taking the actions and decisions referred to in these Regulations.

(2) Competent authorities shall—

- (a) work in close collaboration with competent authorities of other relevant European States;
- (b) provide assistance to competent authorities of other relevant European States in order to facilitate application of these Regulations; and
- (c) ensure the confidentiality of the information which they exchange.

(3) Competent authorities shall exchange information with competent authorities of other relevant European States regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under these Regulations, respecting personal data protection legislation.

(4) Pursuant to paragraph (3), a competent authority receiving information from a competent authority of another relevant European State on disciplinary action or criminal sanctions, shall:

- (a) examine the veracity of the circumstances,
- (b) decide on the nature and scope of the investigations which need to be carried out, and (c) inform that authority of the conclusions which it draws from the information available to it.

(5) A competent authority, from which information or evidence is sought by the holder of a qualification awarded by that competent authority in support of his application to practise a profession in another relevant European State, which regulates that profession shall in the cases in which Annex VII applies, produce that information and evidence within the time limits set down in that Annex or, in other cases, as soon as is reasonably practicable following the request of the holder as the holder reasonably requires to that end.

(6) Competent authorities shall also act as contact points for their regulated professions.

(7) Contact points, shall in addition to the function set out in regulation 38(2):

- (a) provide applicants and the contact point of another relevant European State with such information as is necessary concerning the recognition of professional qualifications, such as information on the national legislation governing the regulated profession concerned and pursuit of that profession, including social legislation, and where appropriate the rules of ethics;
- (b) assist applicants within two months of receiving a request in realising the rights conferred on them by the Directive, in cooperation, where appropriate, with the other contact points and the competent authorities in the host State.

Regulated profession, and Regulated education and training

6.—(1) In these Regulations “regulated profession” means—

- (a) in relation to the United Kingdom—
 - (i) a profession listed in any of Parts 1, 3 and 4 of Schedule 1; or
 - (ii) a profession practised by members of a professional association who have a title or designation set out in Part 2 of Schedule 1; or
 - (iii) a professional activity, or group of activities, within neither of sub-paragraphs (i) and (ii)—
 - (aa) access to which, or pursuit of which or one of the modes of pursuit of which, is subject (directly or indirectly) by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; or
 - (bb) pursuit of which is by persons using a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification;

(b) in relation to any other relevant European State means a professional activity, or group of professional activities, which constitutes a profession if and in so far as the activity, or group of activities, is regulated in that State as a professional activity.

(2) Regulated education and training means education and training which is—

- (a) listed in Annex III of the Directive; or
- (b) directly geared to the practice of a defined profession in a relevant European State, and comprises a course or courses complemented where appropriate by professional training or probationary or professional practice, the structure and level of which are determined by the laws, regulations or administrative provision of that relevant European State or which are monitored or approved by the competent authority in a relevant European State.

(3) For the purposes of paragraph (1), “profession” includes liberal profession (and “professional” is to be read accordingly).

(4) “Liberal profession” means a profession practised on the basis of relevant professional qualifications in a personal, responsible and professionally independent capacity by those providing intellectual or conceptual services in the interests of the client and the public.

Professional qualifications and evidence of formal qualifications

7.—(1) For the purposes of these Regulations, professional qualifications mean—

- (a) qualifications attested by evidence of formal qualifications,
- (b) an attestation of competence issued by a competent authority in the home state on the basis as set out in regulation 20(a); and/or
- (c) professional experience.

(2) For the purpose of conditions for recognition, professional qualifications are grouped under levels set out in regulation 20.

(3) Evidence of formal qualifications means—

- (a) diplomas, certificates and other evidence issued by a competent authority certifying successful completion of professional training obtained mainly in the Community; or
- (b) where paragraph (a) does not apply, diplomas, certificates and other evidence issued by a third country if the holder complies with regulation 3(1)(b).

PART 2

FREEDOM TO PROVIDE SERVICES

Right to practice in the United Kingdom- freedom to provide services

8.—(1) Subject to the provisions in regulations 10-17, a competent authority for a regulated profession shall not, for any reasons related to professional qualifications, restrict an applicant who moves to the United Kingdom to provide professional services if:

- (a) the applicant is legally established in his home state for the purpose of pursuing the same profession there, or
- (b) he has pursued that profession in his home state for at least two years during the ten years preceding the provision of services where the profession is not regulated in that State.

(2) The condition requiring two years pursuit in paragraph (1)(b) shall not apply when either the profession or the education and training leading to the profession is regulated in the home State.

(3) This Part 2 does not apply to any of the professions listed in Part 2 of Schedule 1.

Conditions to practice in the United Kingdom

9.—(1) The provisions of Part 2 shall only apply where the applicant moves to the United Kingdom to provide professional services on a temporary and occasional basis.

(2) The competent authority shall assess on a case by case basis whether the provision of professional services is on a temporary and occasional basis in particular in relation to its duration, its frequency, its regularity and its continuity.

(3) Where the applicant moves, he shall be subject to the professional rules and disciplinary provisions of the bodies referred to in Parts 1 and 3 of Schedule 1 where such rules are:

- (a) of a professional, statutory or administrative nature,
- (b) directly linked to professional qualifications, and
- (c) apply to native applicants in the United Kingdom.

(4) An applicant may appeal from an assessment to a body referred to in regulation 35, such appeal being in accordance with the provisions of that regulation, unless there is a right of appeal against an assessment provided for in another enactment.

Exemptions

10.—(1) Pursuant to regulation 8 and subject to paragraph (2), competent authorities shall exempt applicants established in another relevant European State from the requirements which it places on professionals established in the United Kingdom relating to:

- (a) authorisation by, registration with or membership of a professional organisation or body; or
- (b) registration with a public social security body for the purpose of settling accounts with an insurer relating to activities pursued for the benefit of insured persons.

(2) Competent authorities may, in order to facilitate the application of disciplinary provisions in professional, statutory or administrative rules, provide either for automatic temporary registration or for pro-forma membership if:

- (a) such registration or membership does not delay or complicate in any way the provision of services, and
- (b) does not entail any additional costs for the applicant.

(3) For the purpose of settling accounts with an insurer relating to activities pursued for the benefit of insured persons, the applicant shall inform in advance or, in an urgent case afterwards, the body referred to in paragraph (1)(b).

Declaration

11.—(1) Competent authorities shall require that where an applicant first moves from a relevant European State to the United Kingdom in order to provide services in a regulated profession, he shall inform the appropriate competent authority by way of a declaration.

(2) The declaration shall—

- (a) be made in advance of the service being provided, and
- (b) shall include the details of any insurance cover or other means of personal or collective protection with regard to professional liability, and
- (c) shall be renewed once a year if the applicant intends to provide temporary or occasional services in the United Kingdom during that year.

(3) The declaration or renewal supplied to the competent authority shall be provided in writing and may be supplied by any means.

Documents to be provided on the First Provision of Service

12.—(1) Competent authorities shall require that the declaration be accompanied by the documents in (2) in the following circumstances:

- (a) on the first provision of services, or
- (b) if there is a material change in the situation substantiated by the documents.

(2) The documents that shall be required are:

- (a) proof of nationality of the applicant or where he is not a national of a relevant European State, proof of the Community right on which he relies,
- (b) an attestation certifying that the holder is legally established in another relevant European State for the purpose of pursuing the activities concerned and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation,
- (c) evidence of professional qualifications,

- (d) for cases referred to in regulation 8(1)(b), any means of proof that the applicant has pursued the activity concerned for at least two years during the previous ten years, and
- (e) for professions in the security sector, evidence of no criminal convictions.

Title under which professional services are provided

13.—(1) The applicant on providing services in the United Kingdom shall:

- (a) use the professional title applicable to that profession in the home State, if that title exists within that state for the professional activity,
- (b) indicate that title in the official language or one of the official languages of the home state in such a way as to avoid confusion with the professional title of the profession in the United Kingdom; and
- (c) where no professional title exists in the home state, the applicant shall indicate his formal qualification in the official language or one of the official languages of that home State.

(2) On verification of qualifications where regulation 14, or where both regulations 14 and 15 apply, the applicant on providing services shall use the professional title applicable to that profession in the United Kingdom.

First provision of service checks by competent authorities

14.—(1) Subject to paragraph (2), in regard to those regulated professions having public health or safety implications set out in Parts 1 and 2 of Schedule 4, the competent authority shall verify the professional qualifications of the applicant prior to the first provision of service.

(2) Such prior check shall be possible only where the purpose of the verification is justified and proportionate in order to avoid serious damage to the health or safety of the recipient of the service, or to the health or safety of animals to whom the service is to be given, due to a lack of professional qualifications of the applicant where this check does not go beyond what is necessary to achieve that purpose.

15.—(1) Subject to regulation 16, the competent authority for that regulated profession shall, prior to the first provision of service, give the applicant the opportunity to show that he has acquired the knowledge or competence lacking where:

- (a) the result of a check demonstrates that there is a substantial difference between the professional qualifications of the applicant and the training required to access and pursue the regulated profession in the United Kingdom, and
- (b) the substantial difference is such as to be harmful to public health or safety.

(2) In the circumstances specified in paragraph (1) of this regulation, the applicant shall demonstrate that he has acquired the knowledge or competence lacking, in particular, by taking and passing an aptitude test.

Time Limits for checks by Competent Authorities to be completed

16.—(1) Where regulation 14, or where both regulations 14 and 15 apply, the competent authority shall, within the first month of receipt of the declaration and accompanying documents, endeavour to inform the applicant of its decision:

- (a) not to check his qualifications, or
- (b) the outcome of such a check.

(2) Where there is a difficulty which would result in delay of that decision, the competent authority shall send a duly substantiated request for further information to the applicant within that one month period in paragraph (1) stating the reason for the delay and the timescale for its decision.

(3) In the event of a delay being notified to the applicant in paragraph (2), the competent authority shall make a decision based on the completed documentation within the second month.

(4) The competent authority shall give the applicant the opportunity to show, that he has acquired the knowledge or competence lacking within one month of the decision in paragraph (1) or (3).

(5) In the absence of a reaction from the competent authority within the periods stipulated in paragraphs (1), (3) and (4), the applicant may provide the services in the United Kingdom.

Non compliance

17. An applicant shall no longer be entitled to provide services in accordance with this Part nor retain any temporary registration, if—

- (a) he becomes established in the United Kingdom;
- (b) he is subject to a decision of the competent authority of the relevant European State in which he is established, which has the effect that he is no longer lawfully established in that State or that he is prohibited (even temporarily) from practicing there; or
- (c) he fails to provide the competent authority with a renewal declaration as described in regulation 11.

Administrative cooperation and service provision

18.—(1) Competent authorities:

- (a) may ask the competent authorities of the home state, for each provision of services, to provide any information relevant to the legality of the applicant's establishment and his good conduct, as well as the absence of an disciplinary or criminal sanctions of a professional nature,
- (b) shall provide this information to the competent authorities of other relevant European States in accordance with regulation 5(2), (3), and (4), and
- (c) on receiving a complaint by a recipient of services against an applicant shall ensure the exchange of all information necessary for complaints to be correctly pursued.

(2) The competent authority shall on receiving a complaint as described in paragraph (1)(c), inform the recipient of the outcome of the complaint.

Information to be given to a recipient of a professional services/service

19. Where the service is provided under the professional title of the home state or under the formal qualification of the applicant, the competent authorities may require the applicant to furnish the recipient of the service with any or all of the following information:

- (a) if the applicant is registered in a commercial register or similar public register, the register in which he is registered, his registration number, or equivalent means of identification contained in that register;
- (b) if the activity is subject to authorisation in the home State, the name and address of the competent or supervisory authority;
- (c) any professional association or similar body with which the applicant is registered;
- (d) the professional title or, where no such title exists, the formal qualification of the applicant and relevant European State in which it was awarded;
- (e) if the applicant performs an activity which is subject to VAT, the VAT identification number referred to in Article 22(1) of the Sixth Council Directive 77/388/EEC(a); and
- (f) details of any insurance cover or other means of personal or collective protection with regard to professional liability.

(a) Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment OJL 145, 13.6.1977, p.1 as amended.

PART 3
FREEDOM OF ESTABLISHMENT
CHAPTER 1
GENERAL SYSTEM FOR THE RECOGNITION OF TRAINING

Levels of qualification

20.—(1) For the purpose of applying conditions of recognition under regulation 22, professional qualifications are grouped under the following levels as set out below—

- (a) an attestation of competence issued by a competent authority of another relevant European State on the basis of either:
 - (i) a training course not forming part of a certificate or diploma within the meaning of paragraphs (b), (c), (d) or (e), or a specific examination without prior training, or full-time pursuit of the profession in another relevant European State for three consecutive years or for an equivalent duration on a part-time basis during the previous 10 years, or
 - (ii) general primary or secondary education, attesting that the holder has acquired general knowledge;
- (b) a certificate attesting to a successful completion of a secondary course either:
 - (i) general in character, supplemented by a course of study or professional training other than that referred to in paragraph (c) and/or by the probationary or professional practice required in addition to that course, or
 - (ii) technical or professional in character, supplemented where appropriate by a course of study or professional training as referred to in sub-paragraph (i), and/or by the probationary or professional practice required in addition to that course;
- (c) a diploma certifying successful completion of either—
 - (i) training at post-secondary level other than that referred to in paragraphs (d) and (e) of a duration of at least one year or of an equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education or the completion of equivalent school education of the second secondary level, as well as the professional training which may be required in addition to that post-secondary course; or
 - (ii) in the case of a regulated profession, training with a special structure as set out in Annex II of the Directive, equivalent to the level of training provided for under sub-paragraph (i), which provides a comparable professional standard and which prepares the trainee for a comparable level of responsibilities and functions;
- (d) a diploma certifying successful completion of training at post secondary level of at least three and not more than four years duration, or of an equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment providing the same level of training, as well as the professional training which may be required in addition to that post-secondary course;
- (e) a diploma certifying that the holder has successfully completed a post-secondary course of at least four years duration, or of an equivalent duration on a part-time basis, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course.

Equal treatment of qualifications

21.—(1) Any evidence of formal qualifications or set of evidence of formal qualifications shall be treated as evidence of formal qualifications of a type covered by regulation 20, including the level in question if—

- (a) any evidence or set of evidence of formal qualifications is issued by the competent authority of a relevant European State certifying successful completion of training in any of the relevant European States which is recognised by that relevant European State as being of an equivalent level, and
 - (b) which confers on the holder the same rights of access to or pursuit of a profession or prepared for the pursuit of that profession.
- (2) Any professional qualification shall be treated as evidence of formal qualifications under the same conditions as set out in paragraph (1) where:
- (a) such professional qualification does not satisfy the requirements contained in the legislative, regulatory or administrative provisions in force in the home State for access to or the pursuit of a profession, but
 - (b) confers on the holder acquired rights by legislative, regulatory or administrative provisions in force in the home state.
- (3) Paragraph (2) applies, in particular, in the following circumstances—
- (a) where the home State raises the level of training required for admission to a profession and for its exercise, and
 - (b) if an applicant having undergone former training which does not meet the requirements of the new qualification, benefits from acquired rights by virtue of legislative, regulatory or administrative provisions in the home state.
- (4) Where the circumstances of paragraph (2) apply, this former training shall be considered by competent authorities, for the purposes of the application of regulation 20, as corresponding to the level of the new training.

Conditions for recognition

22.—(1) Subject to a requirement by a competent authority pursuant to regulation 25, if access to or pursuit of a regulated profession in United Kingdom is contingent on possession of specific qualifications, a competent authority shall permit access to and pursuit of that regulated profession to applicants under the same conditions as apply to native applicants, where those applicants:—

- (a) possess the attestation of competence or evidence of formal qualifications required by another relevant European State, where the profession is regulated, in order to gain access to and pursue that profession in that relevant European State, or
 - (b) have pursued that regulated profession on a full time basis for two years during the previous ten years in another relevant European State which does not regulate that profession, provided that the applicant possesses one or more attestations of competence or documents providing evidence of formal qualifications.
- (2) Attestations of competence or evidence of formal qualifications shall satisfy the following conditions:
- (a) they shall have been issued by a competent authority of another relevant European State;
 - (b) subject to paragraph (5), they shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the United Kingdom, as set out in regulation 20; and
 - (c) where paragraph (1)(b) applies, they shall also attest that the applicant has been prepared for the pursuit of the profession in question.
- (3) A competent authority may not require the two years professional experience referred to in paragraph (1)(b) if:
- (a) the evidence of formal qualifications, as defined in regulation 7(2), which the applicant possesses certifies regulated education and training, and
 - (b) such certified regulated education and training is at the levels of qualifications described in regulation 20, paragraphs (b), (c), (d) or (e).

(4) The regulated education and training listed in Annex III of the Directive shall be considered as such regulated education and training at the level described in regulation 20(c).

(5) By way of derogation from paragraph (2)(b), a competent authority shall permit access and pursuit of a regulated profession where access to this profession is contingent in the United Kingdom on possession of a qualification certifying successful completion of higher or university education of four years duration, and where the applicant possesses a qualification referred to in regulation 20(c).

Compensation measures - Adaptation periods and Aptitude tests

23.—(1) An adaptation period means, in relation to the regulated profession which the applicant seeks to take up or pursue in the United Kingdom, a period of pursuit of a regulated profession under the supervision of a qualified member of that profession, with the aim of assessing the ability of the applicant to pursue that profession in the United Kingdom.

(2) The adaptation period shall be limited to the professional knowledge of the applicant.

(3) The competent authority shall aim to assess and determine the detailed rules of the adaptation period, having regard to the circumstances of each individual applicant and, in particular, to the fact that he is a qualified professional in another relevant European State.

(4) The applicant may be required to undergo further training during the adaptation period.

(5) The applicant's performance during the adaptation period shall be assessed by the competent authority.

(6) The professional status of an applicant during the adaptation period shall be a matter for competent authority.

24.—(1) An aptitude test means, in relation to the regulated profession which the applicant seeks to take up or pursue in the United Kingdom, a test of the applicant's professional knowledge conducted by the competent authority for the profession with the aim of assessing the ability of the applicant to pursue that profession in the United Kingdom.

(2) An aptitude test shall be limited to the professional knowledge of the applicant. The test shall take into account that he is a qualified professional in another relevant European State.

(3) The competent authority shall determine the matters to be covered by the aptitude test as follows:

(a) the competent authority shall establish the subjects which, on the basis of a comparison between the education and training required for the practice of the profession by the holder required in the United Kingdom and that received by the applicant, have not been covered by the diploma or other evidence of formal qualifications possessed by the applicant;

(b) the test shall cover subjects selected from those so established, the knowledge of which is essential for the pursuit of the regulated profession in the United Kingdom; and

(c) the test may include knowledge of the relevant rules of professional conduct.

(4) The detailed application of the aptitude test and the professional status of an applicant preparing for the aptitude test shall be a matter for the competent authority.

Conditions for Compensation measures

25.—(1) A competent authority may, before authorising the applicant to practice the regulated profession in the United Kingdom, require him to satisfy in the circumstances specified in paragraph (3) either (but not both)—

(a) to complete an adaptation period of up to three years with a successful assessment, or

(b) to take and pass an aptitude test.

(2) If a competent authority intends to require the applicant to complete an adaptation period or take an aptitude test it must first examine whether the knowledge acquired by the applicant in the

course of his professional experience in a relevant European State or in a third country is such that it fully or partly covers the substantial difference defined in paragraph (4).

(3) A competent authority may require the applicant to successfully complete an adaptation period or pass an aptitude test if:

- (a) the duration of education and training of which he provides evidence under regulation 22, paragraphs (1), (2), (3) or (4), is at least one year shorter than that required by the regulated profession in the United Kingdom;
- (b) the education and training he has received covers substantially different matters than those covered by the evidence of formal qualifications required by the regulated profession in the United Kingdom; or
- (c) the regulated profession in the United Kingdom:
 - (i) comprises one or more regulated professional activities which do not exist in the profession in the applicant's home State, and
 - (ii) that difference consists in specific training which is required by the regulated profession in the United Kingdom and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.

(4) For the purposes of paragraph 3 (b) and (c), "substantially different matters" means matters of which knowledge is essential for pursuing the profession and with regard to which the training received by the applicant shows important differences in terms of duration or content from the training required in the United Kingdom.

26.—(1) Where a requirement is imposed under regulation 25(1), the choice between an adaptation period and aptitude test shall be that of the applicant except:

- (a) in the regulated professions, set out in Part 1 of Schedule 2, whose pursuit requires precise knowledge of national law and where advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, where the provisions of that Part shall apply, or
- (b) in cases specified in—
 - (i) regulation 3(9)(a) and (b),
 - (ii) regulation 3(9)(c) concerning medical practitioners and dental practitioners,
 - (iii) regulation 3 (9)(e), when the applicant seeks recognition in the United Kingdom where the relevant professional activities are pursued by nurses responsible for general care or specialised nurses holding evidence of formal qualifications as a specialist which follows the training leading to the possession of the titles listed in Annex V, point 5.2.2, or
 - (iv) regulation 3(9)(f),

where the provisions of Part 2 of Schedule 2 shall apply.

(2) By way of derogation from the right of the applicant to choose in paragraph (1), for the case of farriers covered by regulation 3(8), the competent authority requires an aptitude test if the applicant envisages pursuing professional activities in a self-employed capacity or as a manager of an undertaking which require the knowledge and the application of the specific national rules in force, provided that knowledge and application of those rules are required by the competent authorities for access to such activities by its native applicants.

(3) In any case where the choice between an adaptation period and an aptitude test rests with the applicant, the competent authority shall notify the applicant of the rules in advance of the applicant's exercise of that choice.

27. A competent authority shall waive the application of compensation measures under regulation 25, where the applicant's professional qualifications satisfy the criteria established in a common platform.

CHAPTER 2
RECOGNITION OF PROFESSIONAL EXPERIENCE

Application

28. A competent authority shall recognise previous pursuit in a relevant European State of one of the activities listed in Annex IV of the Directive as sufficient proof of knowledge and aptitudes where:

- (a) access and pursuit of the regulated profession is contingent on possession of general, commercial or professional knowledge or aptitudes, and
- (b) the previous pursuit of that activity is in accordance with Schedule 5.

CHAPTER 3
UNITED KINGDOM CERTIFICATES OF EXPERIENCE

29.—(1) The Secretary of State shall delegate to ECCTIS Limited^(a), the function of issuing a certificate, to be called a “Certificate of Experience”.

(2) A Certificate of Experience shall be issued to a person who makes an application to ECCTIS Limited for the issue of such a certificate in respect of a relevant activity and satisfies ECCTIS Limited as to his relevant experience and qualifications gained in the United Kingdom as set out in Schedule 5.

(3) For the purpose of this regulation, a relevant activity is an activity which falls within the lists of activities set out in Annex IV of the Directive.

30.—(1) Where the Secretary of State is satisfied that—

- (a) a certificate was issued in reliance upon a false or fraudulent representation or declaration, either orally or in writing, or
- (b) information in reliance upon which a certificate has been issued is not correct or is not correct in a material particular and that the experience or qualifications to which the certificate attests have not been attained,

he may revoke the certificate by notice in writing sent to the person named in the certificate, subject to the conditions in paragraph (2).

(2) The condition is that before revoking the certificate the Secretary of State shall use reasonable endeavours to serve on the person named in the certificate a notice specifying—

- (a) that he is minded to revoke the certificate; and
- (b) (i) the false representations or declarations made upon which a certificate has been issued; or
- (ii) the incorrect information; and
- (c) the effect of (b) on the truth of the certificate,

and inviting that person within a reasonable period of not less than 28 days to submit representations in writing as to—

- (aa) the relevance of the false representations or declarations in relation to the certificate or the matters to which it attests; and
- (bb) any other reason and why the Secretary of State should not revoke the certificate,

and the Secretary of State shall consider any representation submitted within the period specified in the notice.

(a) ECCTIS Limited is a private limited company registered in England and Wales with company number 2405026.

CHAPTER 4
COMMON PROVISIONS

Documentation and formalities

31.—(1) When considering an application for authorisation to pursue a regulated profession, the competent authority may and in accordance with the provisions of Annex VII of the Directive:

- (i) demand the documents and certificates listed in that Annex, and
- (ii) invite the applicant to provide information concerning his training, or if it is impossible for the applicant to provide such information, address the relevant body in the home State.

(2) The documents referred to in point 1(d), (e) and (f) of Annex VII, shall not be more than three months old by the date on which they are submitted.

(3) The competent authority shall keep confidential all such information received by it.

32.—(1) A competent authority in cases of justified doubt, may require from the competent authority of a relevant European State confirmation of the authenticity of the attestations and evidence of formal qualifications awarded in that other relevant European State.

(2) A competent authority in cases of justified doubt, shall be entitled, where evidence of formal qualifications has been issued by the competent authority of a relevant European State, and includes franchised training received in whole or in part in an establishment legally established in a relevant European State other than that which awarded the qualification, to require and verify with the relevant European State of origin of the award—

- (a) whether the training course at the establishment which gave the training has been formally certified by the educational establishment in the relevant European State of origin of the award;
- (b) whether the evidence of formal qualifications issued is the same as that which would have been awarded if the course had been followed in the relevant European State of origin of the award; and
- (c) whether the evidence of formal qualifications confers the same professional rights in the territory of the relevant European State of origin of the award.

33. Where an applicant is required to swear a solemn oath or make a sworn statement, the form of which is such that it cannot be taken or made by applicants of a relevant European State, the competent authority shall ensure that an appropriate equivalent form of oath or declaration is available for those applicants.

Decisions of competent authorities

34.—(1) The competent authority shall acknowledge receipt of an applicant's application to establish himself in the United Kingdom pursuant to Part 3 of these Regulations within one month of receipt, and shall inform the applicant if any document is missing.

(2) The competent authority shall consider the applicant's application as soon as is reasonably practicable, and shall notify him of its decision together with the reasons upon which it is based

- (i) within four months, for applications under Chapter 1 of Part 3, or
- (ii) within three months, for applications under Chapter 2 of Part 3,

of receipt of all the relevant documents.

(3) For the purposes of this regulation, if a competent authority fails to take a decision and notify it to the applicant within the period mentioned in paragraph (2), it shall be deemed to have taken a decision to reject his application and to have notified it to him on the last day of that period.

Appeals

35.—(1) Within four months of the notification to him of any decision of a competent authority, or thereafter with leave of the appeal body, the applicant may appeal against that decision on a matter of law or fact to the appeal body specified in Schedule 3, or in all other cases a county court or a sheriff court.

(2) In this regulation, the reference to any decision of a competent authority includes, where there is provision for internal review or appeal to a competent authority, the decision made on such a review or appeal.

(3) This regulation shall not apply in relation to any decision of the competent authority for a particular profession where a right of appeal against that decision is provided for in another enactment relating to that profession.

(4) An appeal body may, for the purpose of determining any appeal under these Regulations against the decision of a competent authority—

- (a) give any authorisation to practise and impose any condition which the competent authority could give or impose in relation to that profession; or
- (b) remit the matter to the competent authority with such directions as the appeal body sees fit.

(5) Without prejudice to any powers of the Court of Session in Scotland to regulate the proceedings of itself and those of the sheriff courts, an appeal body listed in Schedule 3 in England and Wales or Northern Ireland may make rules of procedure governing the hearing and determination of any appeal under these Regulations against the decision of a competent authority. Such rules may make different provision for different cases.

Use of professional titles

36.—(1) If the use of a professional title relating to one of the activities of the profession in question is regulated, applicants who are authorised to practice a regulated profession in accordance with Part 3 of these Regulations, shall use the professional title used in the United Kingdom which corresponds to that profession, and make use of any associated initials.

(2) Where a profession is regulated in the United Kingdom by a professional association, applicants shall not be authorised to use the professional title issued by that professional association, or its abbreviated form, unless they furnish proof that they are members of that professional association.

(3) A professional association that makes membership contingent upon certain qualifications may do so only under the conditions laid down in these Regulations in respect of applicants who possess professional qualifications.

PART 4 SUPPLEMENTARY

Use of Academic titles

37.—(1) Without prejudice to regulations 13 and 36, an applicant shall have the right to use the lawful academic title (and where appropriate the abbreviation thereof) acquired by him in his home State in which he qualified and in the language of that State.

(2) Where the applicant makes use of the possibility provided for in paragraph (1), the competent authority may require that the title shall be followed by the name and location of the establishment or examining board which awarded it.

(3) Where a competent authority decides that an academic title in paragraph (1) is liable to be confused with a title which, in the United Kingdom, requires supplementary training not acquired

by the applicant, it may require the applicant to use the academic title of the home State in an appropriate form laid down by the competent authority.

Information from competent authorities

38.—(1) Competent authorities shall provide the Secretary of State with such information (including statistical information) as may be required concerning applications made, actions and decisions taken.

(2) Following a request by the Commission, competent authorities acting as contact points shall inform the national co-ordinator of the result of enquiries with which they are dealing as mentioned in regulation 5(7)(b).

Revocations

39. The following Regulations are hereby revoked:

- (a) The European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005(a).
- (b) The European Communities (Recognition of Professional Qualifications) (Second General System) Regulations 2002(b).
- (c) The European Communities (Recognition of Professional Qualifications) (Second General System) (Amendment) Regulations 2005(c).
- (d) The European Communities (Recognition of Professional Qualifications) (Second General System) (Amendment) Regulations 2006(d).
- (e) The European Communities (Recognition of Professional Qualifications and Experience) (Third General System) Regulations 2002(e).
- (f) The European Communities (Recognition of Professional Qualifications and Experience) (Third General System)(Amendment)Regulations 2002(f).
- (g) The European Communities (Recognition of Professional Qualifications and Experience) (Third General System) (Amendment) Regulations 2006(g).

Name
Minister of State
Department for Education and Skills

SCHEDULE 1

Regulation 4

PART 1

PROFESSIONS REGULATED BY LAW OR PUBLIC AUTHORITY

<i>Profession</i>	<i>Competent Authority</i>
Actuary	Institute of Actuaries
Actuary (Scotland)	Faculty of Actuaries
Advocate (Scotland)	Faculty of Advocates

- (a) S.I. 2005/18.
- (b) S.I. 2002/2934
- (c) S. I. 2005/882
- (d) S.I. 2006/3214
- (e) S.I. 2002/1597.
- (f) S.I. 2002/2036
- (g) S.I. 2006/2228

Air Traffic Controller Aircraft Maintenance Engineer Airport Fire Officer Airport Fire fighter	Civil Aviation Authority
Analytical Chemist	The Royal Society of Chemistry
Barrister in England and Wales Northern Ireland	The General Council of the Bar for England and Wales The Executive Council of the Inn of Court of Northern Ireland
Licensed Boatmaster	Secretary of State
Licensed Cab Driver (London)	Transport for London
Cash and Valuables in Transit Operative (England and Wales) Close Protection Operative (England and Wales) Door Supervisor (England and Wales) Public Space Surveillance Operative (England and Wales) Security Guard (England and Wales) Vehicle Immobiliser (England and Wales)	Security Industry Authority
Childminder (England)	Her Majesty's Chief Inspector of Schools in England
Chiropractor	The General Chiropractic Council
Employment In The National Health Service: Child Psychotherapist Clinical Psychologist	Association of Child Psychotherapists The British Psychological Society
Licensed Conveyancer	The Council for Licensed Conveyancers
Arts Therapist, Biomedical Scientist, Chiropodist or Podiatrist, Clinical Scientist, Dietician, Occupational Therapist, Operating Department Practitioner, Orthoptist, Paramedic, Physiotherapist, Prosthetist and Orthotist, Radiographer, Speech and Language Therapist	Health Professions Council
Deck Officer Class 1 – Fishing Vessels Deck Officer Class 2 – Fishing Vessels Deck Officer Class 3 – Fishing Vessels Chief Engineer Class 1 – Fishing Vessels Chief Engineer Class 2 – Fishing Vessels	Maritime and Coastguard Agency
Dental Hygienist Dental Therapist Clinical Dental Technician Dental Nurse Dental Technician Orthodontic Therapist	General Dental Council
Registered Dispenser of Hearing Aids	Hearing Aid Council

Diver	Health and Safety Executive
Approved Driving Instructor (Great Britain) Licensed Trainee Driving Instructor	The Registrar for the purposes of Part V of the Road Traffic Act 1988
Approved Driving Instructor (Northern Ireland)	The Registrar within the meaning of the Motor Cars (Driving Instruction) Regulations (Northern Ireland) 1991
Farrier	Farriers Registration Council
Harbour Pilot	Secretary of State
Registered Gas Installer	Council for Registered Gas Installers
Insolvency Practitioner	Secretary of State The Insolvency Practitioners Association Department of Enterprise, Trade and Investment in Northern Ireland The Association of Chartered Certified Accountants The Institute of Chartered Accountants in England and Wales The Institute of Chartered Accountants in Ireland The Institute of Chartered Accountants of Scotland The Law Society The Law Society of Northern Ireland The Law Society of Scotland
Inspector of Weights and Measures	Secretary of State Department of Enterprise, Trade and Investment in Northern Ireland
Certified Instructor (Motor Cycles) (in Great Britain)	Secretary of State
Licensed Lighterman Licensed Waterman	Port of London Authority
Mine Manager Mine Surveyor Mine Electrical Engineer Mine Mechanical Engineer Mine Electrician Mine Mechanic Mine Deputy	The Health and Safety Executive
Nurses Admitted To: Sub-Part 1 of the nurses' Part of the Register maintained by the Nursing and Midwifery Council, whose field of practice is mental health nursing, learning disabilities nursing or children's nursing Sub-Part 2 of the nurses' Part of the Register maintained by the Nursing and Midwifery Council	Nursing and Midwifery Council
Notary Public (England and Wales)	The Faculty Office
Optometrist (Ophthalmic Optician) Dispensing Optician	General Optical Council
Osteopath	General Osteopathic Council
Patent Attorney Patent Agent	The Chartered Institute of Patent Attorneys

Road/Street Works Operatives	Scottish Qualifications Authority
Road/Street Works Supervisors	Scottish Qualifications Authority
School Teacher (in publicly regulated schools) in: England Northern Ireland Scotland Wales	The General Teaching Council for England Department of Education for Northern Ireland General Teaching Council for Scotland The General Teaching Council for Wales
Social Worker in: England Northern Ireland Scotland Wales	General Social Care Council Northern Ireland Social Care Scottish Social Services Council Care Council for Wales
Solicitor in: England and Wales Northern Ireland Scotland	The Law Society The Law Society of Northern Ireland The Law Society of Scotland
Teacher at an institution in England and Wales within the further education sector (within meaning of the Further And Higher Education Act 1992)	Secretary of State
Certified Technically Competent Person	Waste Management Industry Training and Advisory Board
Registered Trade Mark Agent	The Institute of Trade Mark Attorneys
Listed Veterinary Nurse	The Royal College of Veterinary Surgeons

PART 2

PROFESSIONS REGULATED BY PROFESSIONAL BODIES INCORPORATED BY ROYAL CHARTER

<i>Professional Title (where applicable)</i>	<i>Designatory Letters</i>	<i>Competent Authority</i>
Actuary	FIA	Institute of Actuaries
Actuary (Scotland)	FFA	The Faculty of Actuaries
Chartered Architectural Technologist	MCIAT	The British Institute of Architectural Technologists
Chartered Accountant	ACA ACA CA	The Institute of Chartered Accountants in England and Wales The Institute of Chartered Accountants in Ireland The Institute of Chartered Accountants of Scotland
Chartered Certified Accountant	ACCA	The Association of Chartered Certified Accountants
Chartered Arbitrator Associate of The Chartered Institute of Arbitrators Member of The Chartered Institute of Arbitrators	FCI Arb ACI Arb MCI Arb	The Chartered Institute of Arbitrators
Chartered Biologist	C.Biol, MIBiol	The Institute of Biology
Chartered Builder	MCI OB	The Chartered Institute of Building

Associate of the Chartered Institute of Building	ACIOB	
Chartered Building Services Engineer	MCIBSE	The Chartered Institution of Building Services Engineers
Chartered Building Surveyor Chartered Land Surveyor Chartered Minerals Surveyor Chartered Quantity Surveyor Chartered Surveyor Chartered Valuation Surveyor Technical Member of the Royal Institution of Chartered Surveyors	MRICS MRICS MRICS MRICS MRICS MRICS TechRICS	The Royal Institution of Chartered Surveyors
Chartered Chemical Engineer	MIChemE	The Institution of Chemical Engineers
Chartered Chemist	C.Chem, MRSC	The Royal Society of Chemistry
Chartered Civil Engineer	MICE	The Institution of Civil Engineers
Chartered Colourist Licentiate of the Society of Dyers and Colourists	C.Col. LSDC	The Society of Dyers and Colourists
Chartered Engineer	CEngMIET	The Institution of Engineering and Technology
Chartered Energy Engineer Chartered Petroleum Engineer	MEI FEI MEI FEI	The Energy Institute
Chartered Engineer Incorporated Engineer Engineering Technician	C.Eng I.Eng EngTech	The Engineering Council
Chartered Environmental Health Practitioner	MCIEH FCIEH	The Chartered Institute of Environmental Health
Environmental Health Officer	MCIEH FCIEH	The Chartered Institute of Environmental Health
Chartered Environmental Health Officer	Ch.EHO MREHIS Ch.EHO FREHIS	The Royal Environmental Health Institute of Scotland
Chartered Forester	MICFor	The Institute of Chartered Foresters
Chartered Gas Engineer	MIGasE	The Institution of Gas Engineers and Managers
Chartered Geologist	C.Geol FGS	The Geological Society
Chartered IT Professional	MBCS CITP FBCS CITP	The British Computer Society
Chartered Insurer Chartered Insurance Practitioner Chartered Insurance Broker	ACII ACII ACII	The Chartered Insurance Institute
Chartered Loss Adjuster	ACILA	The Chartered Institute of Loss Adjusters
Chartered Management Accountant	ACMA	The Chartered Institute of Management Accountants
Chartered Marine Engineer	CMarENG	The Institute of Marine Engineering Science and Technology
Chartered Marketer	MCIM	The Chartered Institute of

Associate Member of the Chartered Institute of Marketing	ACIM	Marketing
Chartered Mathematician Licentiate of the Institute of Mathematics and its Application	C.Math	The Institute of Mathematics and its Applications
Chartered Measurement And Control Technologist	MInstMC	The Institute of Measurement and Control
Chartered Mechanical Engineer	MIMechE	Institution of Mechanical Engineers
Chartered Meteorologist	CMET	The Royal Meteorological Society
Chartered Physicist	CPhys MinstP	The Institute of Physics
Chartered Psychologist	C.Psychol	The British Psychological Society
Chartered Public Finance Accountant	CIPFA	The Chartered Institute of Public Finance and Accountancy
Associate of the Royal Academy of Dance Licentiate of the Royal Academy of Dance	ARAD LRAD	The Royal Academy of Dance
Associate of the Royal College of Organists Choir Master Fellow of the Royal College of Organists	ARCO (CHM) FRCO	The Royal College of Organists
Chartered Secretary	ACIS	The Institute of Chartered Secretaries and Administrators
Chartered Shipbroker	MICS	The Institute of Chartered Shipbrokers
Chartered Statistician	CStat	Royal Statistical Society
Chartered Structural Engineer	MIStructE	The Institution of Structural Engineers
Chartered Tax Adviser	CTA	Chartered Institute of Taxation
Chartered Textile Technologist Licentiate of the Textile Institute	CText ATI LTI	The Textile Institute
Chartered Town Planner	MRTPI	The Royal Town Planning Institute
Chartered Waste Manager	MCIWM	The Chartered Institution of Wastes Management
Housing Practitioner	MCIH	The Chartered Institute of Housing
	ACIB	The Chartered Institute of Bankers
	ACIBS	The Chartered Institute of Bankers in Scotland
	EHO MREHIS EHO FREHIS	The Royal Environmental Health Institute of Scotland
	MIMMM	The Institute of Materials, Minerals and Mining
	MLI	The Landscape Institute
	CILIP	The Chartered Institute of Library and Information Professionals
	MRAeS	The Royal Aeronautical Society
	M. Hort (RHS)	The Royal Horticultural Society
	MRINA	The Royal Institution of Naval Architects

PART 3

REGULATED PROFESSIONS REFERRED TO IN REGULATION 28

<i>Profession</i>	<i>Competent Authority</i>
Farrier	Farriers Registration Council
Habour Pilots	Secretary of State

PART 4

REGULATED PROFESSIONS REFERRED TO IN REGULATION 3 (9)

<i>Profession</i>	<i>Competent Authority</i>
Architects	Architects Registration Board
Dentists and specialist dentists	General Dental Council
Medical practitioners, including specialist practitioners and general practitioners	General Medical Council
Specialist medical practitioners and general practitioners	For the purposes of regulations 5(6), 5(7) and 39: The General Medical Council For the purposes of regulations 14-16: The General Medical Council For the purposes of regulations 21-27: The Postgraduate Medical Education and Training Board For the purposes of regulations 32-38: The General Medical Council
Nurses and midwives	Nursing and Midwifery Council
Pharmacists	Royal Pharmaceutical Society of Great Britain and Pharmaceutical Society of Northern Ireland
Veterinary Surgeons	Royal College of Veterinary Surgeons

SCHEDULE 2

Regulation 26

PROFESSIONS IN RESPECT OF WHICH THE RIGHT OF THE APPLICANT TO CHOOSE BETWEEN AN ADAPTATION PERIOD AND AN APTITUDE TEST IS DISPLACED

PART 1

<i>Profession</i>	<i>Requirement</i>
Advocate (Scotland)	Aptitude test
Associate of the Chartered Institute of Management Accountants	Aptitude test
Barrister (England and Wales)	Aptitude test
Barrister (Northern Ireland)	Aptitude test

Certified Accountant	Aptitude test
Chartered Accountant (England and Wales)	Aptitude test
Chartered Accountant (Northern Ireland)	Aptitude test
Chartered Accountant (Scotland)	Aptitude test
Chartered Tax Adviser	Aptitude test
Company Auditor * (still being considered)	Aptitude test
Licensed Conveyancer	Adaptation Period
Insolvency Practitioner	Aptitude test
Notary Public (England and Wales)	Aptitude test
Patent Attorney or Patent Agent	Aptitude test
Public Finance Accountant	Aptitude test
Solicitor (England and Wales)	Aptitude test
Solicitor (Northern Ireland)	Aptitude test
Solicitor (Scotland)	Aptitude test
Registered Trade Mark Agent	Aptitude test

PART 2

Architects	Aptitude test
Dentists and specialist dentists	Aptitude test
Medical practitioners, including specialist medical practitioners and general practitioners	Adaptation period
Nurses and midwives	Adaptation period
Pharmacists	Adaptation period

SCHEDULE 3

Regulation 35

APPEAL BODIES

In the case of the following regulated professions, the appeal body shall be the body, court or person specified below in relation to that profession, namely

<i>Profession</i>	<i>Appeal Body</i>
Advocate (Scotland)	The Court of Session
Barrister (England and Wales)	The Visitors to the Inns of Court
Barrister (Northern Ireland)	The Benchers of the Honourable Society of the Inn of Court of Northern Ireland
Licensed Cab Driver (London)	The Magistrates' Court
Childminder (England)	Care Standards Tribunal
Approved Driving Instructor (Great Britain)	Transport Tribunal
Notary Public (England and Wales)	The Lord Chancellor
Patent Attorney, Patent Agent Registered Trade Mark Agent	The Comptroller-General of Patents, Designs and Trade Marks

Social Worker (England)	Care Standards Tribunal
Social Worker (Northern Ireland)	Care Standards Tribunal
Social Worker (Wales)	Care Standards Tribunal
Solicitor (England and Wales)	The Master of the Rolls
Solicitor (Northern Ireland)	The Lord Chief Justice of Northern Ireland
Solicitor (Scotland)	The Court of Session

SCHEDULE 4

Regulation 14

REGULATED PROFESSIONS HAVING PUBLIC HEALTH OR SAFETY IMPLICATIONS

PART 1

Arts Therapist

Biomedical Scientist

Childminder (England)

Child Psychotherapist (in the National Health Service)

Chiropodist or Podiatrist

Chiropractor

Clinical Dental Technician

Clinical Scientist

Clinical Psychologist (in the National Health Service)

Dental Hygienist

Dental Nurse

Dental Technician

Dental Therapist

Dietician

Dispensing Optician

Hearing Aid Dispenser

Nurse (other than a nurse admitted to Sub-Part 1 of the nurse's part of the register maintained by the Nursing and Midwifery Council whose field of practice is adult nursing)

Occupational Therapist

Operating Department Practitioner

Optometrist (Ophthalmic Optician)

Orthodontic Therapist

Orthoptist

Osteopath
Paramedic
Physiotherapist
Prosthetist and Orthotist
Radiographer
Registered Gas Installer
Social Worker (England)
Social Worker (Northern Ireland)
Social Worker (Scotland)
Social Worker (Wales)
Speech and Language Therapist
Listed Veterinary Nurse

PART 2

PROFESSIONS IN REGULATIONS 3(8) AND 3(9)

Farriers
Dentists and specialist dentists
Medical practitioners, including specialist medical practitioners and general practitioners
Specialist medical practitioners and general practitioners,
Nurses and midwives,
Pharmacists,
Veterinary Surgeons,

SCHEDULE 5

Regulation 28

Activities referred to in Lists I, II and III of Annex IV of the Directive

1.—(1) In the case of activities appearing in list I of Annex IV to the Directive the activity in question must have been previously pursued by the beneficiary—

- (a) for six consecutive years on a self-employed basis or as a manager of an undertaking, or
- (b) for three consecutive years on a self-employed basis or as a manager of an undertaking, where he proves that he has received previous training of at least three years for the activity in question, evidenced by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (c) for four consecutive years on a self-employed basis or as a manager of an undertaking, where he can prove that he has received, for the activity in question, previous training of at least two years duration, attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (d) for three consecutive years on a self-employed basis, if he can prove that he has pursued the activity in question on an employed basis for at least five years, or

- (e) for five consecutive years in an executive position, of which at least three years involved technical duties and responsibility for at least one department of the company, if he can prove he has received, for the activity in question, previous training of at least three years duration, as attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid.

(2) In cases (a) and (d), the activity must not have finished more than 10 years before the date on which the complete application was submitted by the person concerned to the competent authority.

(3) Paragraph 1(e) shall not apply to activities in Group ex 855, hairdressing establishments, of the ISIC Nomenclature.

2. In the case of activities in list II of Annex IV, the activity in question must have been previously pursued by the beneficiary—

- (a) for five consecutive years on a self-employed basis or as a manager of an undertaking, or
- (b) for three consecutive years on a self-employed basis or as a manager of an undertaking, where he proves that he has received previous training of at least three years for the activity in question, evidenced by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (c) for four consecutive years on a self-employed basis or as a manager of an undertaking, where he can prove that he has received, for the activity in question, previous training of at least two years duration, attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (d) for three consecutive years on a self-employed basis or as a manager of an undertaking, if he can prove that he has pursued the activity in question on an employed basis for at least five years, or
- (e) for five consecutive years on an employed basis, if he can prove that he has received, for the activity in question, previous training of at least three years duration, as attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (f) for six consecutive years on an employed basis, if he can prove that he has received previous training in the activity in question of at least two years duration, as attested by a certificate recognised by the home State or judged by a competent professional association to be valid.

(2) In cases (a) and (d), the activity must not have finished more than 10 years before the date on which the complete application was submitted by the person concerned to the competent authority.

3.—(1) In the case of activities in list III of Annex IV, the activity in question must have been previously pursued by the beneficiary—

- (a) for three consecutive years, either on a self-employed basis or as manager of an undertaking, or
- (b) for two consecutive years, either on a self-employed basis or as a manager of an undertaking, if he can prove that he has received previous training for the activity in question, as attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid, or
- (c) for two consecutive years, either on a self-employed basis or as a manager of an undertaking, if he can prove that he has pursued the activity in question on an employed basis for at least three years, or
- (d) for three consecutive years, on an employed basis, if he can prove that he has received previous training for the activity in question, as attested by a certificate recognised by the home State or judged by a competent professional association to be fully valid.

(2) In cases (a) and (c), the activity must not have finished more than 10 years before the date on which the complete application was submitted by the person concerned to the competent authority.

EXPLANATORY NOTE

(This note is not part of the Regulations)

CONSULTATION DRAFT

**Health Professions Council
The Council, 31st May 2007**

2005/36/EC (Professional Qualifications Directive) - Update

Executive Summary and Recommendations

Introduction

There are 3 routes onto the HPC register: UK training and registration, grandparenting and international. International applicants can be either EEA (Member States of the European Union plus Norway, Switzerland, Iceland and Liechtenstein) or non-EEA applicants. The definition of an EEA applicant is someone who can prove nationality (i.e. citizenship) and a right to practise in another EEA country. They can also demonstrate an acquired right through marriage and educational qualifications.

Applicants to the HPC from the EEA are currently assessed under the General Systems directive. This directive will be superseded by directive 2005/36/EC from the 20th October 2007. The aim of directive 2005/36/EC is to reorganise, rationalise and harmonise all 15 rules (including the General Systems directive) relating to professional recognition. Existing European legislation is brought together so that the principles of recognition are standardised across all professions.

Directive 2005/36/EC establishes rules for holders of a professional qualification in a Member State to have access to and allow the pursuit of the profession in which they are qualified in another Member State.

The directive has no impact on UK-trained applicants but is meant for EEA nationals applying for registration. There are some minor alterations to our current registration systems:

- A decision must be given within 3 months of receipt of a complete application.
- Common platforms (Article 15)
 - Common platforms are a set of educational criteria which make it possible to compensate for the widest range of substantial differences. It is a means of waiving compensation measures for potential registrants who meet pre-agreed criteria.
 - A common platform is a voluntary agreement between member countries, which with EU Commission approval will become a legal entity. The agreement is flexible and can be abolished if necessary.
- Language competence (Article 53)
 - EU Commission has reaffirmed that systematic language testing is ruled out as a condition of recognition. Confirmed by ECJ case of Wilson (Case C-506/04). Speech and language therapy is the only profession that is exempted from this part of the directive because it is a core competence of the profession.
- Duty to exchange information between competent bodies (Article 56).

One important aspect of the directive is temporary registration. The following paper gives information on the free provision of services aspect of the directive that will affect our registration functions.

Decision

This paper is for discussion.

Background information

Directive 2005/36/EC will come into force on 20th October 2007.

A full copy of the directive text:

[http://eur-](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf)

[lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2005/l_255/l_25520050930en00220142.pdf)

Resource implications

Not applicable.

Financial implications

Not applicable

Background papers

None

Appendices

None

Date of paper

21st May 2007

Directive 2005/36/EC (on the recognition of professional qualifications)

Temporary and occasional services - Articles 5-9

Summary

This relates to the provision of services on a temporary and occasional basis by a professional who provides services on a permanent basis (established) in another Member State.

The directive is still with the UK government and is still in the process of being transposed into UK legislation. We have received a draft copy of the UK legislation and will be responding by the consultation end date of 3rd August 2007.

Article 5(2) of the directive defines temporary as:

“The temporary and occasional nature of the provision of services shall be assessed case by case, in particular in relation to its duration, its frequency, its regularity and its continuity”.

The directive states that a service provider applying for temporary registration must have received a decision within a month of HPC’s receipt of all relevant documentation; if no response is received from us the service provider can practise under the protected title. A definitive list of the documentation we can request has not yet been finalised.

We do know that it will include:

- A declaration of the intention to provide a temporary service
- Proof of nationality
- Evidence of legal establishment in another EEA state
- Evidence of professional qualifications or proof of professional experience
- Evidence of insurance cover

An important part of the directive is that temporary registration must be at no cost to the applicant for the duration of the service provision; we cannot charge a scrutiny fee or fees for temporary registration. Therefore, any costs incurred would have to be met by the registration fees of current registrants.

There are provisions for the use of aptitude tests and requests for further information from applicants in extreme circumstances on a case-by-case basis, provided this is requested within the first month from receipt of completed documentation.

We have a project team that are considering how to develop a system that will incorporate temporary registration into our current systems. This has to be implemented by 20th October 2007 when the legislation comes into force. As this has not yet been transposed into UK legislation we cannot be sure of the exact requirements that we will

have to meet. The project is part of the current yearly project plan and has been budgeted for.

We are also working closely with the other healthcare regulators in the UK, especially through the Alliance of UK Regulators in Europe (AURE) as well as regulators across Europe (including the Healthcare Professionals Crossing Borders agreement working groups).

The Executive will keep the Council updated with further developments in this area.