

21 May 2002

**PROPOSAL FOR A DIRECTIVE OF THE EUROPEAN PARLIAMENT AND  
OF THE COUNCIL ON THE RECOGNITION OF PROFESSIONAL  
QUALIFICATIONS**

**DRAFT RESPONSE DOCUMENT**

**Background**

The Health Professions Council currently registers 12 professions and assesses EU trained applicants for state registration under the terms of the General Systems Directives 89/48 and 92/51. These Directives have been in place since 1989 and the Council has used them successfully over the years registering in the region of 500 EU trained applicants a year over all the professions.

A recent notification from the Commission has shown that the UK is one of the few countries with no infraction proceedings against it.

In May 2001 the European Commission decided to amalgamate the Sectoral Directives into the General Systems Directives and to add further refinements designed to give a “more uniform, transparent and flexible regime of professional recognition”. In the Summer of 2002 the proposal will be submitted to the European Parliament and the Commission is hoping to adopt the proposal in 2003 and implement it in 2005.

The principles behind the proposed changes derive from the E-Commerce Directive and the Lawyers Directive, neither of which appear to have a great deal of relevance to the work of healthcare professionals.

The document that contains the full text is 124 pages long and a copy would be made available on request.

Most of the regulatory bodies in the healthcare field are in the Sectoral Directive and have their own concerns with the proposals. A number of meetings have been held and some common concerns have been expressed. However, members of the HPC will need to prepare a Council response for the Department of Health and the European Commission..

**General Comments**

I have not attempted to analyse or comment on each Article but have prepared a table of the most relevant or important proposed changes. There are some useful new proposals in the document such as language testing etc. However there are also some proposals which appear to be opposed to the principles of public protection.

**Recommendations**

Council members are asked to consider this report and agree:

- to seek clarification on certain articles
- to work with the Department of Health on these issues
- to express its concerns to the European Commission
- to lobby Euro MPs to ensure that the Council's concerns are met

PAGE	ARTICLE	ISSUE	COMMENT	ACTION
11	Title 3	However the possibility for a member state to require professional experience rather than a compensatory measure in the event of substantial differences relating to the duration and not the content of training is abolished	The HPC has limited itself purely to assessing the content of training and made no comment as to the length in any case.	none
12	Article 15	Article 15 provides for a dispensation from compensation measures where the applicant's qualifications meet the criteria laid down by a decision of the Committee on Recognition of professional Qualifications pursuant to the comitology procedure (regulation). These criteria would be proposed by a professional association in the context of a common platform established at European level and providing adequate guarantees as regards the applicant's level of qualification.	This appears to lay the foundations for a separate committee that would be steering the common platform suggestions from professional bodies. No mention of regulatory bodies here	information required
21	Preamble (29)	In view of the speed of technological change and scientific progress, life-long learning is of particular importance for a large number of professions. In this context, it is for the member states to adopt the detailed arrangements under which, through suitable ongoing training, professionals will keep abreast of technical and scientific progress	Provision for CPD	None

22	1(c)	Evidence of formal qualifications: diplomas, certificates and other evidence issued by an authority in a member state and certifying successful completion of professional training obtained mainly in the community	This appears to be trying to restrict our ability to recognise training and professional qualifications obtained outside the EU. A problem for recruitment as most of our applicants come from non-EU countries	Clarification required
22	3	Evidence of formal training issued by a non-member country shall be regarded as evidence of formal qualifications if the holder has 3 years professional experience, certified by the Member state which recognised that evidence of formal qualifications in accordance with Article 2(2)	Does this imply that all member states are bound by a decision on non-EU qualifications made in any one member state provided the applicant has 3 years professional experience in that member state?	Clarification required
22	4	Where the profession for which the applicant is qualified in the home member state constitutes an autonomous activity a profession covering a wider field of activities in the host member state and where the difference cannot be made up by a compensatory measure referred to in Article 14, the recognition of the applicant's qualifications gives him access to that activity alone in the host member state	This issue concerns a disparity between autonomy of practice in one member state and the scope of practice in another. If this difference cannot be made up by a compensatory mechanism then the applicant should be allowed to practice in whatever area/s he has been trained. This 'reduced practice' might not be clear to members of the public. But at least you can narrow down your scope of practice but can't expand it	Problem has not arisen so far.
23	5 (1)	Member states shall not restrict, for any reason relating to professional qualifications, the free provision of services in another member state. (a) if the service provider is	This article follows from the principles of the e-commerce directive and is supposed to relate to those persons who wish to provide e-services. In the case of the health professions things are much more	Should make an exception in the case of health care professionals

		<p>legally established in a member state for the purpose of practicing the same professional activity there</p> <p>(b) where the service provider moves, if he has practiced that activity for at least 2 years in the member state of establishment when the profession is not regulated in that member state</p>	<p>complex. Additionally there does not seem to be any mention of qualifications or training and in those cases where some professions are not regulated in certain member states there is no protection at all to the public.</p>	
23	5(2)	<p>For the purposes of this directive, where the service provider moves to the territory of the host member state, the pursuit of a professional activity for a period of not more than 16 weeks per year in a member state by a professional established in another member state shall constitute a 'provision of services'</p> <p>The presumption referred to in the previous paragraph shall not preclude assessment on a case-by-case basis, for example, in the light of the duration of the provision, its frequency, regularity and continuity.</p>	<p>This seems to imply that any professional from one member state can work in another member state for 16 weeks a year with no requirement to apply for state registration. It also implies that someone somewhere is counting up the 16 week period in any one year and making a note of the name and other details which would actually be meaningless and unprovable.</p>	<p>This is a sticking point for the HPC – contrary to public protection? Should have a position on this</p>
23	5(3)	<p>The service shall be provided under the professional title of the member</p>	<p>This must be confusing for the public as the practitioner would be calling</p>	<p>Protection of title issue</p>

		<p>state in which the service provider is legally established, insofar as such a title exists in that member state for the professional activity in question</p> <p>That title shall be indicated in one of the official languages of the member state of establishment in such a way as to avoid any confusion with the professional qualification of the host member state</p>	<p>themselves ‘physiotheraputin’ etc</p>	<p>“holding out” issue? Should have a position on this</p>
23	6	<p>Pursuant to article 5(1) the host member state shall exempt service providers established in another member state from the requirements which it places in its territory relating to:</p> <ul style="list-style-type: none"> <li>a) authorisation by, registration with or membership of a professional organisation or body</li> <li>b) registration with a public social security body for the purpose of settling accounts with an insurer relating to activities pursued for the benefit of insured person</li> </ul>	<p>Healthcare professionals applying under the 16 week provision may not need to register with professional bodies. Additionally, and this is unclear, they may also not need to be insured by UK insurers and UK insurers may not have to pay out for treatments to private patients apart from urgent cases</p>	<p>Needs clarification</p>
24	7	<p>Where the service provider moves in order to provide services, he shall, in advance, inform the contact point of</p>	<p>Health professionals taking advantage of the 16 week provision will have to notify the member state from which they</p>	<p>Needs clarification</p>

		the member state of establishment, referred to in article 53. In urgent cases, the service provider shall inform the contact point of that member state as soon as possible after the services have been provided.	originally received their licence to practice before they leave. No public protection at all here. Some member states keep no records of their health professionals since they do not regulate conduct.	
24	8	The competent authorities of the host member state may ask the competent authorities of the member state of establishment to provide proof of the service provider's nationality and the proof that he is legally practicing the activities in question in that member state. The competent authorities of the member state of establishment shall provide this information in accordance with the provision of article 52 Furthermore in the cases referred to in article 5.1(b), the competent authorities of the host member state may ask the contact point of the member state of establishment, referred to in article 53, to provide proof that the service provider has practiced the activities in question in the member state of establishment for at least two years. Such proof may take any form.	This assumes that other competent authorities keep detailed records when they actually do not. Furthermore most do not regulate conduct in a profession only entry to the profession itself. What would constitute proof of practice in a member state?	Is this sufficient for public protection?
29	15	1. Professional associations may notify the commission of common platforms which they establish at European	This appears to indicate that regulatory bodies do not set up common platforms but that professional bodies can do so-	Clarification required

		<p>level. For the purposes of this article “common platform” means a set of criteria of professional qualifications which attest to a sufficient level of competence for the pursuit of a given profession and on the basis of which those associations accredit the qualifications obtained in the member states.</p> <p>2.If the commission is of the opinion that the platform in question facilitates the mutual recognition of professional qualifications, it shall inform the member states thereof and shall take a decision in accordance with the procedure referred to in article 54(2)</p> <p>3.If a member state considers that a common platform no longer offers adequate guarantees with regard to professional qualifications , it shall inform the commission accordingly, which shall, if appropriate take a decision in accordance with the procedure referred to in article 54(2)</p>	possibly unilaterally?	
49	46	The host member state if it knows of any serious specific circumstances which have arisen prior to that	This is an initial stab at the regulation of conduct across member states. It is however inadequate for the purposes of	Ask for strengthening amendment?



		<p>person's establishment in that member state outside its territory, and which are liable to have consequences in that member state for the pursuit of the activities in question, inform the home member state accordingly</p> <p>The home member state shall examine the veracity of the circumstances and its authorities shall decide on the nature and scope of the investigations which need to be carried out and shall inform the host member state of the conclusions which it draws from the information available to it</p>	<p>public protection in the UK. This article needs to be considerably strengthened and expanded</p>	
49	47	<p>1. The competent authority shall acknowledge receipt of the application within one month of the receipt and inform the applicant of any missing document</p> <p>2. the procedure for examining an application to practice a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the competent authority in the host member state no later than three months after the date on which the applicant's completed file was submitted</p> <p>3. The decision or failure to reach a decision within the deadline shall be</p>	<p>These proposed deadlines should not pose a problem for HPC</p>	None

		subject to appeal under the national law		
50	49	<p>Persons benefiting from the recognition of professional qualifications shall have a knowledge of languages necessary for practicing the profession in the host member state</p> <p>The member states shall ensure that where appropriate the beneficiaries acquire the language knowledge necessary for performing their professional activity in the host member state</p>	This appears to give HPC the ability to set language tests or standards as part of the application procedure	none
51	51	Member states which require persons who acquired their professional qualifications in their territory to complete a preparation period of in-service training and/or period of professional experience in order to be approved by a health insurance fund, shall waive this obligation for the holders of evidence of professional qualifications acquired in other member states	<p>Does this mean that a health professional trained outside the UK is able to do get insurance without any requirement for practical training even if a UK trained health professional may need to show that he has undertaken a practical component as part of his training course?</p> <p>Do insurance companies lead on this one?</p>	Clarification required
52	54	The commission shall be assisted by a committee on the recognition of professional qualifications, hereafter referred to as “the committee’	Membership and what kind of representation this means for the AHPs remains to be seen	Clarification required

		comprising representatives of the member states and chaired by the representative of the commission		
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