

PARLIAMENTARY DEBATES

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OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT EUROPEAN QUALIFICATIONS (HEALTH
AND SOCIAL CARE PROFESSIONS) (EFTA STATES)
(AMENDMENT ETC.) (EU EXIT)
REGULATIONS 2020

Wednesday 7 October 2020

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The Committee consisted of the following Members:

Chair: †YVONNE FOVARGUE

† Argar, Edward (<i>Minister for Health</i>)	† Russell, Dean (<i>Watford</i>) (Con)
Bradshaw, Mr Ben (<i>Exeter</i>) (Lab)	Thompson, Owen (<i>Midlothian</i>) (SNP)
Bryant, Chris (<i>Rhondda</i>) (Lab)	† Throup, Maggie (<i>Lord Commissioner of Her Majesty's Treasury</i>)
† Buchan, Felicity (<i>Kensington</i>) (Con)	† Vickers, Matt (<i>Stockton South</i>) (Con)
† Colburn, Elliot (<i>Carshalton and Wallington</i>) (Con)	† Webb, Suzanne (<i>Stourbridge</i>) (Con)
† Double, Steve (<i>St Austell and Newquay</i>) (Con)	† Western, Matt (<i>Warwick and Leamington</i>) (Lab)
Huq, Dr Rupa (<i>Ealing Central and Acton</i>) (Lab)	
† Jenkinson, Mark (<i>Workington</i>) (Con)	Nicholas Taylor, <i>Committee Clerk</i>
† Johnston, David (<i>Wantage</i>) (Con)	
† Madders, Justin (<i>Ellesmere Port and Neston</i>) (Lab)	† attended the Committee
Morris, Grahame (<i>Easington</i>) (Lab)	

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Wednesday 7 October 2020

[YVONNE FOVARGUE *in the Chair*]

Draft European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment Etc.) (EU Exit) Regulations 2020

The Chair: Before we begin proceedings, I thank colleagues for social distancing – the spaces are clearly marked. *Hansard* colleagues would be grateful for speaking notes to be sent to hansardnotes@parliament.uk.

9.25 am

The Minister for Health (Edward Argar): I beg to move,

That the Committee has considered the draft European Qualifications (Health and Social Care Professions) (EFTA States) (Amendment Etc.) (EU Exit) Regulations 2020.

It is a pleasure to serve under your chairmanship, Ms Fovargue. I suspect that this will be one of a run of such delegated legislation committees that we will consider in the coming weeks.

The regulations relate to the recognition of professional healthcare qualifications in the UK, and social work qualifications in England. They are part of the Government's preparations for the end of the transition period.

As members of the Committee will know, the Government have signed agreements with three European Economic Area European Free Trade Association states and Switzerland in relation to the UK's withdrawal from the EU at the end of the transition period. The agreements include provisions that protect the rights of EEA EFTA state professionals with qualifications covered by the directive, and Swiss nationals living and working in the UK, and vice versa.

On 14 September 2020, the House considered legislation brought forward by the Department for Business, Energy and Industrial Strategy that set out arrangements for the recognition of professional qualifications from Switzerland and the EEA EFTA states. The regulations before us cover a similar area. They implement the Swiss citizens' rights agreement and the EEA EFTA separation agreement in relation to the recognition of professional qualifications, or RPQ, as I will now refer to it for the sake of brevity, for healthcare in the UK and social work in England. They also make some minor changes to ensure that recognition arrangements for EU health and social work qualifications continue to function effectively after the transition period.

I will remind the Committee briefly of the background to RPQ. The current system for RPQ is derived from EU law. It allows UK professionals to have their qualifications recognised in the EEA and Switzerland, and vice versa, with minimal barriers. There are seven professions where standards are harmonised under the

relevant directive. That means that qualifications must comply with minimum agreed standards and, where these are met, that such qualifications are automatically recognised by regulators throughout the EU and, by virtue of additional treaties, the EEA EFTA states and Switzerland. Five of those harmonised professions are health professions: doctors, nurses, midwives, pharmacists and dentists.

The recognition arrangements under the directive have supported the movement of European health and care professionals to the UK. At the end of the transition period, the EU directive will cease to apply to the UK and the mutual recognition of professional qualifications will end. Let me be clear that this will allow for some improvements on the current system.

Last year, in preparation for the UK leaving the EU, Parliament passed regulations to amend the domestic law that implements the current EU system for RPQ, including regulations in relation to recognition arrangements for health and care professional qualifications, namely SI 2019/593. I believe that when that measure was considered in Committee by my predecessor but one, the shadow Minister, the hon. Member for Ellesmere Port and Neston, was the Opposition spokesman.

Today's regulations, which will come into force at the end of the transition period, include provisions that ensure that healthcare qualifications that are currently recognised automatically continue to be so, for up to two years after exit day; protect previous recognition decisions; and allow applications for recognition submitted before exit day to be concluded after exit day on the basis that they are already in train. They also remove the provision for healthcare professionals to deliver temporary and occasional services in the UK once such current registrations come to an end.

During the period of continued automatic recognition, UK regulators of healthcare professionals will further refine arrangements for registering all international health and care professionals, including those who hold European qualifications.

Since the passing of the EU exit regulations, the Government have secured further agreements with Switzerland—the Swiss citizens' rights agreement—and the EEA EFTA states—the EEA EFTA separation agreement. Those agreements go further than the arrangements set out in the regulations that were passed last year. The regulations before the Committee today amend the previous statutory instrument in order to implement the improved terms of the Swiss and EFTA agreements. I will briefly set out the main changes.

First, they allow Swiss nationals—and their spouses and dependants—who hold qualifications that are currently recognised automatically to have those qualifications recognised on an automatic basis where the application is made for up to four years after the end of the transition period, rather than the current two in the original SI. Secondly, they allow Swiss healthcare professionals and their dependants to continue to provide temporary and occasional services, in accordance with their contract, for up to five years after the end of the transition period, with a limit of 90 days' service per calendar year.

In addition, for both EEA EFTA state EU-qualified professionals and Swiss nationals, the regulations will require that UK regulators co-operate with their EEA

EFTA state and Swiss counterparts to facilitate the smooth completion of applications ongoing at the end of the transition period; and ensure that individuals whose professional qualifications are recognised are treated on the same basis as UK nationals. It is important to emphasise that the arrangements under this new SI will be reciprocated by the EEA EFTA states and Switzerland respectively.

I would remind the Committee that these regulations only concern the healthcare professions across the UK and social workers in England. All other regulated professions are covered by separate but similar legislation made by the different and responsible Government Departments and, where appropriate, the devolved Administrations.

For completeness, the regulations also make minor amendments to ensure that the frameworks for RPQ will function as intended after the transition period: they will ensure that GP qualifications obtained before the reference date specified in the MRPQ—mutual recognition of professional qualifications—directive are recognised in the same way as specialist medical qualifications obtained before that date, and are not eligible for automatic recognition.

On consultation, it is important to note that UK regulators of healthcare professions have been consulted on an informal basis throughout the development of RPQ EU exit legislation, including these regulations.

To conclude, the regulations are a small but necessary step forward to implement the Swiss citizens' rights agreement and the EEA EFTA separation agreement, in respect of the recognition of professional qualifications. Those agreements were signed after the making of the previous EU exit legislation on this matter, hence this statutory instrument. The regulations enable health and social care professionals and businesses to better prepare for the end of the transition period, and represent a further degree of continuity and co-operation.

I commend the regulations to the Committee.

9.33 am

Justin Madders (Ellesmere Port and Neston) (Lab): It is a pleasure to serve under your chairmanship today, Ms Fovargue.

I thank the Minister for his introduction to the regulations. Dry and technical though they are, they are none the less extremely important, as he outlined. As we have heard, the regulations seek to implement parts of the Swiss citizens' rights agreement and the EEA EFTA separation agreement concerning RPQ—the recognition of professional qualifications of health and care professionals and those that are not covered by the existing “no deal” RPQ legislation, which was adopted in March 2019. As we also heard, these regulations will also make minor corrections to the 2019 EU exit regulations.

Current EU law sets out a reciprocal framework of rules for the recognition of doctors' professional qualifications. This enables EEA and Swiss nationals to have their qualifications recognised and gain access to the regulated profession in which they are qualified, in order to work on a permanent or temporary basis. After the end of the Brexit transition period, those arrangements will no longer apply to the UK because current legislation to implement them will not operate effectively.

New provisions detailing the route that EEA qualified health and social care professionals will take to join the register were added in March 2019. The regulations ensure that the same provisions are available for Swiss and EFTA qualified health and social care professionals.

With just under three months until the end of the transition period it is not only right but prudent to put arrangements in place to clarify how Swiss and EFTA health and social care professionals will join the relevant UK medical registers. That is vital to mitigate any possible disruption to the NHS medical workforce, and it is a matter of regret that we are dealing with this rather late in the day. I am sure that the individuals concerned would have liked greater certainty earlier, but we are where we are.

I have several questions about the possible impact of the regulations on the delivery of health care. As we know, the nationals of the EU and other countries make up 9.1% of doctors in England's hospitals and community health services. They account for 6% of all nurses and 5.8% of scientific, therapeutic and technical staff. Given the record number of NHS vacancies, there is clear potential for workforce disruption if EEA and Swiss nationals cannot register in the UK. We must do all that we can to minimise that risk in a no-deal scenario. That is a particularly important consideration given that, prior to the covid-19 outbreak, there were 106,000 vacancies across the NHS, including 44,000 nursing vacancies and around 120,000 vacancies in social care.

There is no doubt that the current workforce challenge has been exacerbated by the referendum result, or since then at the very least. The percentage of doctors and nurses with EU nationality grew between 2009 and 2016, but since then the percentage of EU national nurses has fallen and the Nursing and Midwifery Council has reported that the number of people from the EEA on its permanent register has decreased steadily from 38,024 in 2016-17 to just 31,385 in 2019-20, with 1,650 people, or equivalent to 5%, leaving the register in the last year. At the same time, the number of EU nurses and midwives coming to work in the UK has also fallen from 6,382 in 2016-17 to just 913 who joined the register in 2019-20.

Given the contribution of EEA and Swiss-qualified professionals to the NHS, it is vital that we stem the tide of vacancies. For that reason, when we debated the previous regulations more than 18 months ago, I asked the then Minister what assurances he could give that the NHS would be able to stem the huge losses of those important health and social care staff. Given the numbers I have cited today, I ask that question of the current Minister.

The Government have previously acknowledged that changes to the procedures for recognising qualifications could make access to health and care professions more difficult. That too could affect the availability of professionals. Given that no impact assessment was published alongside today's measure, can the Minister confirm whether any study has been made of the costs or barriers that may prevent applicants from the EEA and Switzerland from entering the country, and the possible impact on the health service?

Can the Minister clarify who would be captured by enforceable EU rights, as drafted? I know that EU regulators have raised concerns about that. The regulations allow a four-year period for Swiss and certain UK nationals

[Justin Madders]

who have professional qualifications, or are in the process of obtaining a qualification before the completion of the transition period, to apply for recognition under pre-exit rules, and that includes those with third-country qualifications that have been recognised or are in the process of being recognised in Switzerland at the end of the transition period. Regulators are concerned that it is not clear whether that requirement is just intended to capture third-country nationals with enforceable EU rights or EEA nationals with enforceable EU rights. I understand that the current drafting refers to third-country nationals, which appears to suggest that it applies to the former example rather than to the latter. Some regulators are calling for clarity and guidance so that they can operate within the new rules from 1 January 2021. Can the Minister confirm that such guidance will be available ahead of that date?

Although it is clear that the regulations are temporary, there is no clarity about plans to introduce sustainable, long-term arrangements for registering and licensing EEA and Swiss nationals. Will the Minister give us some further information on what plans he has beyond the current timeframe, and the four-year period provided for by the statutory instrument? I recognise that the measure is an improvement on where we were before, but clearly work will still need to be done at the end of that four-year period, so can he confirm that he will work with health and care regulators to design a bespoke system for the recognition of professional qualifications? How will he ensure that such a system puts patient safety at the forefront, applies consistent standards and is fair and transparent for all overseas-trained professionals to join the relevant professional register, regardless of where in the world they qualified?

Finally, the impact on UK professionals wishing to work in the EEA must not be forgotten. Of course, under the current rules, up until the end of 2020 the current UK qualifications will be recognised in other EEA member states under the current legal framework. But while the amendments to the Medical Act 1983 that were adopted in March 2019, and which are being tweaked by today's regulations, allow for the majority of EEA-qualified professionals to have their qualification recognised by UK regulators after the end of the transition period, those provisions are not automatically mutually reciprocated by the EU. So, after 31 December 2020, UK nationals and EEA nationals holding a UK medical qualification will be treated as third-country nationals if they seek to have their qualification recognised in an EEA state. Has the Minister had any discussions with his EU counterparts about the impact on UK professionals wishing to practise in the EU after the end of the transition period? I think he said there were some talks about mutual recognition, but can he confirm whether EU countries are intending to continue to recognise UK qualifications once that becomes a matter for the regulators in the EEA area? Does he have an estimate of how many UK professionals will be affected by that issue?

We do not oppose the regulations or what they seek to achieve. We recognise, as the Minister—and I believe every hon. Member—does, the valuable contribution to the NHS of staff from the EEA and Swiss areas.

9.41 am

Edward Argar: It is, as always, a pleasure to serve opposite the shadow Minister, who always approaches these debates in a spirit of common sense and constructive challenge; so I am grateful to him, although I am not quite sure what I should read into his reference to me as the “current” Minister, and whether he knows something that I do not. Maybe it is a reflection on the number of my predecessors that he has seen standing in this place opposite him during his tenure.

Justin Madders: I meant that the Minister is a very talented individual, and no doubt will be elevated to higher service in the not too distant future.

Edward Argar: The hon. Gentleman is very kind, but I am not sure whether his comments will help or hinder that cause—as the Whip takes note.

The hon. Gentleman is right that the statutory instrument is dry and technical but important. It represents our taking—in co-operation with the Opposition, for whose support we are grateful—a prudent series of steps to help address concerns about what will happen for those professionals from this country who work in Switzerland and EFTA and, likewise, the reciprocal rights.

The hon. Gentleman asked several questions; I will try to respond to them all. He mentioned the timing. Everyone would wish that we were able to bring measures such as this forward as soon as possible, to give those affected as much time as possible to prepare, but in the nature of things, with all the multiple strands being negotiated, these matters came to be negotiated after the 2019 SI and we have brought them forward as soon as we could following the conclusion of those treaties.

The hon. Gentleman reflected a great deal on workforce numbers, and the impact on the workforce more broadly of the decision in the referendum to leave the EU and what steps we were taking to ensure that the NHS and social care continued to have the numbers they needed to provide the extraordinary service that all those professionals perform for people. He was right to highlight a small drop in the number of registered nurses from EU and EFTA countries—although I would point out that the number of doctors from those countries has remained broadly constant since 2016. Actually, that small reduction has been more than offset by the significant increase in the number of nurses coming from outside EU and EFTA states—an increase of around 29,500. In reply to his perfectly reasonable question on what guarantees, what reassurances, I can offer about the continued supply of nurses, doctors and social care workers to our caring services, I remind him that the Government are well on target to meet their pledge of 50,000 more nurses in the NHS in the course of this Parliament. I think—I may be slightly out—we are well over 13,000 up. While I note his point, if we look at the overall nursing, social care and medical workforce in the round, any slight reduction from EU sources has been more than offset by increases from elsewhere.

The hon. Gentleman asked whether there were any other costs or barriers or assessments thereof for Swiss or EFTA nationals. None has been drawn to our attention. The regulations address one of the key things that was a risk and a barrier, but if he is aware of any specific issues, I am happy for him to raise them with me.

The hon. Gentleman's final point was on EU enforceable rights. I will endeavour to give him clarity. This answer is slightly technical, so if he feels his question is not answered fully, I am happy for him to write to me following the Committee and I will try to provide more detail. The regulations apply to both Swiss nationals with qualifying professional qualifications and to a national of a third country who has an enforceable EU right through their relationship with a Swiss national. That means, in effect, that spouses and dependants of Swiss nationals must have their health and care qualifications assessed in the same way in which a Swiss national would. There is a single exception relating to EU nationals who are spouses or dependants of particular groups. I will write to him with some of the technical points around that if he wishes, because I think he seeks a greater degree of clarity.

The hon. Gentleman also raised more broadly the long-term arrangements for the EU workforce in our health and social care sector. I would have been surprised had he not done so. My answer, which will not surprise him—I suspect it is the same one he has received from many of my predecessors—is that these are matters outwith the treaty and outwith Switzerland and EFTA. They are matters for the ongoing negotiations with the EU that we are engaging in continuously and constructively. I do not want to prejudge the outcome of those negotiations, but I hope that both sides can find a way forward to an agreement in the coming weeks.

Question put and agreed to.

9.48 am

Committee rose.

