

## **Explanatory Memorandum to accompany the National Health Service (Performers Lists) (Wales) (Amendment) (EU Exit) Regulations 2022**

This Explanatory Memorandum has been prepared by the Primary Care Division of the Directorate of Primary Care and Health Science 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 amendments to the National Health Service (Performers Lists) (Wales) (Amendment) (EU Exit) Regulations 2022. I am satisfied that the benefits justify the likely costs.

Eluned Morgan  
Minister for Health and Social Services

8 February 2022

## **1. Description**

The National Health Service (Performers Lists) (Wales) (Amendment) (EU Exit) Regulations 2022 (“the Regulations”) amend Regulation 31 of the National Health Service (Performers Lists) (Wales) Regulations 2004 (“the Principal Regulations”) in relation to Dental Performers Lists in consequence of the repeal of section 15(1)(b) of the Dentists Act 1984. These Regulations ensure dentists holding an appropriate European diploma remain exempt from the requirements to undertake foundation training before being eligible for inclusion on a Dental Performers List.

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

None.

## **3. Legislative background**

The Welsh Ministers have powers within section 63(3) of the NHS (Wales) Act 2006 to make provision by way of regulations in relation to dental performers list, including as to the grounds on which an application for inclusion may or must be granted or refused.

Sections 203(9) and (10) of the NHS (Wales) Act 2006 provide that the powers of Welsh Ministers under the Act may be exercised so as to make the full provision to which the power extends or any less provision – by way of exception or otherwise, and include powers to make amending provisions.

These powers can be relied upon by Welsh Ministers to amend regulation 31(5)(a) of the Performers Lists Regulations to refer to an alternative provision within the Dentists Act 1984, and achieve the policy intention.

The Regulations are being made under the negative resolution procedure.

## **4. Purpose & intended effect of the legislation**

The purpose of the Dental Performers List established by the Principal Regulations is to ensure that dentists are suitable to undertake primary dental services and to protect patients from any performers who are not suitable, or whose efficiency to perform those services may be impaired.

Prior to 1 Jan 2021 applicants holding EU qualifications were exempt from undertaking dental foundation training required as part of registration on the Dental Performers List. A dentist needs to be on the Performers List in order to undertake NHS dentistry. Under regulation 31(5)(a) of the National Health Service (Performers Lists) (Wales) Regulations 2004 any applicant with a relevant European qualification obtained this exemption. Regulation 31(5)(a) states:

*“(5) A dentist is exempt from the requirement to undertake foundation training if—  
(a) he or she is registered as a dentist by virtue of section 15(1)(b) of the Dentists Act (registration of nationals of member States who hold appropriate European diplomas) or  
is in any other way a person in respect of whom a member State is prohibited by EU law from imposing such a requirement”*

Under the 2019 EU Exit regulations (the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019), which came into force on 31 December 2020, an amendment was made to the Dentists Act 1984 which removed section 15(1)(b). Relevant European qualifications are now registered under 15(1)(c) which has been expanded to include European qualifications as well as overseas qualifications. This means that the exemption granted by the Performers List Regulations via reference to 15(1)(b) no longer covers those with EU qualifications. The repeal of s15(1)(b) does not affect Swiss applicants as they remain covered by the savings provision in Part 2 of Schedule 3 to the European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019.

The result of this error in amending UK legislation is that applicants with EU qualifications are included in the group of applicants which have to undergo dental foundation training in order to apply to the Dental Performers' List. This is not in line with the policy intention, which was to ensure applicants with EU qualifications continued to be able to register in the UK under similar conditions as they could previously, including holding an exemption from dental foundation training.

This item of legislation is being brought forward now as the issue has only recently been brought to our attention by the UK Government.

## **5. Consultation**

The 2022 Regulations will not be subject to public consultation. As the Regulations provide a limited amendment, affecting a small number of individuals and does not reflect a change in the Welsh Government's policy, a formal public consultation did not take place.

## **6. Regulatory Impact Assessment (RIA)**

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.