



10 December 2015 - 20 January 2016

## Consultation response form

Transposition of revised Mutual Recognition of Professional Qualifications (MRPQ) Directive 2005/36/EC Amendments to health and care regulators' legislation

A CONSULTATION ON THE HEALTH SPECIFIC AMENDMENTS TO THE DIRECTIVE

### About you

**You do not have to tell us this information if you do not want to.**

**Please fill in and/or tick the appropriate response.**

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### Freedom of Information

Information provided in response to this consultation, including personal information, may be published or disclosed in accordance with the access to information regimes. The relevant legislation in this context is the Freedom of Information Act 2000 (FOIA) and the Data Protection Act 1998 (DPA).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities

must comply and which deals amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties. However, the information you send us may need to be passed on to colleagues within the UK Health Departments and/or published in a summary of responses to this consultation.

I do not wish my response to be published in a summary of responses

**Are you responding (please select one):**

As a member of the public

As a health or social care professional

On behalf of an organisation

**If you are responding on behalf of an organisation, please supply details:**

The Health and Care Professions Council (HCPC) is a statutory UK-wide regulator of health, social work, and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 different health and care professions. We regulate all of our professions on a UK-wide basis with the exception of social workers which we regulate on an England only basis. Further information is available here: [www.hcpc-uk.co.uk/aboutus/](http://www.hcpc-uk.co.uk/aboutus/)

## Consultation Questions

**1) Are there any further legislative amendments, other than those set out in the draft European Qualifications (Health and Social Care Professions) Regulations 2015, which you think are required as a result of the changes to the Directive?**

No. We do not consider that further legislative amendments to the Health and Social Work Professions Order 2001 (the Order) and our accompanying Rules is necessary, other than those set out in the draft regulations above. We note that as a result of all of our professions being governed by the 'general system' as set out under Directive 2005/36/EC that the resultant amendments to our Order and accompanying Rules by the Department of Health (the Department) are relatively minor in nature. The majority of legislative changes for us will be covered by those regulations prepared by the Department for Business, Innovation and Skills (BIS) namely the European Union (Recognition of Professional Qualifications) Regulations 2015.

**2) Do you think that a pharmacist trainee should take their practical training during their course or at the end of their course?**

We have no comment to make on this issue.

**3) Do you have any comments on any of the changes in the section above or, where applicable, how these have been inserted into the draft European Qualifications (Health and Social Care Professions) Regulations 2015?**

We have no comment to make on this issue. We note that the majority of the amendments as set out in the draft regulations focus on amendments which are relevant to the sectoral professions and their UK competent authorities (regulators) and would not be relevant to us.

**4) Do you have any comments on the Department's draft European Qualifications (Health and Social Care Professions) Regulations 2015 in relation to the EPC? Are there any further consequential amendments that you think need to be made?**

We consider that the proposed amendments to our Order and accompanying Rules as set out in the draft regulations above cover any resultant issues in relation to the EPC. This includes: allowing a visiting health professional from a relevant European State who holds an EPC to practise in the UK on a temporary and occasional basis; enabling our Council to set reasonable and proportionate fees for processing and / or issuing EPCs; and providing appeal provisions for the issuing, extension or revocation of an EPC or the failure by the Registrar to make a decision within the required time limits.

**5) Do you think there are any potential issues with the introduction of the EPC in relation to the health care professions that have been selected by the Commission?**

We have had detailed discussions with the Department of Health (the Department), Department for Business, Innovation and Skills and the European Commission regarding the introduction of the EPC for physiotherapists throughout the transposition (implementation) period. We recognise that it may take some time in order for the new provisions and processes to become fully embedded in member states and their competent authorities. However, we are keen to work with the European Commission and other stakeholders to resolve any issues (including minor operational issues such as the use of the Internal Market Information system) which may arise post implementation.

**6) Do you agree with the Department's interpretation of what should constitute an alert in relation to healthcare professionals?**

Yes. We believe that the Department has correctly interpreted what should constitute an alert in relation to healthcare professionals. This includes allowing individual competent authorities (regulators) some level of discretion with regard to which decisions should constitute or necessitate sending an alert. The nine UK-wide health and social care regulators have already agreed draft principles for the sending of alerts via the Alliance of UK Health Regulators on Europe (AURE). We do not think that it would be appropriate in all instances to send an alert for non-FTP related matters. For example, administratively removing a professional from our Register due to a registrant accidentally letting their registration lapse at renewal. We contend that administratively removing a professional in such instances would not constitute a prohibition on practice of the kind envisaged by the revised Directive. Such an interpretation would require us to send many hundreds of alerts at each renewal period which would subsequently be revoked within a short time period. This would be disproportionate for competent authorities.

We would also welcome continued discretion with regard to the timing for sending an alert and its interaction with our statutory appeal period. We believe that it is more appropriate and proportionate to send an alert within three days of the decision taking effect ie after the statutory appeal period has ended. This interpretation would also allow us to effectively manage both of the two separate appeal provisions: against the FTP decision or sanction imposed by the panel and / or the resultant sending of an alert. We also consider the proposed amendment to our Order to allow the county court or sheriff in Scotland to require us to withdraw or amend an alert after receiving an appeal in duly justified circumstances is appropriate.

**7) Do you think that it would be helpful for the Department to provide healthcare specific guidance for the regulatory bodies to complement the BIS guidance?**

Yes. We think it would be helpful for the Department to provide healthcare specific guidance for the regulatory bodies to complement the BIS guidance.

**8) Is there anything that you would like us to include in healthcare specific guidance?**

There are a few areas where further healthcare specific guidance would be welcome. These include:

- the ability or provisions for a host member state's competent authority to contest or request the revocation of a temporary and occasional EPC issued by the home member state's competent authority in duly justified circumstances (Article 4c cases of the revised Directive);
- to clarify the Department's views on reasonable and proportionate language controls for a competent authority to carry out in the absence of a separate section 60 order being in place; and
- to clarify the Department's view with regard to competent authorities exercising their continued discretion in relation to the timing for sending an alert within three days of a decision taking effect as opposed to when it was made, given the interaction of the new provision with our statutory appeal period (see our response to question 6 above).

**9) Are there any protected characteristics that you feel may be effected, either positively or negatively, by these changes?**

No. We have no comment to make on this issue.

**10) Are there any potential monetary impacts (either positive or negative) that you think we need to be aware of?**

Yes. There have been some monetary impacts on competent authorities in order to prepare for the implementation of the new provisions contained within the revised Directive. However, these costs have not been significant to date as we have tried to embed many of these new provisions into our existing operations and processes, where possible, without requiring significant IT and other changes.