

Explanatory Memorandum to the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023

This Explanatory Memorandum has been prepared by officials in Social Partnership, Employability and Fair Work and is laid before Senedd Cymru in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023. I am satisfied that the benefits justify the likely costs.

Jeremy Miles MS
Minister for Education and Welsh Language

30 November 2023

PART 1

1. Description

The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023 (“the Wales Regulations”) implement provisions relating to the recognition of professional qualifications contained in the free trade agreement between Iceland, Liechtenstein and Norway and the United Kingdom (“the FTA”) in relation to matters devolved to Wales.

The Wales Regulations amend the UK Government’s Recognition of Professional Qualifications and the Implementation of International Recognition Agreements (Amendment) Regulations 2023 (“the UK 2023 Regulations”) to provide that they do not apply to the Welsh regulators (as defined in regulation 2) of specified regulated professions in respect of which the Senedd has legislative competence.

The Wales Regulations also amend sectoral legislation in Wales consequent upon the implementation of the FTA and the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015 (“2015 EU Regulations”).

2. Matters of special interest to the Legislation, Justice and Constitution Committee

In accordance with section 11A(4) of the Statutory Instruments Act 1946, the Llywydd has been informed that the Wales Regulations will come into force less than 21 days after the instrument has been laid.

The Wales Regulations amend the UK 2023 Regulations and therefore cannot be laid until the UK 2023 Regulations are made. Under the terms of the FTA, each party needs to have measures in place to ensure compliance with its terms by 1 December 2023. The Wales Regulations must therefore come into force on 1 December 2023 to ensure the Welsh regulators are able to comply with the requirements of the FTA from that date. The UK 2023 Regulations were not made until 29 November 2023, as a result of which it was not possible to make the Wales Regulations until 30 November 2023.

The Wales Regulations also provide legal clarity to the Welsh Regulators and associated professionals by ensuring Welsh sectoral legislation reflects the new arrangements for the recognition of qualifications in a timely manner.

3. Legislative background

Paragraph 10 (foreign affairs etc.) of Schedule 7A (reserved matters) to the Government of Wales Act 2006 provides that whilst international relations and

the regulation of international trade is reserved, observing and implementing international obligations is not. The Welsh Ministers therefore have the legislative competence to implement international obligations in matters which are devolved.

The Professional Qualifications Act 2022 ended the interim system for recognition of professional qualifications that derived from the UK's membership of the EU and created a new framework for the recognition of overseas professional qualifications and experience in the UK, or a part of the UK.

Section 3(1) of the Professional Qualifications Act 2022 provides that the appropriate national authority may by regulations make such provision as the authority considers appropriate for the purpose of, or in connection with, implementing any international recognition agreement to which the United Kingdom is a party. "Appropriate national authority" is defined as either the Secretary of State or the Lord Chancellor, or the Welsh Ministers in relation to regulations under the Act which contain only provision which would be within the legislative competence of Senedd Cymru if contained in an Act of the Senedd.

The Secretary of State has used the concurrent powers in the Professional Qualifications Act 2022 to make the UK 2023 Regulations to implement the FTA across the UK. The UK 2023 Regulations include provision to implement the FTA in relation to subject areas which are devolved to Wales and impose statutory duties on Welsh regulators.

The Welsh Ministers and the Senedd opposed the inclusion of concurrent powers in the Professional Qualifications Act 2022 during the passage of the then Bill.

The Wales Regulations disapply the UK 2023 Regulations in relation to Welsh regulators and make appropriate provision in relation to Wales.

The Wales Regulations are being made under the negative resolution procedure as provided for by section 18 of the Professional Qualifications Act 2022.

4. Purpose and intended effect of the legislation

In July 2021, the UK Government signed the FTA with Norway, Iceland, and Liechtenstein.

Chapter 12 of the FTA establishes a mandatory system for the mutual recognition of professional qualifications between the UK, Norway, Iceland, and Liechtenstein (the party states). It requires regulators across the UK to recognise the professional qualifications of applicants from the party states where those qualifications are comparable to the qualifications required to access and pursue the same profession in the UK. The FTA also sets out the way in which applications for recognition of qualifications must be handled and requires regulators to offer adaptation periods and aptitude tests where

necessary.

The Wales Regulations implement the FTA in Wales and require Welsh regulators to comply with the provisions for the recognition of professional qualifications in the FTA.

The Wales Regulations also amend Welsh sectoral legislation as required to take into account the implementation of the terms of the FTA and the repeal of the 2015 EU Regulations.

The terms of the FTA are very prescriptive and allow little room for any policy divergence. Therefore, the duties to be placed on Welsh regulators in the Wales Regulations are necessarily very similar to those set out in the UK 2023 Regulations.

The Wales Regulations come into force on 1 December 2023, which is the date specified within the FTA by which time the party states must have measures in place to comply with its terms.

The Wales Regulations apply only to the Welsh regulators responsible for regulating in Wales the professions listed in Schedule 1. The regulators are the Welsh Ministers, Education Workforce Council, Social Care Wales, the Food Standards Agency and the Animal Plant and Health Agency.

5. Consultation

Section 15 of the Professional Qualifications Act 2022 requires the appropriate national authority, when making regulations under section 3 of the Act, to consult regulators likely to be affected by the regulations, or where it is otherwise appropriate to consult them. The Welsh Government held a targeted consultation on the draft Wales Regulations with the Welsh regulators likely to be affected by the Wales Regulations in October 2023.

Following consideration of the consultation responses, no amendments were considered necessary to the draft Wales Regulations.

A copy of the consultation and summary of the responses are available on request, by emailing EmployabilityAndSkillsPolicy@gov.wales

6. Regulatory Impact Assessment (RIA)

Two options have been considered in this assessment:

Option 1. Do nothing

Under this option, the UK 2023 Regulations will apply in relation to Welsh regulators.

Option 2. Lay Welsh legislation to ensure compliance with the terms of the FTA in devolved areas

The Wales Regulations implement the FTA in Wales and require Welsh regulators to comply with the provisions for the recognition of professional qualifications in the FTA. This is the preferred option as it is considered to properly reflect the devolution settlement.

Costs and benefits

Option 1. Do nothing

This is the baseline option and as such there are no additional costs or benefits associated with the option.

Option 2. Lay Welsh legislation to ensure compliance with the terms of the FTA in devolved areas

The Welsh Government has not identified any significant additional impacts or costs as a result of implementing the Wales Regulations. The impact of the Wales Regulations will essentially be the same as the UK 2023 Regulations.

The Welsh regulators were encouraged to highlight any potential impacts during consultation. There is potentially a limited administrative cost to Welsh regulators associated with complying with the requirements in the FTA to offer compensatory measures to an applicant with professional qualifications obtained in Norway, Iceland and Liechtenstein. The best estimate of this cost is £1,000 per applicant. However, between 2015 and 2023 the Welsh regulators did not receive any applications for the recognition of professional qualifications obtained in Norway, Iceland and/or Liechtenstein and did not expect there to be an increase in the number of applicants seeking to join the professions they are responsible for regulating as a result of the Welsh Regulations. Therefore, it may be that the Welsh regulators will not ultimately incur the administrative costs associated with the requirement to offer compensatory measures where necessary.