

Explanatory Memorandum to the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) (Extension to Switzerland and Miscellaneous Provisions) (Wales) Regulations 2024

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 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 (Amendment) (Extension to Switzerland and Miscellaneous Provisions) (Wales) Regulations 2024. I am satisfied that the benefits justify the likely costs.

Jack Sargeant MS
Minister for Culture, Skills and Social Partnership

20 November 2024

PART 1

1. Description

The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) (Extension to Switzerland and Miscellaneous Provisions) (Wales) Regulations 2024 (“the Wales 2024 Regulations”) implement provisions relating to the recognition of professional qualifications contained in the Agreement between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on Recognition of Professional Qualifications (“the Swiss Agreement”) in relation to matters devolved to Wales.

The Wales 2024 Regulations amend the Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Wales) (Amendment etc.) Regulations 2023 (S.I. 2023/1294 (W. 230)) (“the Wales 2023 Regulations”) to extend the application of the 2023 Wales Regulations to the Swiss Confederation and amend the 2023 Wales Regulations for the purpose of, and in connection with, implementing the Swiss Agreement in relation to the Welsh regulators. The Wales 2024 Regulations also contain provisions to correct minor errors in the Wales 2023 Regulations

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

Under the terms of the Swiss Agreement, each party must have measures in place to ensure compliance with its terms by 1 January 2025. The Wales 2024 Regulations will therefore come into force on 1 January 2025 to ensure the Welsh regulators have a clear statutory duty to comply with the requirements of the Swiss Agreement from that date.

The Wales 2024 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 Swiss 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 includes concurrent powers under which the appropriate national authority may by regulations make such provision as they consider 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 Welsh Ministers opposed the inclusion of the concurrent powers in the Professional Qualifications Act 2022 as these enable the UK Government to legislate in subject areas devolved to Wales without having to secure the consent of the Senedd to do so.

In November 2023 the UK Government used their powers under the Professional Qualifications Act 2022 to lay the draft Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023 ("UKG 2023 Regulations"). The UKG 2023 Regulations made provision to implement Chapter 12 of the European Economic Area European Free Trade Associate Free Trade Agreement (EEA EFTA FTA) which established a framework for recognition of professional qualifications gained in Norway, Iceland and Liechtenstein.

The draft UKG 2023 Regulations extended to England and Wales (as well as Scotland and Northern Ireland), not only for professions where regulation is reserved for the UK Government, but also for professions where regulation is devolved to the Welsh Ministers. The Welsh Ministers opposed this approach and therefore exercised their powers under the Professional Qualifications Act 2022 to legislate in relation to professions whose regulation is devolved and make the Wales 2023 Regulations.

The Wales 2023 Regulations disapplied the UKG 2023 Regulations so far as they applied to Welsh regulators (as defined in the Wales 2023 Regulations) and made separate provision to implement the EEA EFTA FTA in Wales. The Wales 2023 Regulations also made amendments to existing Welsh sectoral legislation to reflect the implementation of the EEA EFTA FTA in Wales.

It is now necessary to amend the Wales 2023 Regulations so that its provisions also apply to Switzerland, as required by the terms of the Swiss Agreement. As a result, the Wales 2023 Regulations will apply to applications from professionals with Swiss qualifications as well as to those with qualifications from Norway, Liechtenstein and Iceland.

The Wales 2024 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 June 2023, the UK Government and the Swiss Confederation signed the Swiss Agreement providing for the continued recognition of professional qualifications between both countries¹.

The Wales 2024 Regulations will require Welsh regulators to operate accessible routes to recognition, as prescribed under the Swiss Agreement, for Swiss-qualified professionals to practise their profession in Wales. Similar recognition arrangements are already in place for professionals holding qualifications from Norway, Iceland and Lichtenstein, pursuant to the EEA EFTA FTA.

As with the EEA EFTA FTA, the Swiss Agreement requires the Welsh regulators to recognise the professional qualifications of applicants from Swiss Confederation where those qualifications are comparable to the qualifications required to access and pursue the same profession in Wales or any other part of the UK. The Swiss Agreement also sets out the way in which applications for recognition of qualifications must be handled and requires the Welsh regulators to offer adaptation periods and aptitude tests where necessary.

The Wales Regulations apply only to the Welsh regulators responsible for regulating in Wales the professions listed in Schedule 1 to the Wales 2023 Regulations. 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 2024 Regulations with each of the Welsh regulators in September 2024.

Following consideration of the consultation responses, no amendments were considered necessary to be made to the draft Wales 2024 Regulations.

As the consultation was targeted to the specific group of Welsh regulators, the consultation documents were not published, but a copy of the consultation and summary of the responses are available on request, by emailing EmployabilityAndSkillsPolicy@gov.wales

¹ On 25 February 2019, the Agreement between the Swiss Confederation and the United Kingdom of Great Britain and Northern Ireland on Citizens' Rights was agreed ("the CRA"). The CRA contains provisions on the mutual recognition of professional qualifications which apply to UK and Swiss nationals. However, these arrangements expire on 31 December 2024.

6. Regulatory Impact Assessment (RIA)

Two options have been considered in this assessment:

Option 1. Do nothing

The Swiss Agreement requires regulators in Wales and the rest of the UK to have processes in place UK by 1 January 2025 to recognise Swiss qualifications or experience should a professional apply to practice a profession regulated by law in the. The Swiss Agreement does not specify that those processes must be implemented by way of legislation.

Under this option, no legislation would be made to place the Welsh regulators under a clear statutory duty to recognise professional qualifications as required under the Swiss Agreement. Instead, each Welsh regulator would have individual responsibility for ensuring they have appropriate measures in place to meet the requirements of the Swiss Agreement.

This would risk an inconsistency of approach amongst the Welsh regulators. There could also be confusion amongst professional applicants and regulators, particularly those who operate in both England and Wales, if there was a statutory approach taken in England and a non-statutory approach in Wales. A failure to provide a clear statutory duty for Welsh regulators to follow in relation to the recognition of professional qualifications may also increase the risk of a Welsh regulator inadvertently acting in breach of the terms of the Swiss Agreement. Also, if the Welsh Ministers decided not to legislate in relation to Wales, the UK Government may decide to use the concurrent powers in the Professional Qualifications Act 2022 to implement the Swiss Agreement in areas which are devolved.

Option 2. Lay Welsh legislation to ensure clear and consistent compliance with the terms of the Swiss Agreement in devolved areas. This is the preferred option.

The Wales 2024 Regulations ensure that the Welsh regulators understand that they have a statutory duty to meet their obligations under the Swiss Agreement. The Wales 2024 Regulations provide consistency and clarity for both regulators who operate in England as well as Wales, and for professionals holding Swiss qualifications or experience when applying to practice regulated professions in different parts of the UK.

Costs and benefits

The Welsh regulators will be under a duty to comply with the terms of the Swiss Agreement from 1 January 2025, even if no legislation is made to expressly implement these requirements into domestic law.

There are no direct costs to businesses, charities or voluntary bodies as a result of these measures under either option 1 or option 2. The costs incurred

under either option would be administrative costs which fall on the Welsh regulators, who may need to adjust their current recognition processes to meet the requirements of the Swiss Agreement. However, as the Welsh regulators are already required to have routes in place to recognise professional qualifications awarded in Norway, Iceland and Lichtenstein, extending those processes for holders of Swiss qualifications is anticipated to incur limited additional costs.

There is potentially a limited administrative cost to Welsh regulators associated with complying with the requirements in the Swiss Agreement to offer compensatory measures to an applicant with professional qualifications obtained in Switzerland where there is a substantial difference between the applicant's professional qualifications and the essential knowledge or skills required to practise the Welsh regulated profession, or the Welsh regulated profession comprises one or more professional activities that cover substantially different matters from those covered by the applicant's professional qualifications. The regulator may offer an aptitude test or require the professional to complete an adaption period.

The best estimate of this potential cost is around £500 per applicant. However, between 2015 and 2024 the Welsh regulators did not receive any applications for the recognition of professional qualifications obtained in Switzerland and they do 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 Wales 2024 Regulations. Therefore, the Welsh regulators may never ultimately incur the administrative costs associated with the requirement to offer compensatory measures where necessary.

There is an indirect risk of costs being incurred by the public sector under option 1 if any Welsh regulator failed to meet their duties under the Swiss Agreement and infraction proceedings were brought against the UK. It is considered that the risk of such proceedings is reduced if the Welsh regulators have clear statutory provisions to follow, as is the case with option 2.