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Innovation & Skills

GUIDANCE FOR COMPETENT
AUTHORITIES

Implementing Professional
Qualifications Directive
2005/36/EC

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Introduction

This document provides updated general guidance to regulatory bodies of the obligations placed upon them by the revised Mutual Recognition of Professional Qualifications Directive 2005/36/EC (PQD). Such bodies are known as “competent authorities” as they control access to regulated professions, professional and vocational titles and professional activities which require specific qualifications, (which includes experience), and are subject to national law or membership rules of bodies governed by the Royal Charter. **This guidance should be read in conjunction with the Directive and relevant Implementing Regulations (Statutory Instruments).**

The original PQD made it easier for qualified professionals to practise their professions in European countries by simplifying the recognition process. It replaced and repealed a number of existing Directives and in many cases the provisions in the original PQD were very similar if not identical. The revised PQD involves changes to current mutual recognition processes and procedures, with a particular focus on using modern technologies to support the mutual assistance of Member States.

This Directive is considered to be of a deregulatory nature and is directly contributing to the growth of the economy. It facilitates recognition of professional qualifications and makes it easier to fill the skilled jobs by qualified professionals. Mobility of skilled labour across Europe directly contributes to the productivity growth.

The Department for Business, Innovation and Skills has responsibility for implementing the Directive. As the Directive covers both the general and sectoral systems of recognition there are a number of pieces of legislation which form a package of implementing measures for the UK. For the general system regime the Directive, in the main, is implemented by Statutory Instrument (to be updated after the regulations are laid).

The provisions relating to the sectoral professions (doctor, nurse, dental practitioner, veterinary surgeon, midwife, pharmacist and architect) and to some non-sectoral health professions are implemented by regulations prepared by the relevant sponsoring government departments namely the Department of Health, the Department of Communities and Local Government and the Department for Environment, Food and Rural Affairs. These regulations will need to be read alongside.

The provisions of the UK Regulations are binding on competent authorities and require them to:

- deal with applicants who are [EEA nationals]¹ (or have enforceable Union

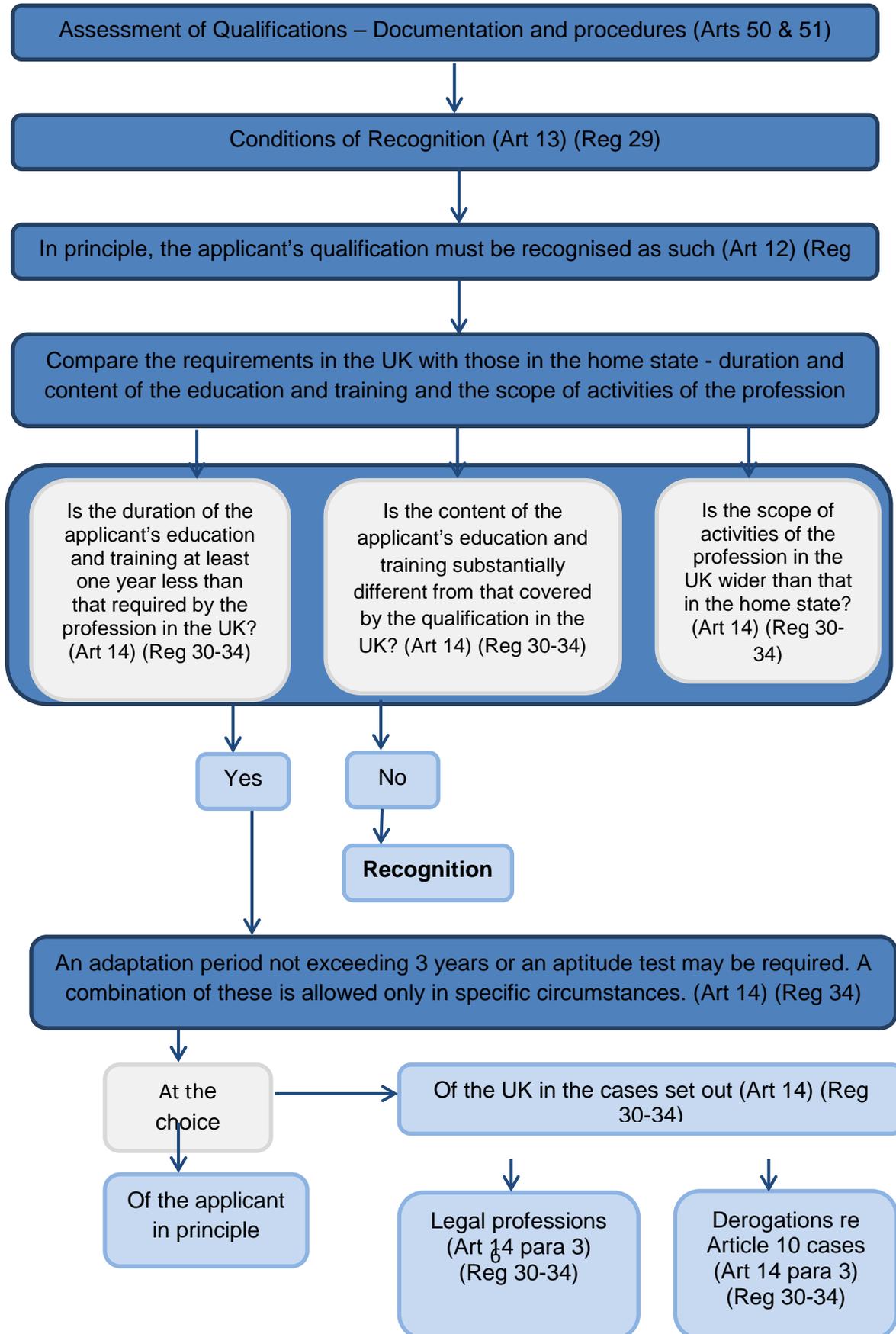
¹ EU Member State plus Norway, Iceland, Liechtenstein and Switzerland. [The EEA States and Switzerland have yet to adopt the revisions made by Directive 2013/55/EU and amendments will be made to the final version of this Guidance before it issues to reflect the updated position.]

rights, such as spouses of [EEA nationals]) holding qualifications obtained elsewhere in the Union or [Switzerland] or from a third country in accordance with the provisions set out in the Directive;

- operate as a contact point providing detailed information to applicants about the profession (see further information in Section 5);
- work closely with competent authorities in other States to provide assistance and exchange pertinent information via the IMI system;
- collate information (including statistics) relating to applications received and decisions taken plus actions relating to temporary and occasional provision of services and to make it available to the Department when requested;
- advise the Department of any changes which may affect the details shown in any of the Schedules of the implementing Regulations.

1. General system recognition

The Process for recognition under the General System – Establishment



1.1 Functions of a competent authority

A competent authority is required to:

- receive and consider applications from professionally qualified applicants from the [EEA] (or those with enforceable Union rights) to practise a regulated profession or use a protected title or designatory letters; including applications for European Professional Cards;
- assess applications in accordance with the provisions and timescales set out in the Regulations;
- make a reasoned decision on applications and communicate that decision in writing to the applicant;
- ensure arrangements for compensation measures are in accordance with the PQD and the Regulations;
- to consider applications for partial access to a professional activity;
- give authorisation to practise or use a title to those [EEA] applicants satisfying the requirements;
- share and exchange information with competent authorities in other [EEA States] to make the recognition process speedier and easier, particularly any information about disciplinary action or criminal sanctions or any other serious incident likely to affect the practice of the profession.
- To inform competent authorities in [EEA States] about professionals whose activities are restricted or prohibited in the UK.
- Where another [EEA State] sends information about a UK professional, the UK competent authority must examine the information presented and decide what action to take.

1.2 Definition of a regulated profession

A regulated profession is one where access to the profession is subject to specific qualifications for accessing the profession:

- a) by law, regulation or administrative provision, which authorises the holder of the qualification to take up or pursue the activities concerned or
- b) in order to practise under a professional title or designatory letters conferred by Chartered bodies in line with Article 3(2) of the Directive.

A profession is regulated when the qualification requirements are set in legally binding Acts of general scope such as laws, regulations or administrative provisions. It can also be regulated through a collective agreement if it is sufficiently general in scope or by several collective agreements if the terms of one collective agreement entered into by a public body and its staff representatives are common to other collective agreements entered into on an individual basis by other public bodies of the same kind and, furthermore, are the result of a single administrative policy laid down at national level. In such case those collective agreements may be sufficiently

general in scope for their terms to be classified as rules regulating a professional activity (see CJEU case law Bobadilla C-234/97 of 8 July 1999).

The definition does not cover all qualifications attested by evidence of formal qualifications, but only these relating to training which is specifically designed to prepare candidates to exercise a given profession (see CJEU case law Brouillard C-298/14 of 6 October 2015)

1.3 Definition of a qualification

A qualification can be broadly defined as evidence of education and training which:

- is awarded by a recognised authority in an [EEA State];
- shows that the holder has successfully completed education and training of an appropriate duration;
- shows that the holder has the qualifications to practise the profession in the [EEA State].

1.4 Eligibility for Assessment under the Directive

Applicants eligible to apply for assessment are those who are [EEA] nationals (or have enforceable Community rights) and:

- a) are already fully qualified to practise that regulated profession in their home State;
- b) want to practise a profession, where automatic recognition would normally apply but for specific reasons they do not meet the criteria for automatic recognition (Article 10 cases – see Annex 1);
- c) are practising their profession in an [EEA State] which does not regulate the profession, but who have a relevant qualification, together with any further necessary training which has prepared them for the profession. In addition, the applicant must have practiced the profession for a minimum of one year during the last ten years. The exception to this rule is where the applicant provides proof that they have undergone "regulated education & training" – see explanation below;
- d) may hold a qualification which entitles them to practise the regulated profession but which is an "old style" qualification as changes have been made to the access of the profession in their home State. In such cases the competent body in the home State must confirm that the qualification gives "acquired rights" to practise that regulated profession – see explanation below; or
- e) where the profession is regulated in their home State but the education and training is of a different level (Annex 2 sets out the levels) to that required in the UK. In these cases the application is subject to the "bridging procedure" – see explanation below.

Regulated Education and Training

The concept of regulated education and training is only relevant where the profession is not regulated or where a professional title is not needed to practise the profession. Regulated education and training is any education and training which is directly geared to the practice of a defined profession and [where] the professional training as well as the structure and level of that professional training or practice required in addition to that course is determined by the laws, regulations or administrative provisions of the [EEA State] or monitored/ approved by the relevant authority.

The Directive applies only if training is provided by state recognised institutions and it meets the national requirements for attestations of competence and evidence of formal qualifications. Diplomas delivered by private education schemes which are not recognised by the State do not fall within the scope of the Directive.

Access to the profession in a host Member State should be granted if the applicant has pursued the profession for a period of at least one year during the previous ten years and has an attestation of competence or evidence of formal qualifications issued by that state.

Under these provisions when an applicant moves from an [EEA State] where the profession is unregulated but has completed a course of regulated education and training confirmed by that [EEA State] then the competent authority in the host State cannot impose the requirement of one year's professional experience.

In the UK, NVQs and SVQs are regarded as regulated education and training – this principle is taken from Directive 92/51. The concept of regulated education and training was introduced into Directive 89/48 by Directive 2001/19; the UK's interpretation of regulated education and training at this level is any university course which has been accredited by the appropriate body.

Regulated education and training can be in respect of any of the levels in Article 11, except level (a).

Acquired Rights

'Acquired rights' is where access to the profession has changed due to the entry requirements being revised, for example from a 2 year course to a degree level qualification. An applicant who holds a qualification that was regarded at the time of the award as sufficient for entry to that profession, but which is now less than the professional requirements, is accepted as having 'acquired rights' under the provisions of the PQD as long as it carries the same status and rights to that profession.

Bridging Procedure

The earlier general system Directives had a range of levels of education and training and these have been carried forward in Article 11 of the PQD (see Annex 2) as well as the possibility to move between those different levels. In the original PQD, Competent Authorities in host Member States were able to reject applicants under the general system of recognition where qualifications were more than one level lower than the qualification required in the host Member State.

The revised PQD removes this provision, stipulating that Competent Authorities may only refuse access where the applicants' qualification falls under category (a) of Article 11 (the lowest level specified - generally qualifications at a secondary or primary level or not covered in other categories) and the host Member State national requirements for professional qualification falls under category (e) (the highest level of qualification specified - post-secondary for at least 4 years with any necessary training).

Third Country Qualification

A third country qualification is a qualification that has been awarded outside of the [EEA]. Such qualifications must be accepted as eligible to apply for recognition if the holder has subsequently had three years professional experience in the [EEA State] which recognised the qualification (in other words accepted the holder into that profession) and that experience is certified by that [EEA State] – entitlement under the Directive only applies for the “second” recognition within the [EEA].

In the case of sectoral professions (except architects), at the first recognition stage the applicant will be required to satisfy the minimum training conditions and may also have to meet additional higher requirements. In respect of architects, the minimum training requirements are only a condition for the automatic recognition of qualifications.

Professional traineeships

Competent Authorities are required to recognise professional traineeships carried out in other [EEA States] as described where access to a regulated profession depends on completion of such traineeship. Competent authorities shall take into account professional traineeships carried out in a third country.

For the traineeship to be recognized it has to be compliant with the guidelines on the organization and recognition of professional traineeships carried out in another Member State or in a third country, in particular on the role of the supervisor of the professional traineeship. Guidance on this point should be published by Competent Authorities.

However, this does not restrict any requirement to pass an examination to access the profession in the home state and limits may be set to the duration of such traineeships carried out abroad.

1.5 The assessment process

It is important at the outset that the applicant is made fully aware of the documents required – the list is contained in Annex VII of the Directive; and the applicant must be told in writing within **one month** of any missing documents. It is also good practice to inform the applicant that all the documentation has been received and to indicate when they might expect a decision.

When assessing the application, the competent authority is required to take into account the formal qualifications, training and any professional experience of the applicant (wherever that may have been obtained). These should be compared with the relevant UK requirements in respect of the professional activities covered and the areas of knowledge and skills required to perform them in the UK. It is not appropriate to include detailed comparisons of areas of academic study which may usually form part of the UK studies leading to the qualification but which have no practical bearing on the ability to carry out the professional activities.

The assessment should always be undertaken under the general presumption that someone who is a fully qualified professional in their home State is likely to possess the knowledge and expertise to practise the profession in the UK.

Where the professional activities covered differ substantially from those of the profession in the UK, or where there is a substantial shortfall in the applicant's knowledge and expertise compared with the requirements in the UK and after taking into consideration the knowledge and expertise the applicant has acquired through professional experience, then the applicant may be required to undertake a **compensation measure** before being admitted to the profession. In all but a few specified cases, those listed in Schedule 3 of the implementing Regulations, the choice of compensation measure rests with the applicant. More information on compensation measures can be found below (paragraph 1.7).

Where an authority considers there is a substantive disparity between the professional activities attested by the applicant's qualifications and those covered by the profession, the authority may find it necessary to reject the application. In effect, this decision would mean that the profession currently being practiced by the applicant is not the same profession as that practiced in the UK.

Where the differences between professional activities in a home and host state are so wide that a full training programme would be necessary, the competent authority must consider whether the conditions for partial access are met. In making the decision they must consider whether the activity can be exercised independently in the applicant's home state. If the conditions are met, the competent authority should consider the application in the light of the general interest.

1.6 Informing the applicant of the outcome of the assessment

Whatever the outcome of the assessment, the result must be communicated to the applicant in writing within 3 months (extension to 4 months is possible in certain situations) after all the necessary documents are received. The applicant must be given:

- full and detailed reasons for the decision in writing;
- a comprehensive explanation of the substantial difference which will form the basis of the compensation measure; providing an explanation of the structure of the profession will help the applicant to have a better understanding of why these differences are essential to the practice of the profession and hence must be successfully addressed (if applicable);
- the choice of compensation measure(if applicable);
- the decision on partial access (if applicable);
- information on the appeal process: both internal and external routes.

Although it is important to use the correct terminology and phraseology, all correspondence should be easily understood by those applicants whose mother-tongue is unlikely to be English. It is better to make a point several times in different ways than risk being misunderstood. An offer to give further explanation by telephone is also worth bearing in mind.

In the case of a decision to refuse recognition or a requirement of a compensation measure, the applicant should be informed of any internal appeal procedure in addition to their right to make a formal appeal against your decision through the legislative channel.

1.7 Compensation Measures:

When the compensation measure is proposed it should be proportionate and take account of the applicant's existing documented professional experience. Competent authorities wishing to derogate from the choice of compensation measures should in each case justify the decision to do so by an imperative requirement in the general interest. Compensation measures are viewed to be part of the recognition process.

The Aptitude Test

This is a test, set by the competent authority, designed to show the applicant's ability to adapt their skills to the different circumstances and knowledge base required in the UK. In order to set the test, which must be tailored specifically to the gaps in knowledge of the applicant concerned, the authority must draw up a list of the theoretical and/or practical subjects not covered by the education, training and practical experience of the applicant but which are regarded as essential for the practice of the profession in the UK. The test must relate only to the subjects covered by this list and may be a theoretical or practical examination. It must be

professionally, rather than academically, focused and must take account of the fact that the applicant is already a fully qualified professional in another Member State.

The candidate should be helped to prepare for the test by the Competent Authority providing information about preparatory courses, a list of recommended reading, and by providing examples of the sort of questions which will be asked or sample test papers (if there are any) The test should not be a memory test and reference material should be allowed during the course of the examination.

It should be possible for an applicant who fails to have the opportunity to have another attempt. There should be minimum delay from the decision of the applicant to undertake the test and the administration of the test (the frequency of the test should be at least 2 sessions a year) and the notification of the result.

The Adaptation Period

The purpose of the adaptation period is to allow the applicant to acquire the knowledge and skills they lack, but are considered essential for the practice of the profession in the UK. The applicant must acquire the knowledge and skills during a defined period of practice under the guidance of a qualified member of the profession. The period of supervised practice may include further education and training if this is the most suitable way for the applicant to acquire that skill or knowledge.

The authority should draw up a list of the knowledge and skills that are essential to practice the profession which are missing from the applicant's qualifications, training and practical experience. This will determine the activities to be covered by the adaptation period and its probable length.

The assessment of the adaptation period must cover the tasks performed by the applicant under the supervision of a qualified member of the profession; this cannot be a formal examination (either written or by interview). It may, however, be based on a written report drawn up by the person supervising the applicant. If the performance is assessed as unsatisfactory, it should be possible to extend the adaptation period.

The competent authority must set the 'rules' for the operation of an adaptation period. This means that the authority needs to formalize any general administrative procedures with which the applicant or the mentor/supervisor must comply. For example this may require mentors/supervisors to be agreed in advance or adaptation plans to be submitted before commencing the adaptation period. The competent authority must provide information and guidance to assist the applicant in finding a suitable organization and supervisor to guide them through the adaptation period. The competent authority should provide a list of establishments/people responsible for adaptation traineeships for the profession. However an applicant should be free to choose a training supervisor and the place where the adaptation traineeship will be spent from this list. In principle, it is the responsibility of the applicant to find a placement – this ensures the applicant has the maximum and necessary flexibility to

find a suitable placement which may be voluntary or paid and would be normally in the capacity as an assistant to the qualified professional.

1.8 Partial Access

The principle of partial access allows a professional who is fully qualified in their home State to practise a part of a regulated profession's activities in another State without having to gain qualifications or recognition for practicing the domestic scope of the profession. Partial access applies in the case of establishment and through Title II for temporary provisions of services.

Applications may be made for partial access separately from applications for general recognition. Competent Authorities should inform applicants of the possibility of granting partial access in the absence of a specific request for partial access.

Due to the nature of the partial access conditions, partial access should be granted by Competent Authorities on a case-by-case basis. If all the conditions listed below are fulfilled, unless there are overriding reasons of general interest to the contrary, competent authorities have an obligation to propose partial access to the applicant.

The conditions for partial access:

- The professional is fully qualified in his home state to carry out the activity for which partial access is sought;
- The differences between the professional activities in home and host state are so wide that the application of compensation measures would amount to requiring the applicant to complete the full programme of education and training required to have access to the full profession in the host state; and
- That the professional activity can objectively be separated from other activities of the regulated profession in the host state.

The decision to reject applications for partial access should be proportionate and justified by overriding reasons of general interest. Partial access does not apply to professionals benefitting from automatic recognition of their professional qualifications under Chapters II, III and IIIa of Title III.

Partial Access applications for the purpose of establishment in a host Member State shall be examined in accordance with Chapters I and IV of Title III.

1.9 Requirements other than qualifications

There may be other requirements which the applicant must satisfy to access the profession. The provisions setting out the criteria relating to requirements other than qualifications are detailed in Annex VII of the Directive. Those documents referred to in point 1 d), e) and f) of Annex VII have a three months validity as these contain

information which may change rapidly; however this is not the case for "acquired rights" certificates for the sectoral professions. By their nature, these certificates are to be considered valid since the substantive conditions established in the Directive (in general, three years during the five years preceding the request for access to the profession in another Member State) are fulfilled. It is therefore expected that an acquired rights certificate may have a validity of no more than two years. Whereas, a medical certificate can have a time validity of three months.

UK competent authorities may be asked to provide documentation as detailed in Annex VII for their own members seeking recognition elsewhere in Europe; the time limits for providing such information is two months.

1.10 Titles

On being accepted into the UK profession the professional will operate under the UK professional title, where one exists. The professional also has the right to use their home State academic title. However, the competent authority can make certain stipulations – these are detailed in Regulations 26 and 58.

In the cases of Partial Access, a Competent Authority can require a professional to use their home state academic title or use of that title in English.

2. Recognition of experience

In the UK these provisions only apply to the profession of farrier. This is essentially a regime of automatic recognition.

The applicant is required to provide a certificate relating to the nature and duration of the activity concerned – this document confirms that the applicant meets the criterion laid down in the relevant part of Articles 17-19. This document can be provided in any format and must be automatically recognised. The applicant may also have to provide other documentary evidence relating to “other requirements”, if applicable. It is important at the outset that the applicant is made fully aware of all the documents required. Applicants must be informed in writing, within one month, of any missing documents. Whatever the outcome of the assessment, the result must be communicated to the applicant in writing no later than three months after all the necessary documents are received and this should include details of the appeal process, where applicable.

In those cases where the applicant is not eligible for a certificate but holds a qualification then the establishment procedures in Section One will apply under the provision of paragraph 1.4(b) – Article 10 cases (Annex 1).

3. Automatic recognition

The essential feature of the regime for the seven sectoral professions is that the training conditions in Member States have been harmonised, so that if a qualification is listed, that qualification is subject to mutual automatic recognition – the Directive has not changed this concept in that each Member State recognises certificates of training issued by other Member States giving access to the sectoral profession covered by Annex V.

Annex VII of the Directive sets out the documentation which can be required, namely that the applicant should provide proof of their nationality and the certificate referred to in paragraph 2 of Annex VII.

There are some sectoral professionals who for one reason or another may not qualify for automatic recognition. For example, the professional may wish to practise as a specialist in another Member State where their specialist training is not mutually recognised, or they may hold a qualification from a country outside Europe and have three years' certified professional experience in another European Member State. These specific cases are listed in Article 10 of the Directive. For such cases the establishment procedures in Section One will apply under the provision of paragraph 1.4(b) – Article 10 cases (Annex 1).

4. Temporary provision of services

4.1 General information

The aim of this provision is to facilitate the free movement for [EEA] nationals, as established professionals, who want to provide temporary services in another [EEA State] either on a self-employed basis or an employed basis, with as few restrictions as possible. The provisions on freedom to provide services on a temporary basis in the Regulations do not set up an authorisation or recognition procedure but a fast track for individuals to freely and immediately provide temporary services subject to the provisions set out in Part II which implement Articles 5-9 of the Directive. The only substantial derogation from this principle is the prior check of qualifications that competent authorities may require for those professions having public health or safety implications – where the check is solely to avoid 'serious damage' to the health or safety of the service recipient due to the lack of professional qualifications.

The service provider must hold a professional qualification – if not then there is no entitlement to provide services – however, the exception is evidence which attests that the applicant has rights of automatic recognition under paragraph 1(c) of Annex VII (this applies only to farriers).

The provisions on freedom to provide services on a temporary basis apply to all the regulated provisions including Article 10 cases and therefore the following paragraphs are relevant to the general and sectoral professions as they elaborate and provide guidance on the Directive.

However in this Department's regulations, we implement the temporary service provision for the general system and Article 10(a) cases only. Our regulations also implement the provisions relating to the checking of qualifications, which in the stated cases, will apply to temporary service providers and this includes Article 10(b-f) cases, except architects. The temporary service provisions for the sectoral professions are set out in the various regulations of the sponsoring departments.

Under the revised PQD, the decision to recognise a qualification on a temporary basis now entitles the professional to exercise that activity over the entire territory of the host State (the whole of the UK rather than one or more of the component parts).

In cases where the profession is regulated by Chartered bodies and only the professional title is reserved a professional coming from another member State will operate under his home state title when providing services, similar to applicants under Article 7(3). They are therefore in the same position regarding professional title as any UK national operating in that professional field without the Chartered title. To introduce a requirement for an [EEA] service provider to be subject to host state professional rules (in such cases chartered body rules) would put in place rules

which currently do not exist and therefore be contrary to the aim of these provisions. Consequently, chartered bodies would not apply any of the provisions set out in Articles 5-9.

4.2 Declaration

For the first provision of services a competent authority may require an applicant to inform it of the activity by submitting a declaration. This is **not** and should not be regarded as a request for approval to practise the profession. The Directive does not oblige to request any such declaration; it is an option that the Member States may only apply within the limits of the Directive and of the Treaty.

The service provider need only supply a Declaration informing the authority of the intention to provide services on a temporary basis – the general principles set out in Regulation 21. The UK's suggested format of the Declaration is attached at Annex 3 - ultimately the final format of the Declaration will be agreed at European level and be included in the Code of Conduct; competent authorities are strongly advised to use this format pending the final agreement.

The service provider must provide proof of their legal establishment in a Member State. Legal establishment means that the provider is fully qualified to exercise that profession in a Member State and fulfills all the conditions for practicing a profession in that country (the requirement for three years professional experience for holders of third country qualifications does not apply – as this is a recognition criterion); and also that the service provider has not been debarred for any reason. This applies equally to movement from regulated or unregulated professions. However, where the profession is unregulated, the provider must supply evidence of at least one years' professional experience during the last ten years in a Member State where they were established – if this cannot be provided there is no entitlement to provide services under the PQD, however, Treaty rights apply.

The objective of the Declaration is to inform the competent authority of the intention to provide services during the year and allow immediate access to the profession. Only where the profession is listed in Schedule 2 of the implementing regulations can a competent authority check the qualifications of the service provider – so therefore it needs to be made clear to any enquirer that time must be allowed for the checking process to be completed before practicing the profession.

4.3 First provision of service

Regulation 21 sets out, except for the sectoral professions and Article 10 (b-f) cases, the specific principle relating to the first provision of service. The provider must supply to the competent authority, in writing, a signed Declaration accompanied by the appropriate documents listed in Section 6 of the Declaration. The Declaration must be made in advance of the service but no set time period can be imposed as to how far in advance this must be – but for those professions able to check qualifications a time frame will need to be built into any guidance provided. The

Declaration and documents can be provided by any means - email, fax or post.

It is considered good practice to acknowledge the receipt of the Declaration and documents and to signpost the service provider to the professional rules/codes of ethics to which they will be expected to operate within.

The process for this differs if a professional chooses to use the European Professional Card for Temporary Service provision, please see section 5.1 of this guidance for more information.

4.4 Documentation

The documentation is to verify the facts in the Declaration and to provide information for the checking of qualifications. The service provider **cannot** be required to supply any further information beyond that which is provided for in the Declaration.

Evidence of qualifications can be any document including a certificate attesting to the possession of the qualification or a copy of the qualification itself. Requiring original or authenticated documents for the temporary service providers is considered disproportionate as is the translation of standard documents such as identity cards or passports – simple translations should be accepted for less essential documents. If it is necessary, the applicant can be asked to provide additional information after he has started to provide the services.

In cases, where the accompanying documents are not produced this cannot result in an 'automatic' refusal to permit temporary services. For example, the professional may have submitted the declaration with the core evidence of legal establishment but, for whatever reason, has not enclosed the other supporting documents. It may serve as a helpful reminder to the service provider if, on your relevant website page, the list of documents to be supplied with the Declaration is clearly set out. It would be reasonable to acknowledge the receipt of the declaration and to state whether a check of qualifications is to be made; also to request that the other documentation is supplied. It is also suggested that it is made clear to the service provider that while operating on a temporary basis, they will be subject to professional rules - it would be advantageous to signpost service providers that intend to operate temporarily, to the appropriate sections of the professional rules. If the documentation is not supplied, at that point it would be appropriate to apply the professional rules; sanctions can be imposed but these must be proportionate. Refusal can only occur where the service provider is not able to prove legal establishment or where this evidence is known to be false.

Insurance

The Directive does not contain rules about the compulsory scope of the insurance coverage itself. Insurance can only be required where it is a requirement of our own nationals. If insurance information is provided and there is a shortfall in the insurance coverage then extra cover can be required but the professional cannot be compelled to do so in the UK. The service provider can subscribe to this additional coverage in another Member State - equivalent coverage must be accepted from another Member State. Declarations must be provided in advance of service so this would

enable the provider to upgrade any insurance cover or indeed take out insurance before practising. The competent authority can take action against a service provider who has none, or insufficient, insurance but only if the same action would be taken against UK nationals.

Language checks

For professions that have patient safety implications, or for those professions where there is 'a serious and concrete doubt' about the sufficiency of the professional's language knowledge language controls can be imposed to ensure the applicant's knowledge of the language necessary for practicing the profession. This decision must be communicated with the justification. Such controls can only be exercised after issue of an EPC or recognition of a professional qualification.

Compensation measures are considered as part of the recognition process therefore, if necessary, any language checks should be carried out after the compensation measures.

In the context of the temporary service provision a professional can be asked to provide a self-declaration of his language knowledge. However, competent authorities should not limit the means by which migrants can prove their linguistic knowledge. In this regard reference can be made to the Code of conduct of the Group of Coordinators which gives examples of documents that can attest linguistic knowledge.

4.5 Checking of qualifications

Only for the first provision of service for professions having public health and safety implication (cases listed in Schedule 2 of the implementing regulations) can a check be made of the service provider's qualifications – this is only the qualification and **not** professional experience.

The time frame for the checking process is strictly limited. Where there is no reaction from the competent authority within the set deadlines the applicant may provide the service. It is generally recognised that the complete process (including the compensation measure where appropriate) will be completed within 2 months. Where there is a delay, and this has to be for valid and substantiated reasons, the decision to require a compensation measure has to be made at the end of the second month so that the compensation measure is undertaken in the third month – resulting in a total time of 3 months.

Timescale	Procedure
Case 1 :Declaration with accompanying documents presented in Month 1	<p>A straightforward case - by the end of Month 1 the qualification is checked and the applicant is notified of immediate access to the profession and able to provide services under the UK title. The whole process is completed within 1 month.</p>
Case 2: Declaration with accompanying documents presented in Month 1	<p>The check of the qualification is to be completed by the end of Month 1. The applicant is notified of the need to undertake a compensation measure before being able to practise temporarily under the UK title.</p> <p>The compensation process is to be completed by the end of Month 2 (end of February). The applicant is to be notified by the end of Month 2 of being able to practise temporarily under the UK title or the need to re-sit the test.</p> <p>The whole process is to be completed within 2 months.</p>
Case 3: Declaration with accompanying documents presented in Month 1 but additional information is necessary	<p>The check of the qualification is undertaken but in certain cases the competent authority cannot finalise a decision by the end of Month 1 due to insufficient information. The applicant must be informed of this within Month 1 and asked to supply the necessary information; and also to be advised that in any event a decision will be taken by the end of Month 2 (end of February). The measure would then be undertaken during Month 3 (March).</p> <p>In the exceptional case where additional information cannot be obtained by the applicant or is not supplied by the end of Month 2 an assessment should be made based on the evidence presented. This may well result in a compensation measure.</p> <p>In both these scenarios the whole process is completed within 3 months.</p>

Compensation measures:

If there are differences which may cause serious damage to the service recipient a competent authority can impose an aptitude test or a very short adaptation period (the length of which has to be proportionate and not longer than 3 years). An aptitude test must be made available to the applicant within 6 months of the decision to impose one.

The competent authority may charge the provider a reasonable and proportionate amount for that compensation measure. If the service provider does not pass the compensation measure he cannot provide services in that profession until he has acquired the relevant knowledge or competence. However, he should be given the opportunity to re-sit the test.

4.6 Requirement for further information

Competent authorities can liaise with competent authorities in other [EEA States] at any time in order to obtain further information such as the relevance of the professional experience in unregulated cases or authenticity of documents, where appropriate.

Checks such as 'Disclosure and Barring checks or requests for information on good conduct/character cannot be imposed on service providers; this information must be obtained from the authorities in the other [EEA States]. The exception to this rule is for the security sector, the health sector and professions related to the education of minors, including in childcare and early childhood education, where it is required for UK nationals. For these professions the evidence has to be supplied by the service provider of no criminal convictions – which may be a statement from the local police in his home state. As part of the monitoring role, a competent authority can make checks about the provider's status, good conduct, the absence of disciplinary sanctions with the home state authority before registration and at any time after that.

As some providers may be registered in more than one [EEA State] any information about disqualification needs to be carefully considered on a case by case basis and the competent authority will need to justify the decision to permit or not to permit the provider access to the profession – it cannot be automatic refusal. The principle of proportionality also applies to cases where the service provider has restricted or conditional practice in their [EEA State] - there can be no automatic refusal as the restriction may have no bearing in the UK. Further information should therefore be sought through administrative cooperation.

For those professions with health and safety implications or that require work with minors, the 'Alert Mechanism' will provide an online and quick way of informing Competent Authorities of professionals who have been removed from a register in another [EEA State]. For more information on this please see section 5.2 of this guidance.

You may be asked for similar confirmation about your own registrants, if they are seeking to operate temporarily in another EEA State.

4.7 Operating on another EEA State's title

It is generally expected that the majority of service providers will operate under their home title as these provisions are not an authorisation procedure. The competent authority can require the service provider to supply certain information to the service recipient as stated in Regulation 33 – the documentation should be presented to the service recipient in a manner which is comprehensive and understandable. Such a requirement should be confirmed to the service provider in the acknowledgement of the Declaration.

4.8 Operating on the UK's professional title

Where the qualifications have been checked and recognized, the service provider is required to use the UK's professional title. Verification can be an examination or a cursory perusal of the qualification to confirm that the qualification is a relevant qualification for that profession. This would activate the "checking" mechanism so that every case would result in the provider practising under the UK title. The provisions of Regulation 33 to provide documentation to the service recipient would therefore not apply.

4.9 Registration

The Directive makes it clear that provided a service provider is legally established in another [EEA State] and submits a declaration and the required documents, they are entitled to provide services without being registered. However, for practical purposes to make it easier to apply disciplinary provisions, competent authorities may require automatic temporary registration. This does not mean that checks, where permitted, cannot be carried out but simply that registration is a formality without the completion of any further documentation and no charge or fee can be imposed – this is because the provider is already subject to costs of being legally established in their home state, which may include complying with rules of registration. Costs, even though applicable to our own nationals, are a restriction under the Treaty as it hinders service provision.

All service providers, whether operating on host or home state title, whether on a temporary register or not, are subject to the professional rules of the profession. It would not be reasonable and proportionate to expect a temporary service provider to fulfil all the conditions applicable to permanent registrants. After careful consideration it is felt that, within certain limits, Continued Professional Development (CPD) may be applicable. However, this will only apply where there is no CPD requirement in the applicant's home State and will only be relevant at the renewal stage. Also that it would not be reasonable to expect the same amount of CPD as for someone

operating permanently and that it need not be undertaken in the UK – all these considerations will need to be applied in a flexible and proportionate way. Competent authorities will need to determine which of the professional rules are directly linked to professional qualifications and therefore caught by the provisions of the Directive; providers should then be signposted to those relevant parts.

4.10 Period of service provision

A time limit of less than 52 weeks cannot be imposed on service providers. The Declaration has to be renewed annually where the service provider intends to operate temporarily during the following year; but documents will only accompany the renewal Declaration where a change has occurred. A formal requirement to inform the competent authority of any changes during the year cannot be imposed on the service provider. However, as part of the monitoring role this does not prohibit the competent authority reaffirming aspects with the home Member State competent authority or contacting the authority periodically during the year for any information. The principle of automatic registration applies equally to the renewal stage as does the relaxation of charges.

The competent authorities cannot ask information which is not mentioned under Article 7.1 and 7.2.

Neither the Directive nor the Regulations define a period of temporary and occasional service. The temporary and occasional nature of the service has to be assessed, on a case by case basis, on the combined criterion of duration, frequency, regularity and continuity of that service provision. These are the basic criteria or indicators of the European Court of Justice to distinguish between establishment and the provision of services. The notion of establishment should be applied to situations in which these criteria reveal the existence of a stable and continuous link with the economic life in the Member State concerned:

Duration - time the service activity takes to perform. A general line could be taken as to what may be temporary for a particular profession but it should not be set as a criteria or the only guide

Frequency - rate of occurrence, which may be the interval between visits e.g. a week once every 3 months. An assessment will have to be made over a period of time e.g. 2 days a week over a year or more

Regularity - how regular the services are provided: is it constant or at fixed intervals. For example ski instructors are in the [EEA State] once of year but this can be consistently for many years, this could similarly apply to other professions such as divers or architects. Consideration has to be given by competent authority to the type of professional service supplied and whether seasonal for example.

Continuity - whether the services are provided in a continuous period or whether sporadically over a period of time e.g. architect - on a 2/ 3 months project.

Hence such assessments can only be on a case by case basis. Competent authorities may review and monitor cases periodically to assess whether or not the

service provision is genuinely temporary and occasional - and may contact service providers as part of their monitoring role to ask for further details, e.g. employment status or details of work undertaking, but the manner in which this is done has to be limited. The assessment is a matter of judgment of the competent authority in each case – which can be challenged. If the outcome is that the service is deemed to be no longer temporary and occasional then the service provider will be required to satisfy the rules of establishment.

Directives cannot be used as a vehicle for people to circumvent the establishment rules. Competent authorities should take their own legal advice on specific cases.

5. Online processes

The European Professional Card (EPC) and Alert Mechanism are two new online mechanisms brought in by the revised PQD. They work in tandem, making use of the existing Internal Market Information system (IMI) to speed up recognition processes and provide stronger safeguards. Both were brought into force via a Directive Implementing Regulation which means that Member States' do not need to transpose this into legislation. The act can be found here [<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015R0983&from=EN>]

It is must also be possible for applicants to apply online through the traditional route and many competent authorities already provide online forms. Further information can be found on this later in this section.

5.1 European Professional Card

The EPC provides a faster, online method of recognition for professionals who wish to carry out professional activities across borders, though they may use the traditional methods of application if preferred. The EPC is linked to the existing Internal Market Information System (IMI)¹ and takes the form of an electronic certificate, rather than a physical card which could be falsified or become obsolete.

Professions affected

The Commission, by means of an implementing act, can make the EPC available to certain professions under the following criteria. There should be:

¹ IMI is an electronic, web based portal developed by the European Commission, which identifies regulators in all of the [EEA State]s. It enables messages and information to be exchanged and translated in a secure environment, and complies with data protection rules. This facility is only open to competent authorities who regulate in a specific area and any information that is exchanged is only visible to the authorities involved.

- a) Pre-existing, or the potential for, significant mobility of the profession;
- b) Sufficient interest expressed by the relevant stakeholders;
- c) Regulation or education and training for the pursuit of the profession concerned within a significant number of Member States.

An up to date list of the professions benefitting from the EPC can be found on UK NARIC's website:

<http://www.naric.org.uk/UK%20NCP/Individuals/Leaving%20the%20UK/epc.aspx>

Submission of an EPC application

The Commission will set up a 'Professionals Interface' [hyperlink to be included when available] that enables professionals to submit online EPC applications. Applicants will create an 'EPC account' and upload documents through this interface which will automatically create an IMI file containing the personal data necessary to identify the applicant and any relevant information and documents necessary to assess the applicant's professional status.

Processing EPC applications

The EPC can be used by professionals to carry out professional activities in a range of [EEA States] on a temporary or occasional basis, or to establish themselves in another Member State on a more permanent basis. There are different processes for each which are explained below.

The deadlines for recognition under the EPC process are:

- 1 month for automatic recognition and;
- 2 months for the general system of recognition.

The EPC is also subject to the provision of tacit consent, whereby in the absence of a decision within the deadline, the card is automatically validated and the professional qualification recognised. However, this only deals with professional recognition and does not permit automatic access to the profession.

Establishment

The host State is responsible for issuing the EPC in cases covered by article 7.4 and in cases of establishment.

The IMI file, in respect of the applicant, will be transmitted to the relevant Home Competent Authority which will verify the documents uploaded by the applicant are correct and confirm that the applicant is legally established in that [EEA State]. In cases where the qualification has been issued by another [EEA State] or states, the competent authority in the [EEA State] that issued the evidence of the qualification

would be required to cooperate and respond to any requests for information from the Home competent authority or Host competent authority.

The Host Competent Authority will make the final decision on whether to a) issue the EPC, b) refuse the EPC, c) subject the applicant to compensation measures, and inform the applicant accordingly.

The CA may refuse to issue the card if it does not receive the necessary information it requires in accordance with the Directive for taking a decision, from either the home State or the applicant. This decision must be duly justified. The Directive also stipulates that the host State will have the option to extend the deadline by two weeks when it is strictly necessary, in particular for reasons relating to public health or safety.

In cases where a Host competent authority decides to refuse to issue an EPC, information must be included on why that decision has been taken and on the right to appeal that decision.

Table 1: EPC for applicants for Establishment (T&O covered by Article 7.4)

	Home Member State actions	Host Member State actions
Deadlines:	Within 1 week , informs applicant of any missing document	-Issues decision within 1 month for automatic recognition and; -2 months for the general system of recognition.

Compensation measures

In cases where a decision is taken to subject an applicant to compensation measures, such a decision would also contain any information on the contents of compensation measures imposed, the justifications and any obligations of the applicant to communicate the outcome of the compensation measures.

The decision on compensation measures would put the EPC application on hold pending completion of compensation measures by the applicant.

Upon completion of a test of adaptation period, the applicant would be able, if so required, to inform (through the professional’s interface) the Host Competent Authority of the outcome of the compensation measures. The Host competent authority must confirm, via IMI, the completion of the compensation measure and

take a decision accordingly.

Temporary and occasional service provisions

The Home Competent Authority is responsible for issuing the EPC for temporary and occasional provision of services other than those covered by article 7.4².

If the Home Competent Authority made a positive decision, it would accept and transmit the prior declaration to the Host Competent Authority. Its decision must be subject to appeal in the home courts.

Table 2: EPC Process for applicants for Temporary and Occasional NOT covered by Article 7.4

	Home Member State actions	Host Member State actions
Process:	<ul style="list-style-type: none"> -Verifies the documents uploaded are correct - Confirms applicant is legally established in that Member State -Makes final decision on whether or not to issue the EPC and transmits this to the Host MS'. 	<ul style="list-style-type: none"> - Receives the EPC - May not require any further declaration under Article 7 for the following 18 months (though there is the possibility to challenge the Home MS decision)
Deadlines:	<ul style="list-style-type: none"> -Within 1 week, informs applicant of any missing document or -Makes final decision within 3 weeks of receiving any missing documents 	

Professions covered by article 7.4

For professionals covered by article 7.4, the process for an EPC is very similar to that for establishment. The Host Competent Authority will make the final decision on whether to a) issue the EPC, b) refuse the EPC, c) subject the applicant to compensation measures, and inform the applicant accordingly.

Payments

² Article 7.4 covers regulated professions that have public health or safety implications which do not benefit from automatic recognition by way of professional experience under Chapter II, coordination of minimum training conditions under Chapter III and on the basis of common training principles under Chapter IIIA

If the competent authority of home Member State charges fees for processing applications for EPC, it shall inform the applicant via the online tool, within one week of receipt of EPC application, about the amount to be paid, the means of payment, any references to be mentioned, the required proof of payment, and shall set a reasonable deadline for payment.

5.2 Alert Mechanism

The Alert Mechanism will provide Competent Authorities in host States with a faster and more reliable mechanism for identifying certain professionals who have been prohibited or restricted from practicing in another EEA State. This should lead to greater security and protection for service recipients.

The introduction of an alert mechanism in the revised PQD applies to the sectoral professions (except architects), those with patient safety implications and those involved in the education of minors including childcare and early childhood education that are regulated in an EEA state.

The mechanism requires that all Competent Authorities notify, via IMI, their counterparts in other States of any professional who has been restricted or prohibited from practising, even on a temporary basis within **3 calendar days** of the adoption of the decision to do so. This also applies to professionals for whom the court has found they have applied for recognition using falsified documents. Where a competent authority has identified a professional using false qualifications, they can still alert other competent authorities through less formal channels e.g. IMI.

Alert content

As part of this notification, the Competent Authority must include the necessary data to clearly and unambiguously identify the professional to minimize the risk of mistaking one professional for another. Such information should include:

- The name of the professional
- The professional's date of birth
- The professional's place of birth

It is important that the Competent Authority that initiates the alert clearly indicates the period during which the restriction or prohibition applied, including, where applicable, the date on which the relevant national decision has been taken.

The alerts will include information about the national authority or court adopting the decision on prohibition or restriction of the right to practise, but it must not contain any background information about the decision – e.g. no reasoning or justification for the decision should be included in the alert.

In case of a change in the restriction, a revoking decision or proceedings by the professional, Competent Authorities are required to update their previously sent alerts.

Competent Authorities will be able to ask for further information on an alert if necessary, but this must be done on a bilateral basis through IMI.

The Competent Authority must inform the professional concerned of the decision to issue an alert at the same time the alert is sent to other States. They must also inform them of the right to appeal and access to remedies for damage caused by false alerts.

5.3 Internal Market Information System (IMI)

The IMI system will be used to support Competent Authorities to work in close collaboration with each other and provide mutual assistance, as required by the Directive. Specifically this related to any disciplinary or criminal sanctions taken against professionals.

The majority of Competent Authorities will already be registered with IMI. For more information on how to register please see Annex 4.

5.4 Online applications

The revised PQD states that all required procedures and formalities are easily completed by electronic means. A number of competent authorities have already established online application forms through their websites. BIS strongly encourages all Competent Authorities to follow this example. This is a requirement of the Directive and enforceable by the Commission from 18 January 2016 onwards.

Moving procedures online does not apply to compensation measures or other post-recognition procedures, e.g. language checks, however it also make sense to have this information available centrally and online.

5.5 Online information

The Directive requires that certain information is accessible online. The majority of this will be covered by UK NARIC's webpage; however certain information needs to be made clear on the Competent Authorities' own webpage. This includes information on:

- the requirements and procedures of an application for recognition

- any fees to be paid by the applicant
- any documents that the applicant will need to submit
- the appeal process for decisions made under the PQD.

6. Additional information

6.1 Contact point

This is a vital part of the recognition process. Competent authorities are obliged to act as contact points for their respective profession and to provide information to applicants wishing to access the profession in the UK. Information such as legislation pertaining to the profession, code of ethics, standards of competence, professional rules, an application form for recognition and the Declaration should be readily obtainable. Having such information easily identified and accessible on your website will make it easier for applicants to find the information and reduce the number of queries you may have: ideally having a section on recognition would be a good option.

The Directive requires the contact point to inform applicants about 'social legislation' - we have taken this to mean *minimum wage, social security, employment rights, taxation, setting up a business*. NARIC will be the central point of contact for the UK providing the 'one window' into the country and will provide on this website hyperlinks to information concerning social legislation. NARIC will also be acting as the contact point for applications for EPCs in respect of professional activities that are not regulated in the United Kingdom.

Contact points are also obliged to assist professionals that are registered with them seeking recognition in Europe with relevant documentation and may also have to clarify or explain to other contact points or competent authorities such aspects as how the profession in the UK is structured, practiced, regulated, level of the qualification.

6.2 Appeals

The Directive, in Article 51, gives the applicant the right of appeal to national courts. In respect of establishment the mechanism and procedures have been carried forward – that being either an appeal to the body mentioned in the regulations in respect of the named profession or in all other cases to the county court or sheriff's court.

However, the Directive is silent in respect of temporary service provision. As agreed with stakeholders, in cases where the service provider contests the outcome of an assessment as to whether the period of service is temporary and occasional an appeal can be made using the routes mentioned above.

6.3 Language Skills

It is recognised that an applicant should have sufficient language skills necessary to perform effectively in their role. The importance of this is recognised in the Government's Manifesto commitment to ensure that all customer-facing public sector workers speak fluent English. All public authorities should have regard to the Code of Practice for the English language requirement for public sector workers. Language competence is seen as a matter for employers; not a condition of recognition. Competent authorities cannot demand proof of the applicant's competence of spoken or written English as part of the documents submitted in support of the request for professional recognition; or treat the applicant's file as incomplete in the absence of such proof. Competent authorities may seek evidence of an applicant's competence in English as part of the registration process, but this evidence may not be considered for the purposes of registration until the applicant's qualifications have been recognised.

It is accepted that all correspondence with the applicant will be in English and that any compensation measure will be conducted in English.

Language testing conducted after recognition but prior to employment would be permissible but has to be proportionate and justified. Language testing cannot be used systematically or be standardized.

6.4 European Case Law

CJEU Case law makes a distinction between establishment and temporary service provision. In particular, the case of *C-58/98 Corsten*³ states that legislation applicable to nationals of the host Member State and usually applied to applicants wanting to operate permanently cannot be applied in its entirety to temporary providers established in their home State.

6.5 Statutory Instruments

Copies of the Statutory Instruments which implement the Directive in the UK are available on *[link to be inserted when regs are laid]*

6.6 Disclosure and Barring Service

Professionals from the [EEA] taking up employed positions, whether on a temporary and occasional basis or on a permanent basis, and whether in the NHS or the private sector, will be subject to the same pre- and post-employment checks as any other post holder. Usually, this is the employer's responsibility: in the case of staff supplied through agencies, this would be the responsibility of the agency. There is

³ C-58/98 Corsten [2000] ECR I-7919

no difference between European migrants and domestic registrants in this respect.

For some posts criminal records checks may be needed, particularly for those working closely with children or vulnerable groups, for example in teaching, health or social care. Employers will determine when these are needed. Applications may be made to the Disclosure and Barring Service (DBS) for work in England and Wales, Disclosure Scotland (DS) for work in Scotland, and Access Northern Ireland (ANI) for work in Northern Ireland. Employers may also ask staff for a police certificate of good conduct from your home country. Self-employed professionals may obtain a “basic” check from DS, for work anywhere in the UK, which will indicate any current, unspent convictions. An unsuitable individual may be barred from work in “regulated activity” with children and/or adults. Regulated activity is generally working closely with children or other vulnerable groups in either a paid or voluntary capacity. It is a criminal offence for a barred person to seek to work, or work in, activities from which they are barred. It is also a criminal offence for employers or voluntary organisations to knowingly employ a barred person in regulated activity. Barring information is included on criminal record checks for work in regulated activity and certain other posts. Employers and some regulatory bodies will have the duty to supply relevant information about registrants to the DBS also they have a discretionary power to apply for relevant vetting information that DBS hold about a person who is on their register or applying for registration.

Clearly if this is the first occasion on which a person has provided services in the UK the Disclosure and Barring Service (DBS) may have limited information about them, and regulators will have to rely on information obtained from the professional’s competent authority.

6.7 National Assistance Centre- UK NARIC

The UK NARIC www.naric.org.uk acts as the national assistance centre and point of single contact for the UK. The centre gives information and advice on the comparability of overseas qualifications with those from the UK. The centre also acts as the national reference point for vocational qualifications www.uknarp.org.uk

UK NARIC’s website will provide information on all regulated professions in the UK, including the contact details of the relevant Competent Authorities. It will also provide information on the EPC, the professions it is available for and the related fees, as well as information on the other [EEA States’] systems for recognition and the documents required.

6.8 European Commission Website

This website contains useful information on recognition including legislation, practical information and a list of contact points for other Member States.

The site also includes a database listing the regulated professions in other Member States and contact details of the competent authorities -

http://ec.europa.eu/growth/single-market/services/qualifications/directive-in-practice/index_en.htm- a word of caution the database may not always be fully up to date.

ANNEX 1 Article 10 Cases

Article 10 of Directive 2005/36/EC extends the application of the General System to exceptional cases where individuals do not meet the requirements for automatic recognition where the professions are covered in principle by other regimes of recognition. Previously under CJEU case law these professionals could only benefit from the Treaty, however Article 10 of the Directive introduces, for those limited cases, application of the general system.

The reference to “specific and exceptional reasons” clarifies that this provision neither affects the obligatory nature of the minimum training conditions for the sectoral professions nor the access to the relevant sectoral professions conditional to possession of one of the qualifications on the exhaustive list in the Directive (with the exception of architects).

The specific cases:

(a) for activities listed in Annex IV, when the migrant does not meet the requirements set out in Articles 17, 18 and 19

This carries forward Article 3 of Directive 1999/42 which enabled professionals to get recognition of their qualifications where they did not satisfy the requirements of professional experience. Article 14(3), subparagraph 3, of Directive 2005/36 maintains the possibility to derogate from the professional's choice of compensatory measure but only in cases where the professional will be in a self-employed capacity which requires the knowledge and application of the specific national rules in force, provided that knowledge and application of those rules are required by our own nationals.

(b) for doctors with basic training, specialised doctors, nurses responsible for general care, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives, pharmacists and architects, when the migrant does not meet the requirements of effective and lawful professional practice referred to in Articles 23, 27, 33, 37, 39, 43 and 49

As under the former legislation, acquired rights in the Directive aim to ensuring recognition for sectoral professionals who have acquired their qualifications before certain dates (the application of the initial sectoral directive or the date of accession for more recent [EEA States]), even when the relevant qualifications do not comply with the minimum requirements of training set out in the Directive. To do so, in most cases, a further requirement of professional experience (generally, three years of professional practice during the five years preceding the request for recognition in another [EEA State]) to compensate the lack of formal training.

The relevant sectoral directives do not provide any mechanism of recognition for cases where professionals did not have, or could not demonstrate, the professional experience required; in such cases Treaty provisions applied. Article 10 now extends the General System to such situations. Professionals not benefiting from acquired

rights for reasons other than professional experience will continue to be covered by Treaty provisions. Other specific cases are detailed in Articles 23(3) to (5) and Article 27(2). Article 14(3) allows [EEA States] to derogate from the professional's choice of compensatory measure in these cases.

(c) for architects, when the migrant holds evidence of formal qualification not listed in Annex V, point 5.7

Directive 85/384/EEC, in the field of architecture, did not make access to nor exercise of the professional activities conditional to possession of a qualification listed as respecting the minimum training criteria. This implied that [EEA States] could deliver architectural qualifications that did not meet the minimum training requirements and gave access at national level to the professional activities of an architect. In accordance with CJEU case law (Dreessen judgement⁴), fully qualified architects holding a qualification that do not benefit from automatic recognition under Directive 85/384, did still benefit from the right of recognition under the provisions of the Treaty.

Directive 2005/36 takes over the principles underlying the training of architects and the context for automatic recognition. Article 10 allows professionals holding a qualification not listed in the Directive to benefit from the General System regime. Article 14(3) gives the right for Member States to derogate from the migrant's choice of compensatory measure in these cases.

(d) without prejudice to Articles 21(1), 23 and 27, for doctors, 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, points 5.1.1, 5.2.2, 5.3.2, 5.4.2, 5.5.2, 5.6.2 and 5.7.1, and solely for the purpose of the recognition of the relevant specialty

Under the original legislation, the treatment of specialist professional qualifications varied between the different sectoral professions. Article 8, Directive 93/16/EEC and Article 6, Directive 78/686/EEC provided a specific regime of recognition for qualifications of specialised doctors and dentists where the qualifications were not listed, even for a given [EEA State], as benefiting from automatic recognition. This regime permitted [EEA States] to impose on professionals the same level of training as that imposed on nationals and a period of supplementary training could be required. The other sectoral directives did not have any reference to the recognition of relevant specialities.

The definition of, and access to, sectoral specialities has not changed with the revised Directive. Article 10 brings all the sectoral specialist professional qualifications into the General System; the differences in training will be bridged by the application of a compensatory measure. Automatic recognition will still apply for the recognition of the "basic" qualification, the General System is limited to the

⁴ Case C-31/00 Conseil National de l'Ordre des Architectes V Dreessen, [2002] E.C.R. I- 663

recognition of the specialised qualification.

Article 14(3) allows derogation from the professional's choice of compensatory measure but only for the recognition of medical and dental specialities not automatically recognised. This is because the other sectoral specialities were considered already to be dealt with under the General System, and this has been maintained.

(e) 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, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by specialised nurses without training as general care nurse;

(f) for specialised nurses without training as general care nurse, when the migrant seeks recognition in another Member State where the relevant professional activities are pursued by nurses responsible for general care, specialised nurses without training as general care nurse 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

The situation regarding nurses was special as 'nurses responsible for general care' benefiting from automatic recognition were the only profession in the field in some [EEA States], whilst in others they were considered as having undergone basic training, and in others still they were considered as specialists.

The situation remains unchanged and Article 10 maintains the regime already applied by [EEA States]:

Case 6 is special in that the Directive goes beyond the former interpretation and extends the application of the General System; also Article 14(3) allows [EEA States] to derogate from the professional's choice of compensatory measure in this case. This is not the treatment given by Article 14(3) to cases 3, 4, 5, 7 and 8 to the extent that the General System was considered to be applicable already under the old regime and this has been fully maintained.

(g) for migrants meeting the requirements set out in Article 3(3)

Articles 2(2) and 3(3) of the Directive set out the regime for the recognition of third country qualifications. This applies equally to professionals covered by the General System, to crafts activities and to sectoral professions. Article 2(2) gives [EEA States]“ the right to choose to recognise or not, as a first time recognition within the [EEA], the professional qualifications of [EEA] nationals obtained in third countries.” In cases in which recognition is granted, [EEA States] may impose their own national requirements. The exception is for the sectoral professions where [EEA State]s have to respect the minimum training conditions laid down in the relevant provisions of Title III of the Directive.

Article 3(3) deals with professional recognition following the first recognition within the [EEA]. The [EEA] professional holding a third country qualification which has already been recognised in an [EEA State] must have three years professional experience in that [EEA State] which recognised the qualification for the first time. In the cases in which the condition of professional experience is not fulfilled Treaty provisions apply.

Article 10(g) extends the provision formerly specific to the General System to the crafts activities and to the sectoral professions. Article 14(3) allows [EEA States] to derogate from the migrant's choice of compensatory measure in those cases.

Cases	Home Member State	Host Member State	Regime applicable (actual legal framework)	Regime applicable (Dir. 2005/36/EC)
1	Nurse responsible for general care	Nurse responsible for general care	Sectoral Directive	Automatic recognition (Article 21) or acquired rights
2	Specialised nurse (with basic training as nurse responsible for general care)	Nurse responsible for general care	Sectoral Directive	Automatic recognition (Article 21) or acquired rights
3	Specialised nurse (with basic training as nurse responsible for general care)	Specialised nurse (with basic training as nurse responsible for general care)	Sectoral Directive for basic training General System for specialisation	Automatic recognition (Article 21) or acquired rights for basic training General System for specialisation (Art. 10(d))
4	Nurse	Specialised	General	General

Cases	Home Member State	Host Member State	Regime applicable (actual legal framework)	Regime applicable (Dir. 2005/36/EC)
	responsible for general care	nurse (direct entry training)	System	System (Article 10 (e))
5	Specialised nurse (with basic training as nurse responsible for general care)	Specialised nurse (direct entry training)	General System	General System (Article 10 (e))
6	Specialised nurse (direct entry training)	Nurse responsible for general care	EC Treaty	General System (Article 10 (f))
7	Specialised nurse (direct entry training)	Specialised nurse (direct entry training)	General System	General System (Article 10 (f))
8	Specialised nurse (direct entry training)	Specialised nurse (with basic training as nurse responsible for general care)	General System	General System (Article 10 (f))

ANNEX 2 Levels of Education and Training

Article 11 of the Directive sets out the five levels of education and training - this is a consolidation of the various levels taken from Directives 89/48 and 92/51:

Level A "Attestation of Competence" is issued on the basis of any training not covered by any other level; or a specific examination without proof of prior education and training. The basis of this level has not be changed but now includes three consecutive years of practice of that profession or the equivalent duration on a part time basis during the previous ten years; or general education

Level B "Certificate". The criterion has not changed. This attests to either:

a course of education and training of which entry requires GCSEs or equivalent and (where appropriate), professional training and/or probationary or vocational practice

or a secondary course of a technical or vocational nature and, where appropriate, training or probationary or professional practice

Level C "Diploma". A "level C Diploma" attests to the successful completion of training a post-secondary level of a duration of at least a year or part time equivalent as well as any professional training which may be required, or

Regulated education and training or vocational training equivalent to training under the paragraph above, if it prepares trainee for comparable level of responsibilities and functions and subject to issue of a certificate from the home State

Level D is also a Diploma. A "level D Diploma" is a qualification which attests to successfully completing a university course of at least 3 years but not more than 4 years duration or of an equivalent duration on a part time basis which may be an equivalent number of ECTS credits at a university or establishment of higher education or an establishment of the same level; plus any professional training which may be needed.

Level E is another Diploma. A "level E Diploma" is a qualification which attests to successful completion of a post-secondary course of at least 4 years duration or equivalent duration on a part time basis which may be an equivalent number of ECTS credits at a university or establishment of higher education or an establishment of the same level; plus any professional training which may be needed.

ANNEX 3 Declaration pursuant to Article 7 concerning the temporary provision of services

1. This declaration concerns:

A first provision of services in the host Member State (please complete sections 2 to 7)

An annual renewal of the declaration⁵ (please complete sections 2 to 5 and 8 to 10)

2. Identity of applicant:

2.1 First name(s) and surname(s)

2.2 Nationality(ies):

AT BE CY CZ DE DK EE EL ES FI FR HU HR IE IT LT LV LU MT NL PL PT SI SK SE UK
BG RO IS LI NO

Other(s)

2.3 Passport number or Identity card number:

Country

Country

Country

2.4 Gender: Male Female

2.5 Date of birth:

2.6 Place of birth:

Town:

AT BE CY CZ DE DK EE EL ES FI FR HU HR IE IT LT LV LU MT NL PL PT SI SK SE UK
BG RO IS LI NO

Other

⁵ Please attach a copy of the previous declaration and of the first declaration made.

2.7 Contact details in Member State of establishment:

Address:

.....

Telephone (with dialling codes):

Fax (with dialling codes):

E-mail:

2.8 Contact details in the host Member State:

Address:

.....

Telephone (with dialling codes):

Fax (with dialling codes):

E-mail:

3. Profession concerned:

3.1 Profession pursued in the Member State in which you are established:

.....

.....

.....

3.2 Please state the professional activities⁶ for which you will be providing services on a temporary basis in the host Member State:

.....

.....

.....

.....

4. Legal establishment in one or more Member States⁷:

⁶ Please indicate the title of the profession in the language of the Member State(s) in which you are established and in the language of the host Member State.

For the purposes of this declaration, “legal establishment” refers to the pursuit of the profession in compliance with the rules relating to professional qualifications, including the related training conditions, and all the rules specific to the pursuit of the profession. Legal establishment precludes any prohibition, albeit temporary, from pursuing the profession.

4.1 Are you legally established in a Member State(s) to pursue the profession referred to in 3.13

Yes No

If you answered yes, in which Member State are you legally established?

AT BE CY CZ DE DK EE EL ES FI FR HU HR IE IT LT LV LU MT NL PL PT SI SK SE UK
BG RO IS LI NO

If no, please explain:

4.2 Is this profession regulated in the Member State(s) in which you are established?

Yes No

If it is regulated, please go to question 4.4.

Any comments:

4.3 If the profession referred to in 3.1 is not regulated in the Member State(s) in which you are established and you have not undergone regulated education and training leading to the profession in 3.1, have you acquired for that profession professional experience of at least two years during the last ten years on the territory of that Member State(s)?

Yes No

Any comments:

Declaration pursuant to Article 7 concerning the temporary provision of services

4.4 Do you belong to a professional association or an equivalent body?

Yes No

If your answer was yes, please indicate which one, giving the relevant contact details and your registration number.

.....
.....

⁷ If you are established in more than one Member State, please supply the information for each of the Member States in question.

.....

Are you subject to authorisation or supervision by a competent administrative authority?

Yes No

If your answer was yes, please indicate which one, giving the relevant contact details and your registration or licence number

.....

.....

.....

5. Professional insurance

5.1 Do you have any insurance cover or other means of personal or collective protection with regard to professional liability arising from the pursuit of the profession referred to in 3.1?

Yes No

If yes, please provide the following details of your insurance cover:

Name of the insurance company:

Number of contract:

Limit of indemnity.....

5.2. Does the insurance cover referred to in 5.1 include protection for the practice of the professional activities in the host Member State?

Yes No

Any comments:

Declaration pursuant to Article 7 concerning the temporary provision of services

6. Supporting documents annexed to this declaration (if requested)

6.1. Please tick the document(s) which accompany this declaration:

Proof of nationality

Attestation(s) of legal establishment

Evidence of professional qualifications

Proof of two-year professional experience⁸

⁸ To be completed only if the profession is not regulated in the Member State of establishment

Evidence of no criminal convictions

7. I confirm that the information I have provided in this declaration is correct and that I intend to provide services on a temporary and occasional basis.

Signed _____

Date _____

8. Renewal Information⁹

8.1. What period(s) did you provide services in the host Member State?

From // to //

Any comments:

8.2. Please indicate the professional activities carried out during the periods you provided services.

.....
.....

9. Other comments such as any changes to the supporting documentation referred to in 6.1

.....
.....

10. I confirm that the information I have provided in this renewal declaration is correct and that I intend to provide services on a temporary and occasional basis.

Signed _____

Date -----

⁹ This information will be retained by the competent authority to monitor service provision

ANNEX 4 Information on registering with IMI

To register for IMI please send the following information to the contacts below:

Name of your organisation, address, general contact e-mail and Tel No.	
Brief description of what your organisation does	
Contact name/s, email address and Tel no. (You can have more than one contact - if so, please nominate which contact/s will also act as your authority's administrator/s).	

How do I use IMI?

Once your authority is registered on IMI, your nominated contact/s can learn how to use the system by accessing the Commission's website:

http://ec.europa.eu/internal_market/imi-net/docs/training/standard_flows.pdf (*How to handle information requests*). There are other training tips under the same sub-heading.

What does an Administrator do?

Your nominated contact will also be registered as an Administrator (you can have more than one), which means that you will be able to manage your authority's information on IMI, register/delete other users and change user's access rights in the system. Please note that if you are the only contact you will be automatically nominated as the Administrator. Please have a look at the attached training link to see how this is done:

http://ec.europa.eu/internal_market/imi-net/docs/training/managing_authority_users_en.pdf

What questions can I ask through IMI?

You will need to use the question set for professional qualifications:

http://ec.europa.eu/internal_market/imi-net/docs/data_protection/pq/gpq_en.pdf for making enquires on the system, which other competent authorities on the IMI system will be using as well.

Where do I go for further help on this?

If you have any further queries concerning IMI please contact Chris Korcz (chris.korcz@bis.gsi.gov.uk)



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