

Agenda Item 15

Enclosure 11

**Health and Care Professions Council
14 February 2019**

**The regulatory impact of Brexit - Update on
internal planning**

To note

From Olivia Bird, Acting Policy Manager

Council, 14 February 2019

The regulatory impact of Brexit - Update on internal planning

Introduction

On 29 March, the UK is scheduled to leave the EU following the Brexit referendum in 2016.

Leaving the EU will have a number of implications for the HCPC, which internal colleagues are currently planning for. This paper sets out the likely scenarios we are working towards, and what steps we have taken to prepare for these.

This paper focuses on the regulatory impact of Brexit. The potential impact of operational departments, such as Finance, Human Resources or Office Services, is being managed internally and is not the subject of this paper.

Possible scenarios

At the point writing, there are a number of possibilities which could play out:

1. The Government's deal is approved by Parliament and we leave the EU on 29 March, entering a transition period of 21 months ending on 31 December 2020 (during which time Union law continues to apply to and in the UK, with the same effect as the Member States).¹
2. We leave the EU with no deal on 29 March.
3. We do not leave the EU on 29 March, whether that be due to the outcome of a future election or due to the commencement of further negotiations with the EU or another outcome.

In the event of the Government's deal being approved, the resulting transition period will mean that our regulatory processes governed by EU law continue to apply as before exit day until 31 December 2020. The negotiations on the UK's future relationship with the EU will then determine to what extent these processes will remain after the transition period.

For the purpose of planning, we have therefore focused our efforts on scenario two; that we leave the EU with no deal. This is because this scenario would have the

¹ Draft agreement with the EU, https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf

most significant implications for our regulatory functions, in particular our European Mutual Recognition application process.

Mutual Recognition of Professional Qualifications

The EU regime for the mutual recognition of professional qualifications (MRPQ) enables EU professionals to practise across the EU on an established, or a temporary or occasional, basis, without fully having to retrain or requalify. This is established by the European Union Directive 2005/36/EC (MRPQ Directive).

There are two different systems for recognising qualifications:

- **The sectoral system** – In healthcare this applies to doctors, dentists, general care nurses, midwives and pharmacists. These professions have harmonised training standards across the EEA and Switzerland. Qualifications listed in the MRPQ Directive meet these harmonised standards, and professional regulators across the EEA and Switzerland are obliged to recognise these qualifications on an automatic basis with no further checks on the holder's professional qualifications.

This is the system regulators such as the GMC fall under. The NMC, GPhC and GDC also fall under this system for the regulation of the nurses, midwives, pharmacists and dentists.

- **The general system** – This covers qualification not listed in the MRPQ Directive. Applications from holders of such qualifications are considered on a case by case basis against UK standards.

The HCPC falls under this system, meaning that EU qualifications are recognised on a case by case basis through a process whereby they are assessed against our standards of proficiency. Applications relying upon mutual recognition of professional qualifications fall under what we refer to as the European Mutual Recognition (EMR) route.

Professions such as nursing associates, for the NMC, or pharmacy technicians, for the GPhC, also fall under this system.

EMR application route

The EMR application route is the process by which we consider applicants applying to join the Register using their rights under the MRPQ Directive.

The differences between the EMR route and our International route (the process for applicants applying to the Register who have qualified outside the EEA or Switzerland) is that:

- EMR applicants are entitled to periods of adaptation (a period of supervised practice and / or academic training intended to make up for significant shortfalls identified in an application) or an aptitude test (a test of the applicant's current knowledge relating to the shortfalls identified in their assessment) if their application is unsuccessful.
- International applicants must provide a certificate confirming their proficiency in English language (unless they declare English as their first language). This is not required for EMR applicants unless they are applying to practise as a speech and language therapist.

The implications of a no deal for MRPQ

On 12 October 2018, the Department for Business, Energy and Industrial Strategy published guidance on providing services, including those of a qualified professional, if there's no Brexit deal. This states that, in the event that there is no deal:

The MRPQ Directive will no longer apply to the UK and there will be no system of reciprocal recognition of professional qualifications between the remaining EEA states, Switzerland and the UK.²

The guidance outlines the implications for this as follows:

- For EEA and Swiss professionals (as well as UK nationals holding EEA or Swiss qualifications) who have received a recognition decision in the UK before exit, these recognition decisions will not be affected and will remain valid.
- EEA and Swiss professionals (as well as UK nationals holding EEA or Swiss qualifications) who have applied for a recognition decision and are awaiting a decision on exit day will, as far as possible, be able to conclude their applications in line with the provisions of the MRPQ Directive.
- Professionals with EEA or Swiss qualifications who have not started an application for a recognition decision in the UK before exit will be subject to

² <https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexite-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexite-deal>

the new system of recognition, subject to Parliament's approval.

- UK nationals seeking recognition to work in regulated professions in the EEA or Switzerland should check the host state's policies. The European Commission has stated that decisions on the recognition of UK qualifications in EU countries before exit day are not affected and has published guidance in the Commission's Brexit Professional Qualification preparedness notice to this effect.

No deal drafting

On 20 December 2018, the Government laid the Health and Care Professions (Qualifications and Entitlements) (Amendment etc.) (EU Exit) Regulations 2018 in Parliament. This statutory instrument amends our legislation in the event of a no deal Brexit. It therefore sets out how we would operate in the event MRPQ would no longer apply.

The statutory instrument sets out that:

- anyone who has registered using an MRPQ route before the date of exit would retain their registration;
- anyone who has applied using an MRPQ route before the date of exit would be able to proceed with their application through that route including any appeals; and
- applications for registration after the date of exit would be considered depending on a number of factors set out in the statutory instrument.

For the HCPC, this means that:

- EMR applications which we receive before the date of exit will be considered as they would have been before exit day. Any EMR applications received after this date will then progress as an International application.
- Temporary and occasional registration, which allows professionals who remain established in their home state to provide services on a temporary and occasional basis another state, will also cease after exit day.
- The European Professional Card (EPC) mechanism, an electronic certificate used in recognition procedures under both the automatic and general systems, will no longer be an eligible route of registration. Physiotherapists who are currently covered by the EPC and who have not applied to join the

Register before exit day will need to apply via the International route.

- We will lose access to the Internal Market Information (IMI) system, an online tool used by regulators to share information relating to applicants, qualifications and fitness to practise. We will therefore be unable to process applications and exchange information through IMI.

Ongoing preparation

We continue to work closely with Government. This has included reviewing earlier iterations of the statutory instrument outlined above, as well as providing information regarding our processes and professions as requested to support civil servants in their Brexit preparations.

We have also been involved in early discussions regarding the Common Travel Area on the island of Ireland, and the impact of any back stop or hard border between the Republic of Ireland and Northern Ireland on our regulatory processes. We will continue to monitor developments in this area.

The Registration department is taking a number of measures to mitigate the effect of a no deal, including preparing communications to those currently on the Register of visiting European health or social work professionals and developing processes to ensure incoming EPC and EMR applications are concluded in line with the relevant legislation before and after Brexit.

In addition to this, the Policy and Standards department is:

- engaging with Heads of Departments to assess the likely impact in the event of a no deal scenario;
- working jointly with Communications to develop a bank of frequently asked questions for use across the organisation, and to review the website to identify content which would need revising in the event of a no deal;
- attending meetings with the other regulators and civil servants to discuss preparations for Brexit; and
- seeking ongoing legal advice relating to Brexit.

We will continue to monitor the political landscape, and respond to developments as they arise.

Decision

Council is invited to note the contents of the paper.

Background information

- Government guidance on 'Providing services including those of a qualified professional if there's no Brexit deal'
<https://www.gov.uk/government/publications/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal/providing-services-including-those-of-a-qualified-professional-if-theres-no-brexit-deal>
- The European Qualification (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018
<http://www.legislation.gov.uk/ukdsi/2018/9780111177686/contents>
- Explanatory memorandum to The European Qualification (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2018
http://www.legislation.gov.uk/ukdsi/2018/9780111177686/pdfs/ukdsiem_9780111177686_en.pdf

Resource implications

Resource implications to be factored in to relevant work plans.

Financial implications

Financial implications to be factored in to relevant work plans.

Date of paper

01 February 2019