

Draft Regulations laid before the National Assembly for Wales under paragraph 1(9) of Schedule 7 to the European Union (Withdrawal) Act 2018, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2019 No. (W.)

**EXITING THE EUROPEAN UNION,
WALES**

SOCIAL CARE, WALES

**PROFESSIONAL QUALIFICATIONS,
WALES**

The Regulation and Inspection of
Social Care (Qualifications) (Wales)
(Amendment) (EU Exit) Regulations
2019

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018 (c. 16) in order to address failures of retained EU law to operate effectively and other deficiencies arising from the withdrawal of the United Kingdom from the European Union.

These Regulations make amendments to the Regulation and Inspection of Social Care (Wales) Act 2016 (anaw 2) (“the 2016 Act”) relating to the regulation of social workers and social care managers in Wales and make savings and transitional provision in connection with those amendments.

Regulation 14 amends the reference to “European lawyer” in paragraph 7 of Schedule 1 to the 2016 Act

in line with the transitional arrangements made for lawyers from EEA states and Switzerland by the Services of Lawyers and Lawyer's Practice (Revocation etc.) (EU Exit) Regulations 2019.

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.

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The Regulation and Inspection of
Social Care (Qualifications) (Wales)
(Amendment) (EU Exit) Regulations
2019

Made

*Coming into force in accordance with
regulation 1(2) and (3)*

The Welsh Ministers in exercise of the powers conferred by paragraph 1(1) of Schedule 2 and paragraph 21 of Schedule 7 to the European Union (Withdrawal) Act 2018(1) make the following Regulations.

(1) 2018 c. 16.

In accordance with paragraph 1(9) of Schedule 7 to that Act, a draft of this instrument has been laid before and approved by a resolution of the National Assembly for Wales.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Regulation and Inspection of Social Care (Qualifications) (Wales) (Amendment) (EU Exit) Regulations 2019.

(2) Subject to paragraph (3), these Regulations come into force on exit day.

(3) Regulation 14(2) comes into force at 11.00pm on 31 December 2020.

(4) These Regulations apply in relation to Wales.

(5) In these Regulations, “the 2016 Act” means the Regulation and Inspection of Social Care (Wales) Act 2016(1).

PART 1

Amendments to legislation

Amendments to the Regulation and Inspection of Social Care (Wales) Act 2016

2. The 2016 Act is amended as follows.

3. In section 66(1) (interpretation of Parts 3 to 8), omit the definitions of “exempt person”, “the General Systems Regulations”, “national”, “relevant European State”, “visiting European social care manager part” and “visiting European social worker part”(2).

4. In section 74 (rules: fees)(3), omit subsection (3).

5. In section 80 (the register)(1), omit subsections (1)(c) and (d), (2)(c) and (d), and (3)(c) and (d).

(1) 2016 anaw 2.

(2) The definitions “visiting European social care manager part” and “visiting European social worker part” were inserted by S.I. 2016/1030, regulation 120(2).

(3) “European social worker part or visiting European social care manager part” was substituted by S.I. 2016/1030, regulation 122.

6. In section 84 (“appropriately qualified”)(2), omit paragraph (aa)(ii).

7. In section 85 (qualifications gained outside Wales – social workers)(3), omit subsection (1).

8. Omit section 85A (qualifications gained outside Wales – social care managers)(4).

9. Omit section 90 (visiting social workers from relevant European States)(5).

10. Omit section 90A (visiting social care managers from relevant European States)(6).

11. Omit section 105 (other appeals: decisions made under the General Systems Regulations)(7).

12. In section 113 (continuing professional development), omit subsections (3) to (5)(8).

13. In section 164 (meaning of “registered person” in Part 6)(9)—

(a) for “the social worker part, an added part” substitute “the social worker part or an added part”;

(b) omit “or the visiting European social worker part or visiting European social care manager part”.

14.—(1) In Schedule 1 (regulated services: definitions), in paragraph 7 (advocacy services)—

(a) in sub-paragraph (4)—

(1) Relevant amendments were made by S.I. 2016/1030, regulation 126(2), (3) and (4).

(2) Relevant amendments were made by S.I. 2016/1030, regulation 128(2) and (3).

(3) “- social workers” was inserted into the section heading by S.I. 2016/1030, regulation 130(2).

(4) Inserted by S.I. 2016/1030, regulation 132.

(5) Relevant amendments were made by S.I. 2016/1030, regulation 134.

(6) Inserted by S.I. 2016/1030, regulation 136.

(7) Relevant amendments made by S.I. 2016/1030, regulation 138.

(8) Relevant amendments made by S.I. 2016/1030, regulation 140.

(9) “European social worker part or visiting European social care manager part” was substituted by S.I. 2016/1030, regulation 142(2).

(i) at the end of paragraph (a), omit “or”;

(ii) for paragraph (b) substitute—

“(b) an individual to whom—

(i) regulation 5(1)(a) of the Revocation Regulations applies,

(ii) regulation 5(1)(b) of those Regulations applied and who becomes a registered European lawyer (by virtue of a decision on the individual’s application or on appeal),

(iii) regulation 5(1)(c) of those Regulations applied and whose suspension is terminated (whether on appeal or otherwise), or

(iv) regulation 5(1)(d) of those Regulations applied and whose registration as a registered European lawyer has been reinstated, or

(c) an individual for whom the provisions in regulation 4A or 5A of the Revocation Regulations have effect so as to allow that person to continue to practice as a lawyer in the United Kingdom after exit day.”;

(b) after sub-paragraph (4) insert—

“(4A) In sub-paragraph (4)—

“registered European lawyer” (*“cyfreithiwr Ewropeaidd cofrestredig”*) has the same meaning as in regulation 2(1) of the European Communities (Lawyer's Practice) Regulations 2000 (S.I. 2000/1119) as it had effect immediately before exit day;

“the Revocation Regulations” (*“y Rheoliadau Dirymu”*) means the Services of Lawyers and Lawyer’s Practice (Revocation etc.) (EU Exit) Regulations 2019 (S.I. 2019/XXX).”

(2) In Schedule 1, in paragraph 7, omit sub-paragraph (4)(b) and the definition of “registered European lawyer” in sub-paragraph (4A) (as substituted and inserted by paragraph (1) of this regulation).

Consequential amendment to the Mental Health Act 1983

15. In section 130H(7)(b) (independent mental health advocates for Wales: supplementary powers and duties) of the Mental Health Act 1983⁽¹⁾, omit “or the visiting European part”.

PART 2

Savings and transitional provision

Pending applications

16.—(1) Where a relevant application is received before exit day, the 2016 Act continues to apply in relation to the application (including in relation to any appeal arising from it) on and after exit day as if the amendments made by Part 1 had not been made.

(2) In paragraph (1), “relevant application” means an application for—

- (a) admission to the visiting European social worker part or the visiting European social care manager part of the register kept under section 80 of the 2016 Act,
- (b) renewal of registration in those parts of the register under section 86(2) of the 2016 Act,
- (c) readmission to those parts of the register under section 80 of the 2016 Act following lapse of registration, or
- (d) restoration to those parts of the register under section 96(2) or 97(2) of the 2016 Act.

Visiting social workers and visiting social care managers: saving of old law

17.—(1) This regulation applies where—

- (a) immediately before exit day—
 - (i) a person had the benefit of regulation 12 of the European Union (Recognition of Professional Qualifications) Regulations 2015⁽²⁾ in respect of the provision by

⁽¹⁾ 1983 c. 20; section 130H was inserted by the Mental Health (Wales) Measure 2010 (nawm 7), section 34. Subsection (7)(b) of section 130H was amended by the 2016 Act, Schedule 3, paragraph 39.

⁽²⁾ S.I. 2015/2059.

that person of services as a social worker or a social care manager, and

(ii) section 90(3) or 90A(3) of the 2016 Act applied to the person, and

(b) the person continues to have that benefit on or after exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the provision of those services by that person on and after exit day, as they applied before that day, subject to the modifications specified in regulation 18 (interpretation of saved provisions)—

(a) in section 66(1) (interpretation of Parts 3 to 8), the definitions of “exempt person”, “the General Systems Regulations”, “national”, “relevant European State”, “visiting European social care manager part” and “visiting European social worker part”;

(b) section 74(3) (rules: fees);

(c) in section 80, subsections (1)(c) and (d), (2)(c) and (d) and (3)(c) and (d) (the register);

(d) section 90 (visiting social workers from relevant European States);

(e) section 90A (visiting social care managers from relevant European States);

(f) section 113(3) to (5) (continuing professional development).

(3) Paragraph (2) has effect until—

(a) in the case of a person who is registered in accordance with section 90(3) or 90A(3) of the 2016 Act, the day on which the person’s name is removed from the register under section 90(6) or 90A(6) of that Act as the case may be;

(b) in the case of a person who is treated as being registered under section 90(4) or 90A(4) of that Act, the day on which the person’s entitlement to be registered under section 90(3) or 90A(3) of the 2016 Act ceases by virtue of section 90(5) or 90A(5) of that Act as the case may be.

Interpretation of provisions saved by regulation 17(2)

18. In so far as the following provisions of the 2016 Act continue to apply by virtue of regulation 17(2), they apply with the following modifications—

(a) in section 90 (visiting social workers from relevant European States)—

(i) subsection (1) is to be read as if “other than the United Kingdom” was omitted;

(ii) subsection (8) is to be read as if, for the definitions of “exempt person” and “the General Systems Regulations”, there were substituted—

““exempt person” (*“person esempt”*) means—

(a) a person who, immediately before exit day, was a national of a relevant European State,

(b) a person who, immediately before exit day, was a national of the United Kingdom and, at that time, was seeking access to, or pursuing, by virtue of an enforceable EU right, social work, or work as a social care manager, or

(c) a person who, immediately before exit day, was not a national of a relevant European State, but at that time was, by virtue of an enforceable EU right, entitled to be treated, for the purposes of access to and pursuit of social work or work as a social care manager, no less favourably than a national of a relevant European State,

and for the purposes of this definition, “enforceable EU right” (*“hawl UE orfodadwy”*) means a right recognised and available in domestic law, immediately before exit day, by virtue of section 2(1) of the European Communities Act 1972 (c. 68);”;

““the General Systems Regulations” (*“y Rheoliadau Systemau Cyffredinol”*) means the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059)—

- (a) in relation to anything done before exit day, as they had effect at that time;
 - (b) otherwise, as (and only to the extent that) they have effect, on or after exit day, in relation to an entitlement which arose before exit day or arises as a result of something done before exit day;”;
- (b) in section 90A (visiting social care managers from relevant European States), subsection (1) is to be read as if “other than the United Kingdom” was omitted.

Internal Market Information System (IMI) Alerts

19.—(1) This regulation applies where—

- (a) before exit day, a person is given notice of a decision made under regulation 67 of the European Union (Recognition of Professional Qualifications) Regulations 2015 to send an alert about the person, and
- (b) either—
 - (i) the time limit for appeal against the decision under section 105(1)(c) of the 2016 Act expires on or after exit day, or
 - (ii) an appeal against the decision under that section is made, but not finally determined, before exit day.

(2) Despite the amendments made by Part 1, the following provisions of the 2016 Act continue to apply in relation to the decision on and after exit day as they applied before exit day—

- (a) in section 66(1), the definition of “the General Systems Regulations”;
- (b) in section 90(8), the definition of “the General Systems Regulations”;
- (c) section 105(1) (but not paragraphs (a) and (b) of that subsection and subject to the modification specified in paragraph (3) of this regulation).

(3) For the purposes of paragraph (2)(c), section 105(1)(c) of the 2016 Act is to be read as if for “those Regulations” there were substituted “the General

Systems Regulations (as they had effect at the time SCW's⁽¹⁾ decision was made)".

(4) In disposing of an appeal against the decision on or after exit day, the tribunal has (instead of the powers specified in section 105(5) of the 2016 Act) the power—

- (a) to confirm the decision, or
- (b) if the tribunal considers that the alert should be withdrawn or amended, to direct that Social Care Wales take such steps as the tribunal thinks fit to notify the European Commission of the tribunal's decision.

Julie Morgan, Deputy Minister for Health and Social Services, one of the Welsh Ministers

Date

(1) See section 67(3) of the 2016 Act for the definition of Social Care Wales ("SCW").