



Department
for Business
Innovation & Skills

GOVERNMENT CONSULTATION ON
THE TRANSPOSITION OF THE
REVISED MUTUAL RECOGNITION
OF PROFESSIONAL
QUALIFICATIONS DIRECTIVE
2005/36/EC

Government response

MARCH 2015

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Government response to the consultation on the revised Mutual Recognition of Professional Qualifications 2005/36/EC

1. Introduction

The Mutual Recognition of Professional Qualifications Directive (PQD) is one of the main tools to facilitate the free movement of persons and is intended to allow individual professionals to market their skills in other Member States on a temporary or established basis. It directly contributes to economic growth by enabling businesses, the public sector and consumers to access the professional services they require more readily and more economically by encouraging stronger competition for professional services. There are also indirect benefits for the UK economy through UK professionals working overseas, gaining wider experience and skills.

This document analyses responses to the public consultation on the transposition of the revised PQD. It also sets out the Government's response to the points raised and explains how, when it has been possible, these have been addressed in the draft implementing regulations and guidance.

The [draft implementing regulations and guidance](#) are available and will be referred to under each section. We would welcome any views on these by 29 May 2015.

It is proposed that the implementing Regulations will extend over the United Kingdom. The draft Regulations are currently drafted on a UK-wide basis but they contain provisions which, in relation to Scotland, are not reserved matters under the Scotland Act 1998. The consent of Scottish Ministers is required and depending on the outcome of discussions with Scottish Government officials, it is possible that Scottish Ministers will choose to make a separate Scotland-only set of Regulations in relation to devolved areas.

2. Ministerial Foreword



The UK has been supportive of the revised Mutual Recognition of Professional Qualifications Directive (PQD) since it was launched and the benefits it can bring to the Single Market. The revision of the PQD has introduced important changes to speed up processes, introduce key safeguards and use online tools to make the movement of professionals easier.

This benefits the UK in a variety of ways; businesses may choose from a wider pool of talented professionals to make sure they get the best person for the job; consumers have greater choice in the market, which has the potential to decrease costs and increase quality; and UK resident have greater freedom to pursue their chosen careers across the EU.

To ensure that all interested parties had the chance to share their views, we launched a 3 month consultation last summer on the new provisions of the PQD and the plan for transposition. The information received through the consultation process was valuable and I thank all those who responded. We have now considered this information and present the government response, along with the next steps.

We have brought forward the original date for a further consultation on the draft implementing regulations and guidance. This is in response to the concerns raised by Competent Authorities during the initial consultation about the time they need to adjust their processes to be in line with the revised PQD by January 2016.

Lucy Neville-Rolfe

3. Responses received

In total, 44 responses to the consultation were received. Although largely from competent authorities, who were directly informed of the consultation and are most affected by the administrative provisions, responses were also received from professional associations, business representative organisations, trade bodies, devolved administrations and individual professionals. A detailed breakdown can be seen in the below table.

24	Competent Authority
4	Business representative organisation/trade body
4	Individual
2	Devolved administrations
1	Regulatory body
1	Chartered professional body
8	Other

There were a wide range of responses across the field of professional qualifications. The largest group of respondents were competent authorities from the health sector, amounting to 14 of the 44 responses received. The construction and professional business services sectors were also well represented with 6 and 8 responses for each sector respectively.

A list of those organisations or individuals who responded, who did not request confidentiality, can be found at Annex I.

4. Summary of responses and next steps

The following analysis of the responses received to the consultation is focused on the questions posed in the consultation document. [Draft guidance](#) is attached which seeks to address some of the specific issues raised, therefore we do not provide a Government Response to each question. However, all views expressed through the consultation have been, and will continue to be, taken into account during the transposition of the Directive. Further information on the process going forward is set out under 'Next Steps'.

The responses that were received in relation to the Impact Assessment have also been taken on board and will be reflected in the final Impact Assessment, published alongside the final regulations in December.

General

The following question was put to consultees:

1. Do you agree with our proposal to revoke and replace the current 2007 Regulations rather than amend them?

As all respondents were either supportive or offered no view on the proposal to revoke and replace the current 2007 Regulations rather than amending them, this has been BIS' approach when drafting regulations and implementing the revised Directive.

Further information was requested on how the draft regulations will be consulted on and how the timeline will fit in with that of the other Government Departments who are implementing sectoral legislation. Concerns were raised about the compressed timetable for consultation and legislative changes which has occurred as a result of the upcoming election and the Commission's delays in producing Implementing Acts for a number of proposals.

Government response:

We acknowledge that the timescale is tight. This has been caused by delays caused by the change of Commission and uncertainty on the EPC implementing act. This has meant that the UK draft regulations and guidance are delayed and in turn this makes it problematic for competent authorities, particularly those involved in the European Professional Card.

BIS has provided draft regulations and guidance with this response to provide competent authorities with such information as we have and our proposals for implementation, to allow as much time as is possible for the competent authorities to plan and allocate their resources effectively.

European Professional Card

Consultees were asked the following questions:

As mentioned previously, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the EPC. With this in mind, we have the following questions:

- 2. Do you have any suggestions for professions that should be included in the EPC?**
- 3. Within the scope of article 4a.7 of the Directive relating to the power to adopt an implementing act, can you suggest any issues that we should be conscious of with regards to the EPC?**

There were mixed comments on the introduction of the EPC. Amongst the Health Competent Authorities, there are concerns some of the new processes brought in by the EPC may impact regulators control and have an effect on patient safety. A number of specific issues were raised which have been discussed separately in other stakeholder fora. These have been fed back to the Commission and officials from BIS and the Department of Health have raised these issues throughout negotiations on the text of the Implementing Act.

Other sectors also expressed concerns around the EPC and struggled to see what added value it brought to the recognition process. A number of respondents stressed the importance of the Commission holding an independent review of the EPC before proposing a further roll-out to any other professions.

Many respondents were supportive of the EPC in principle and its intention to ease the movement of professionals. The Security Industry Authority for example, although acknowledging that the short terms costs may increase, recognised that in the longer term the EPC would deliver cost savings to both license holders and competent authorities by streamlining the recognition process.

Government response:

The merits of the EPC have been previously agreed and this provision is now in the text of the agreed Directive. The intention is to facilitate free movement of professionals and the responsibilities of home and host states are laid down in the Directive. Any debate needs to be focused on the professions selected to benefit from the card and mechanisms of the EPC, rather than the basic provision.

The specifics of implementation are difficult to address at this stage, due to the delay in receiving details of the implementing act for the EPC and the Alert Mechanism. A vote on a draft Implementing Act has not yet taken place. We have been able to draft regulations on the basic provisions laid out in the Directive as the Implementing Act is proposed as a 'Regulation' meaning that Member States' will not have to transpose this into domestic legislation – although it will be directly applicable and the affected professions will need to ensure their administrative procedures and, if necessary, governing legislation, meet the requirements of the Implementing Act.

Guidance has also been produced for the EPC, however without confirmation of the details we cannot finalise this and it will lack necessary detail. We also have secured a commitment from the Commission to provide detailed operational guidance, which should follow later this year.

Draft regulations 8 - 13, 24 and 36

Guidance: Page 22 - 26

Partial Access

Consultees were asked the following questions:

4. **Bearing in mind the requirements for partial access set out in the Directive (article 4f.1), which professions do you consider eligible for partial access and why?**
5. **Do you think that we should require applicants who wish to access a profession on a partial basis to do so using the title for that profession in English rather than the professional title of their own state? Is the answer different in relation to different professions?**

The respondents representing the health sector were in consensus, suggesting that partial access provisions ought not to apply to health professions due to 'overriding reasons of general interest' cited in the Directive and the potential risk to patient safety. More specifically, problems were anticipated around the difficulty of limiting the scope of professional activities carried out by a professional and confusion for service recipients. There is also a need for clarity on which professions will be eligible for partial access.

These concerns were mirrored by other respondents. In the construction sector, it was stated by three respondents that professional activities cannot 'objectively be separated', a criteria laid out in the Directive for partial access. One respondent did comment on the benefit of partial access for its members who seek to work across borders within the EU. Within the professional business service sector, there was a difference of opinion about the relevance of partial access to the legal professions whilst other respondents raised queries over its application to professions where the title is protected but there is no reserve of activities, for example architects.

Regarding the use of professional title for those applicants accessing a profession on a partial basis, there was general agreement on the applicant retaining their Home Member State title in order to protect consumers and differentiate them from professionals who are authorised to access the whole scope of professional activities. There are some professions where it has been suggested an English translation might be more suitable.

Government response:

It has recently been confirmed with the Commission that partial access will extend to all professions but not to the professionals eligible for automatic recognition. This means that the partial access is available to sectoral professionals who apply for recognition through the general system.

As partial access operates on a case by case basis it is not possible to rule out certain professions altogether. Partial access can only be refused in limited circumstances. Refusals must be justified and proportionate. This means it is vital, in professions where partial access is a concern, that decision processes are transparent and robust because they would be open to challenge. It is our intention to provide general guidance on the operation of partial access provisions.

It is proposed that the partial access provisions are implemented in relation to sectoral professions subject to the automatic recognition system as well as in relation to the general system of recognition in the BIS implementing Regulations.

Draft regulations 16 and 17

Guidance: Page 13

Temporary Provision of Services

Consultees were asked the following questions:

- 6. Do the new requirements for temporary provision require clarification?**
- 7. In relation to the option to require a language declaration in relation to professions with safety implication, which professions do you think fall within this description?**

The majority of respondents stated that the new requirements for temporary provision did not require clarification. One competent authority recognised the benefits of the new requirements, commenting that the reduction from 2 years to 1 year of experience in professions that are not regulated in their Home Member State may improve choice for consumers and increase mobility.

However, a number of respondents raised specific questions around, for example, language declarations and the implication of the 'entire territory' provision on professions which have different regulatory systems in the devolved administrations.

A number of respondents requested that BIS produced a clear definition of 'Temporary and Occasional' in this context. For example, one respondent asked that the minimum or maximum stay be defined as it is in tax law.

There was general agreement that all medical professionals should be required to declare their language competence. Some suggestions were made for the same provision to apply to professionals involved in work with 'animal safety' implications and construction, though there was no consensus on these.

Government response:

The concerns expressed have fed into how BIS drafts the new regulations and are addressed in the accompanying guidance.

BIS will not be providing a definition of "temporary and occasional" because the ECJ has consistently stated that the distinction between establishment and provision of services needs to be made on a case by case basis, taking into account not only the duration but also the regularity, periodicity and continuity of the provision of services (Gebhard Case 55/94).

Draft regulations 18 - 33

Guidance: Page 15 - 22

Conditions of recognition

Consultees were asked the following question:

8. Are the conditions for recognition sufficiently clear?

As above, the majority of respondents find the conditions of recognition clear, however some questions were raised on both the justification for some of the new conditions and the practical implications.

Of particular concern is the new provision reducing the period that an applicant has pursued a profession from two years to one during the previous ten years, when that profession is not regulated in the home Member State. This is primarily because there is no specific requirement to maintain skills and knowledge. Other comments largely related to the practical nature of recognising certificates from Member States' where the profession is not regulated and concerns around the wider scope of qualifications that now must be considered.

Government response:

BIS has endeavoured to address issues as far as possible in the implementing Regulations and in guidance.

Draft regulation 43

Guidance: Page 10

Compensation measures

Consultees were asked the following questions:

- 9. Although the applicant has the right to choose, Members States' can stipulate, by way of derogation, an adaptation period or aptitude test. Do you think there is a case, in relation to a profession, for expanding the category of cases where we may stipulate either an aptitude period or adaptation test as set out in Article 14.3? If so, please provide reasons for this.**

The responses varied, largely dependent on sector or profession. The respondents representing the health sector mainly suggested stipulating medical professionals undertake an adaptation periods rather than aptitude test. In contrast, responses suggested that it would not be appropriate to allow for adaptation periods in sectors such as the legal or construction sectors. Some responses requested that BIS revisit previous guidance on compensation measures.

Government response:

The Directive lays out the process for derogating from the general compensation measures and the criteria for doing so. Where an appropriate case is made by a relevant profession, BIS will follow this up with the sector to explore the basis for derogation.

Draft regulations 44 – 48

Guidance: Page 11 - 12

Common training principles

Consultees were asked the following questions:

These principles are subject to delegated acts adopted by the Commission. Therefore we are interested in your views in general terms only at this stage.

- 10. Is the provision for setting up common training principles/frameworks of interest to your profession?**
11. Do you consider your profession to be outside the scope of a CTF or CTT and why?

The responses indicated some support for making use of this provision to set up Common Training Frameworks and/or Tests. This would largely be on the understanding that this would streamline the recognition and be ultimately less burdensome to both competent authorities and professionals. In particular, the Engineering and Accountancy professions were mentioned as professions where this may be helpful and achievable. Indeed, many competent authorities suggest that steps to harmonise requirements are already being made outside of the scope of the Directive, for example the ICAEW are working closely with other EU regulators on the Common Content Project which seeks to 'unify, to the highest extent possible, the professional entry-level qualifications of the participating Institutes.'¹

However, responses also highlighted the various challenges of Common Training Principles. In some professions, for example Law and Accountancy, education can focus on specific local or national requirements which make it difficult to create an overarching common framework. In these fields, it was suggested that partial common training tests or frameworks might prove useful for the elements of education that cut across the EU. The wide range of definitions for one profession across the EU and the scope of the reserved activities could also make common training principles hard to develop in some fields, particularly Construction. Responses also suggested this may be difficult to coordinate for professions with devolved sectors, such as Education.

Government response:

We will bear these views in mind when it comes to discussions of CTF and CTT in relation to particular professions. These are not addressed in the draft implementing regulations or guidance as currently they do not apply to any particular professions.

We would encourage all Competent Authorities to work with their counterparts across the Single Market to harmonise education and training requirements, and work towards developing Common Training Frameworks.

Recognition of professional traineeships

Consultees were asked the following questions:

12. What limits to the duration of professional traineeships should be set, if any, in relation to a relevant profession. ?

13. Are there any current guidelines on organisation and recognition of professional traineeships?

As article 55a provides for the recognition in a home member state of professional traineeships carried out abroad where access to a regulated profession is dependent on completion of professional traineeship, this question addressed the possibility that member states could set a limit to the duration of that part of the traineeship carried out abroad. There were no substantive responses to this question.

¹ Eng Council paper

Government response:

As this is an issue for competent authorities in the main, BIS will endeavour to ensure that any representations made to limit the duration of professional traineeships carried out abroad in relation to a particular profession are given due consideration by the relevant competent authority.

Draft regulation 7

Guidance: Page 10

Exchange of and Access to Information

Consultees were asked the following questions:

- 14. Are your procedures already available online?**
- 15. Do you accept electronic payments?**
- 16. Is your Competent Authority already linked in to the PSC?**
- 17. Are you aware of IMI?**
- 18. Are you registered with IMI?**
- 19. If you are already registered on IMI:**
 - a. Do you find the system easy to use?**
 - b. Do you find the information exchanged useful?**
- 20. Do you consider you should be designated as a coordinator? Please provide reasons.**

The majority of respondents for whom this section was relevant (i.e. competent authorities) were aware of and registered with the Internal Market Information System (IMI)². Generally, IMI is viewed as a useful tool in theory, allowing competent authorities to search for their counterparts, track the progress of cases and re-direct queries when necessary. However respondents have also encountered a number of practical issues.

Regarding IMI itself, respondents' commented on the accuracy of translations offered, the relevance of the pre-determined questions and the overall usability of the system. Competent authorities had also experience difficulties getting timely responses or finding their relevant counterpart on the system, which may not be registered. In addition, some suggestions for improving the system were also provided. These points will be fed back to

² IMI is an electronic, web based portal developed by the European Commission, which identifies regulators in all of the EEA states. 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.

the relevant team at the Commission, who are currently working to improve the system.

Most competent authorities stated that their procedures for recognition are already available online, including payment. The majority, however, do not have a fully online web based application system. Most allow applicants to download forms and submit them by email and accept payment via telephone or by bank transfers.

Government response:

The guidance explains how Competent Authorities can register with IMI, along with links to Commission websites with more information. It also explains the role played by the PSC and UK NCP, along with a specific section on online recognition which provides further information on the requirements.

Draft regulation 5 (6) and 59

Guidance: Page 22 - 27

Alert Mechanism

Consultees were asked the following questions:

As with the EPC, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the Alert Mechanism. With this in mind, we have the following questions:

21. Within the scope of the implementing act (article 56a.8), can you suggest any issues that we should be conscious of with regards to the Alert Mechanism including:

- Eligible authorities or coordinators
- Procedures on treatment of alerts
- Security of processing alerts?

The majority of responses to the question posed on the Alert Mechanism came from Competent Authorities in the fields affected, specifically those with patient safety implications or those involved in the education of minors including childcare and early childhood education that are regulated. There was general support for the new provision and its role in safeguarding the public, one respondent commented that they 'welcome the introduction of the alert mechanism as an improvement to patient safety and quality of care.'

Government response:

As with the EPC, the specifics of implementation are difficult to address at this stage, due to the delay in receiving details of the implementing act for the EPC and the

Alert Mechanism. A vote on a draft Implementing Act has not yet taken place. However, we have been able to draft regulations on the basic provisions laid out in the Directive. This is possible because the Implementing Act is a 'Regulation' meaning that Member States will not have to transpose this into domestic legislation. Guidance has also been produced for the Alert Mechanism, however without confirmation of the details this is not finalised and will have gaps. We also have asked the Commission to produce guidance, which will follow later this year.

There were a number of queries about the practical nature of the Alert Mechanism. A number of specific queries were raised which are answered below, though it is important to stress that these are not finalised.

There was some confusion about what circumstances would lead to an alert and over the right of appeal. This is covered in the guidance, which explains that the alert will have to be issued for any decision that restricts a professional for providing a service or a subset of services in that Member State. The right of appeal is stated within the text of the Directive and cannot be negotiated.

A further query was raised over whether the reference to 'days' in the Directive will be interpreted as working days or calendar days. The Commission have confirmed that 'days' refers to calendar days which we are aware will require considerable organisation from Competent Authorities to ensure that weekends and holidays do not impact on deadlines.

It is proposed that the alert mechanism is implemented in respect of the sectoral professionals subject to the automatic recognition system as well as in respect of professionals subject to the general system of recognition in BIS' implementing regulations.

Draft regulation 59

Guidance: Page 26

Transparency initiative

Consultees were asked the following questions:

- 22. Do you have any views on the most effective exercise of the transparency process?**
- 23. Do you know of any Chartered Bodies that should be either removed or added from Annex I? Please give reasons for your answer.**
- 24. Do you know of any regulated professions that should either be removed or added from Schedule I? Please give reasons for your answer**
- 25. Has your Competent Authority updated the information on the database (A request to complete the 'Proportionality' tab was sent on 18 July 2014)?**

Respondents commented on the consultative nature of the transparency initiative and its use in better understanding regulatory frameworks across the EU. As requested by many respondents, the information on the database (other than the proportionality information supplied by competent authorities) will ultimately become public and accessible by competent authorities and members of the public. This should help support the movement of professionals across borders by making requirements clear in advance.

It is clear that respondents also see limitations; for example, not all Member States have currently updated the database and there are concerns that information will not be kept up to date in future, resulting in misleading information for end users. Respondents suggested that the database includes information on the completion date of a file and recommends users to also check the competent authorities websites to confirm whether or not legislation or procedures on a particular issue has changed since then. Queries were also raised on how often competent authorities would be expected to update the database and what the outcomes of the transparency process will be.

Government response:

The Transparency Initiative was supported by the UK during negotiations on the PQD. Making the varying regulatory systems clear across the EU, should help remove some uncertainty and identify barriers or areas for harmonisation. The process also requires all Member States to analyse the regulation they have in place and question its relevance and proportionality. In some areas this may lead to introducing less stringent measures. The Directive requires all Member States to provide the Commission with information on the requirements they intend to maintain, remove or make less stringent in the form of a National Action Plan. This is expected to be an on-going process after the transposition deadline. We would therefore ask that all competent authorities ensure the database is as up to date as possible.

The next National Action Plan is due in April 2015 and will focus on the sectors already considered under the first wave of the mutual evaluation process.³

Some suggestions were made for Annex I and Schedule I to include a number of new Chartered Bodies and Professions. These will be considered during the drafting of regulations and the competent authorities who made these suggestions may be contacted directly if more information is required.

³ These are the transport, real estate, construction, crafts, business services, wholesale and retail sectors.

5. Overall conclusion

Some of the concerns raised are around provisions that have been agreed in the Directive and therefore cannot be altered in implementation by BIS. It has been useful to understand these issues, which we have considered whilst drafting regulations and guidance. We have made these public now for comments to give Competent Authorities as much time as possible to consider these and implement the provisions within the transposition timeline.

Through these we hope to limit, as much as possible, any problems of implementation and maximise the benefits of the Directive. For example by making effective use of the Alert Mechanism to better safeguard the public, investigate the use of Common Training Tests and Frameworks in tandem with competent authorities and make sure the transparency initiative is used to benefit competent authorities and provide them with more information.

Unless another course of action has been stated in the above sections, all responses that have been received have been considered during the drafting of regulations and guidance and it is hoped that these allay any concerns.

6. Next steps

We welcome views from Competent Authorities on the draft implementing regulations and guidance. Any comments should be sent through by **29 May 2015** (as would have been the case if we were to run a formal consultation). Following this we will hold transposition workshops to clarify further any remaining issues.

The Implementing Act for the European Professional Card and Alert Mechanism has not been voted on and we would expect this to take place shortly. We will be in close contact with the Competent Authorities most affected by this.

7. Contact details

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Annex I: List of Individuals/Organisations who responded

Architects Registration Board (ARB)
Archives and Records Association
British Medical Association
Care Council for Wales
Chartered Accountants Ireland
Chartered association of Building Engineers
Chartered Institute of Arbitrators (CI Arb)
Chartered Institute of Architectural Technologists
Department for Economy, Science and Transport (wales)
Department for Education and Skills (Wales)
Engineering Council
Faculty of Advocates
Federation of Awarding Bodies
General Dental Council (GDC)
General Chiropractic Council
General Medical Council
General Osteopathic Council
General Teaching Council for Northern Ireland
General Teaching Council for Wales
General Optical Council (GOC)
General Pharmaceutical Council (GPhC)
Health and Care Professions Council (HCPC)
Institute for Chartered Accountants for England and Wales (ICAEW)
Institute of Civil Engineers (ICE)
Information Commissioner's Office
Institution of Mechanical Engineers
NHS European Office
Nursing and Midwifery Council (NMC)
Optical Confederation
RIBA
Royal Aeronautical Society
Royal College of Nursing UK
Royal College of Veterinary Surgeons
Royal Environmental Health Institute of Scotland (REHIS)
Royal Town Planning Institute
Scottish Social Services Council
Security Industry Authority
Solicitors Regulation Authority
The Farriers Registration Council
Architects Registration Board (ARB)
Archives and Records Association



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BIS/15/252

1. GENERAL SYSTEM RECOGNITION

The Process for recognition under the General System – Establishment



