

Council – 24 September 2015

Implementing the revised Recognition of Professional Qualifications (RPQ) Directive – an update for Council

Executive summary and recommendations

Introduction

The RPQ Directive is European Union (EU) legislation which established rules for holders of a professional qualification in one Member State to have access to and allow the pursuit of the profession in which they are qualified in another Member State. The HCPC applies these rules when we receive applications from European Economic Area (EEA) nationals or other relevant persons, with applicable professional rights and qualifications, who wish to practise in the UK in any of the professions we regulate.

A review of the existing Directive was completed at European level in November 2013. Member States were given two years to implement the provisions of the revised Directive into their domestic law. This implementation period ends on 18 January 2016. The HCPC needs to comply with the revised Directive from this date.

This paper:

- provides an overview of the existing Directive and how it impacts on the HCPC;
- summarises the UK Government's legislative implementation of the revised Directive into domestic law;
- outlines our preparations to implement a number of the revised Directive's provisions into our existing operations; and
- identifies some remaining regulatory challenges for the Council's information.

Decision

This is a paper for discussion, no decision is required.

Background information

- Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the Recognition of Professional Qualifications

(consolidated text, 17 January 2014), 7 September 2005, (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2005L0036:20140117:EN:PDF>) (For other background information: see paper)

- Paper for Council, 25 September 2014 (enclosure 17 at www.hcpc-uk.org/aboutus/council/councilmeetings/index.asp?id=678)

Resource implications

None as a result of this paper. The resource implications of the major project to implement the requirements of the revised Directive have been accounted for in departmental planning for 2015-2016.

Financial implications

None as a result of this paper. The financial implications of the major project to implement the requirements of the revised Directive have been accounted for in departmental planning for 2015-2016.

Appendices

None

Date of paper

11 September 2015

Implementing the revised Recognition of Professional Qualifications (RPQ) Directive – an update for Council

1. Introduction

The RPQ Directive (the existing Directive) reorganised and harmonised the rules about the recognition of professional qualifications between relevant European Member States (hereafter referred to as ‘Member States’).¹

It established rules to allow holders of a professional qualification in one Member State to have access to and to pursue the profession in which they are qualified in another Member State. We refer to these as ‘home’ and ‘host’ Member States, respectively.

The HCPC applies these rules when we receive applications from European Economic Area (EEA) nationals or other relevant persons, with applicable professional rights and qualifications, who wish to practise in the UK in any of the professions we regulate (hereafter referred to as ‘EEA applicants’).

Under UK and EU law, the HCPC acts as the competent authority for each of its regulated professions. Competent authorities are normally regulators or professional bodies who have responsibility for professional registrations. However, in some Member States the competent authority for a particular regulated profession can be a government department.

The existing Directive was reviewed at European level during 2010 – 13. The text of the revised Directive was agreed in November 2013 and the HCPC will need to be compliant with it from January 2016.²

The revised Directive contains a number of new provisions which will require some changes to our operations and processes. The most significant of these are discussed in more detail later in the paper.³

This paper is divided into four sections:

- it provides an overview of the existing Directive and how it impacts on our registration processes;
- it summarises UK legislative developments for implementing the revised Directive into domestic law;

- it outlines the preparatory work being undertaken to implement a number of changes to some of our operations and processes as a result of the new provisions contained within the revised Directive; and
- it identifies some regulatory challenges for us having to comply with this piece of EU legislation and its interaction with our statutory role.

2. An overview of the existing Directive (Directive 2005/36/EC)

The existing Directive caters for the recognition of qualifications through:

- Automatic recognition for certain professions for which minimum training requirements have been harmonised across Member States.⁴
- The ‘general system’ for other regulated professions whereby minimum training requirements are not harmonised across Member States and recognition is granted on the basis of a comparison of professional qualifications (or regulated education and training) between Member States on a case-by-case basis.

All the professions regulated by the HCPC are affected by the ‘general system’ only. The existing Directive also introduced a special scheme for temporary mobility of professionals between Member States which is referred to below.

Recognising professional qualifications

EEA applicants who apply for recognition of their professional qualifications in order to obtain full HCPC registration and use one of our protected titles must demonstrate a level of proficiency comparable to that required for entry to our Register.

However, there are certain principles that we must apply when assessing their application. These include:

- mutual recognition – the principle that once a professional is allowed to practise a profession in one Member State they can practise in another;
- restriction of movement and the internal market mechanism – only measures that also apply to UK nationals can be applied to EEA nationals;
- maximum application assessment periods;
- freedom of establishment;⁵ and
- the duty to exchange information between Member States (and their regulatory bodies) regarding disciplinary action, criminal sanctions or any serious circumstances which are likely to affect the ability of a person to practise their profession.

EEA applicants who benefit from mutual recognition rights under the existing Directive, and who do not hold a qualification received from a UK approved

education or training programme, currently apply for recognition via our International-EEA mutual recognition rights route.

For recognition purposes (in this instance full HCPC registration) each application is assessed by two registration assessors from the part of the Register that the EEA applicant wishes to join, in order to ensure that the applicant meets the standards of proficiency for that profession.⁶

If that assessment finds substantial shortfalls between the EEA applicant's relevant education, training and experience and the standards of proficiency required for entry to the Register, the applicant is offered a choice of compensation measures to make up this shortfall. The EEA applicant will be required to either complete a 'period of adaptation' (POA) or pass an aptitude test in order to be eligible for full HCPC registration.⁷

Temporary mobility of professionals

The temporary mobility scheme allows EEA nationals (or other relevant persons), who are fully qualified and able to practise their profession in their home Member State, to provide services on a temporary and occasional basis only in another Member State.

Visiting professionals (visitors) wishing to practise in the UK on a temporary and occasional basis in any of our regulated professions need to make a declaration, concerning the temporary provision of services, to the HCPC under a process more commonly known as 'temporary registration'.

This type of registration is provided for an initial period of 12 months and is renewable. There are significant differences between 'temporary registration' and full HCPC registration. These include the following:

- The visitor cannot use any of our protected titles.
- The visitor's qualifications and experience are not checked and assessed against our standards of proficiency in the same way as International – EEA mutual recognition rights applications are for full HCPC registration (as outlined above).
- There are some restrictions on the type of work and employment that a visitor can carry out whilst benefitting from temporary registration.⁸

3. Implementing the revised Directive into UK law

Member States have two years to implement the provisions of the revised Directive into domestic law. This implementation period is scheduled to end on 18 January 2016. Regulators need to be compliant with the provisions of the revised Directive from this date.

The revised Directive has introduced a number of new provisions which will impact on some of our operations and processes. These include:

- the introduction of the European Professional Card (EPC);⁹
- the development of a proactive fitness to practise (FTP) alert mechanism for all of our regulated professions; and
- the clarification of the use of language controls carried out by regulators on EEA applicants where the profession in question has ‘patient safety implications’.

The EPC will only apply to one of our regulated professions – physiotherapists – in the first instance. The EPC is intended to promote free movement and make the system of recognition of professional qualifications between Member States (and their regulatory bodies) more efficient and transparent, whilst also introducing cost and operational efficiencies. It will take the form of an electronic certificate issued under streamlined recognition procedures to EEA applicants who apply for it. It will be available for both recognition (in this instance full HCPC registration) and for temporary provision of services.¹⁰

The revised Directive has introduced a proactive Fitness to Practise (FTP) alert mechanism for all professions whose actions could affect ‘patient safety’. The HCPC will be required to send an alert to regulatory counterparts in other Member States if a registrant or visitor has had their professional practice restricted or prohibited (even temporarily); or has been found by our FTP processes to have attempted to use falsified documents to gain registration. The alert will need to be sent within three days of the restriction or prohibition taking effect and will be sent via a secure electronic communication tool provided by the European Commission.

In principle, the revised Directive allows a host Member State (and their regulatory body) to carry out systematic language controls on EEA applicants who wish to access a profession which has ‘patient safety implications’. The Department of Health (DH) has introduced a separate section 60 order for a number of our regulatory counterparts in this area and clarified their systems and processes for requesting proof of language competency from EEA applicants. No timetable has yet been provided to the HCPC on when a similar section 60 order will be introduced for our regulated professions. In the meantime we will continue to request proof of language competency in the first instance from EEA applicants applying to be registered as a speech and language therapist only; and / or when we have a justified doubt about the professional’s language competency and there is a resultant risk to patient safety.

An explanation of some of the necessary changes to the HCPC’s operations and processes resulting from the provisions outlined above is provided in section four below. However, there are a number of other relatively minor changes contained in the revised Directive which will impact more on our internal operations and processes which have not been referred to here.¹¹

The HCPC’s Policy and Standards Department has led on engagement with the UK Government and other stakeholders regarding implementation of the revised Directive into domestic law. This has included:

- providing feedback to DH and Department of Business, Innovation and Skills (BIS) officials on different aspects of regulatory policy pertaining to the implementation of the revised Directive;
- reviewing and providing feedback on relevant implementation documentation and draft legislation which was supplied by government and European officials;
- responding to formal consultations overseen by BIS on the implementation of the revised Directive, draft regulations and draft guidance for regulators;¹²
- providing feedback to the DH on resultant changes to the HCPC's governing legislation;
- attending meetings with key stakeholders including other regulators, government and European officials; and
- obtaining legal advice on proposed changes to our governing legislation and related matters.

In addition, the Chief Executive and one of the Policy Officers presented reports on the regulation of the physiotherapist and practitioner psychologist professions in the UK at a meeting hosted by the European Commission in Brussels during March 2015. This was part of a wider transparency initiative launched by the European Commission to ensure that Member States' systems of regulation were reasonable and proportionate and did not present undue barriers to the mobility of EEA professionals. Our presentation was positively received by the European Commission and other attendees.

We have also maintained an active membership of the Alliance on UK Health Regulators on Europe (AURE).¹³ As part of this the HCPC has issued joint statements with other regulators on various issues in relation to the implementation of the revised Directive.

4. Changes to our operations and processes under the revised Directive

The existing Directive has had a significant impact on our operations and processes particularly in our Registration Department. A business plan for a major project on the implementation of the revised Directive was agreed by the Executive Management Team (EMT) in November 2014. The Project Initiation Document (PID) was agreed in June 2015.

The composition of the project team includes representatives from the FTP, Policy and Standards, Project Management, Operations and Registration departments. The team has already identified many of the necessary changes to the HCPC's operations and processes which are required to implement the revised Directive's provisions. Some remaining changes will become more evident once the relevant domestic legislation is finalised.

Due to both a delay in finalising the content of the implementing act on the EPC and alert mechanism and a formal decision being taken on the extension of the EPC to the physiotherapist profession at European level, the time allotted to regulators to comply with some of the provisions contained in the revised Directive is short.¹⁴

Regulators are also awaiting access to the upgraded IT and electronic communications systems which are being developed at European level which will allow for the processing of EPC applications and the sending and receiving of FTP related alerts.

However, the project board has continued to meet fortnightly to determine the various changes required to our operations and processes. These include:

- developing workflows for the processing of EPC applications when acting as either a home or host Member State's regulatory authority;¹⁵
- developing workflows and processes for our FTP Department to send and manage FTP related alerts; and
- ensuring that various departments and stakeholders are both aware of and compliant with some of the relatively minor provisions of the revised Directive.

5. Regulatory challenges

The revised Directive has introduced some challenges for us in both meeting our legal requirements under European legislation and the interaction of this with our statutory role to protect the public.

Under the EPC procedure a host Member State's regulator will have no formal role in the issuing or renewal of an EPC for temporary and occasional service provision when the home Member State's regulator is authorised to do so. This EPC gives access to the profession in a host Member State on a temporary and occasional basis only. It is valid for an initial period of 18 months and can be renewed by the home Member State's regulator at the request of the visitor. However, we are taking action to mitigate this challenge by continuing to engage with key stakeholders including the DH and European Commission to seek to ensure that the full revocation provisions contained in the implementing act for the EPC are provided to both home and host Member State's regulators.

The EPC has also introduced more strict deadlines for a host Member State's regulator to make a decision on whether or not to recognise a qualification (in this instance leading to full HCPC registration). If a host Member State's regulator does not make a decision within the required deadlines, the EPC will be tacitly recognised.¹⁶ If an EPC is tacitly recognised or issued it is in effect recognised and makes the EEA applicant eligible for full HCPC registration. However, we have devised strict internal operational processes and workflows for our Registration Department in order to limit the possibility of tacit recognition occurring.

Finally as referred to above, there is still uncertainty with regard to the legislative timetable for the introduction of a separate section 60 order on language controls for the HCPC. However, we have continued to ensure that any language controls we carry out on EEA applicants are reasonable and proportionate and only occur (with the exception of speech and language therapist applicants) where we have a justified doubt about the EEA professional's language competency. We have also found limited evidence to date that EEA applicant's language competency has been a significant cause of concern in our FTP processes.

6. Abbreviations

AURE – Alliance of UK Health Regulators on Europe

BIS – Department for Business, Innovation and Skills

DH – Department of Health

EEA – European Economic Area

EMT – Executive Management Team

EPC – European Professional Card

EU – European Union

FTP – Fitness to practise

PID – Project Initiation Document

RPQ Directive – Recognition of Professional Qualifications Directive

7. References

- ¹ Relevant European Member States include any member of the European Economic Area (EEA) or Switzerland.
- ² The text of the revised Directive is available here: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:354:0132:0170:EN:PDF>
- ³ For further information on these provisions, please refer to the previous paper which was presented to Council on 25 September 2014 (enclosure 17) which is available here: www.hcpc-uk.org/aboutus/council/councilmeetings/index.asp?id=678
- ⁴ Automatic recognition currently applies to seven 'sectoral' professions which include doctors, midwives and nurses. EEA applicants in these professions, who meet the minimum training requirements set out in the Directive, can have their qualifications automatically recognised in another Member State.
- ⁵ The principle of freedom of establishment enables an economic operator (whether a person or company) to carry out an economic activity in a stable or continuous way in one or more Member States.
- ⁶ Further information on our assessment process for EEA applicants is available here: www.hcpc-uk.org/apply/eeaandswitzerland/assessingyourapplication/
- ⁷ Further information on our EEA assessment outcomes is available here: www.hcpc-uk.org/apply/eeaandswitzerland/assessingyourapplication/
- ⁸ Further information on the temporary registration process is available here: www.hcpc-uk.org/aboutregistration/temporary/
- ⁹ The EPC will be available for both recognition (in this instance full-HCPC registration) and for temporary provision of services. For the HCPC, the latter will be processed, issued and renewed by the home Member State's regulator only and will be valid for an initial period of 18 months.
- ¹⁰ For the HCPC, the latter will be processed, issued and renewed by the home Member State's regulator only and will be valid for an initial period of 18 months.
- ¹¹ For further information on these provisions, please refer to the previous paper which was presented to Council on 25 September 2014 (enclosure 17) which is available here: www.hcpc-uk.org/aboutus/council/councilmeetings/index.asp?id=678
- ¹² Our responses to both BIS consultations are available here: www.hcpc-uk.org/aboutus/consultations/external/index.asp?id=178 and www.hcpc-uk.org/aboutus/consultations/external/index.asp?id=190
- ¹³ AURE brings together nine of the health and social care regulators to work collaboratively on European issues affecting service user and client safety. Further information on AURE is available here: www.aure.org.uk/
- ¹⁴ Implementing Acts are a legislative measure drafted by the European Commission which detail how certain European measures should be uniformly implemented across the European Union. The relevant implementing act is available here: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0983&from=EN>
- ¹⁵ This work has included discussions around setting the level of various EPC fees and processing payments for these.
- ¹⁶ The required deadline is two months which can be extended by two weeks on two separate occasions with justification.