

consultation

February 2011

Mobility of health professionals across Europe

Your views on the Recognition of Professional Qualifications Directive

Key points

- The Recognition of Professional Qualifications Directive makes it easier for professionals to register and practise in European countries other than the one in which they qualified.
- The European Commission is reviewing the Directive to see whether the existing rules and procedures can be improved and simplified.
- The NHS values the contribution of qualified professionals from other parts of Europe, but it is important for healthcare services that safety and quality are not adversely affected.

Recent high-profile cases in the UK have focused attention on concerns about the clinical competence and language skills of some healthcare professionals from other European member states. There is potential for conflict between the aims of the European single market to facilitate professional mobility by removing barriers to freedom of movement, and the desire for greater safety, quality and transparency in the provision of healthcare services.

Now you have the opportunity to tell European decision-makers your views, via the NHS European Office. A consultation issued recently by the European Commission offers you the chance to influence the future direction of European rules in this area.

This consultation paper outlines the key issues for NHS organisations, notably in their role as employers. We in the European Office are working on your behalf to ensure that the issues which concern you most are addressed in Brussels, and that your views are taken into account when the current European legislation is revised.

The current situation

Existing EU rules on professional mobility are contained in Directive 2005/36/EC on the recognition of professional qualifications ("the Directive"). This Directive aims to

facilitate the free movement of EU citizens by making it easier for professionals (including health professionals) qualified in one member state to practise their profession in another member state.



'Professional registration does not remove the need for employers to ensure, as part of the recruitment process, that the applicant has the necessary skills and competences to perform the role for which they are applying'

Healthcare professionals (doctors, dentists, nurses responsible for general care, midwives and pharmacists) who hold certain qualifications and are currently registered with a regulatory body in one member state, can register to practise in any other EU

member state without having to satisfy further tests or formalities under the Directive's 'automatic recognition' procedures.

Automatic recognition of qualifications under the Directive is about granting access to professional registration, not about suitability to undertake a particular job. Professional registration does not remove the need for employers to ensure, as part of the recruitment process, that the applicant has the necessary skills and competences to perform the role for which they are applying.

Reviewing Directive 2005/36/EC

The European Commission ("the Commission") launched a major evaluation of the Directive in March 2010, leading to the publication in October 2010 of a report, together with over 180 experience reports produced by member state bodies responsible for professional regulation.

The impetus behind this is the perception that the rules are now ripe for modernisation given the enormous expansion in the

The main provisions in Directive 2005/36/EC on the recognition of professional qualifications

- The aim of the Directive is to facilitate freedom of movement for professionals qualified in one of the European member states by ensuring their qualifications can (where appropriate) be recognised in other member states and that they can practise there.
- For five healthcare professions (doctors, dentists, nurses responsible for general care, midwives and pharmacists) recognition and registration by the 'competent authority' (regulatory body) in another member state is automatic, provided they hold a qualification which is listed in one of the Directive's annexes as meeting minimum training requirements.
- Where they do not hold a recognised qualification (for example, they hold a specialist nursing qualification) they may still be able to register with UK regulators if they have trained and qualified in the relevant profession and can provide evidence that they have practised "effectively and lawfully" for a specified minimum number of years in another member state.
- Where their qualification is not recognised, and the gap between the duration and content of their training and UK standards is too great, they can be required to make up the deficiency by undertaking "compensation measures" (a period of supervised practice or an aptitude test) before they can register.
- Professionals registered in one member state can provide services in another member state on a "temporary and occasional" basis, with the minimum of formalities, simply by completing a declaration to the relevant competent authority. The Directive allows member states to require additional documentation with the initial declaration, such as proof of nationality, evidence of qualifications and evidence of current registration in another member state. The UK has chosen to require all of these for healthcare professionals, on grounds of public safety.
- Competent authorities across the EU are obliged to collaborate and exchange information about registrants regarding disciplinary action, criminal sanctions or other "serious, specific circumstances" which may affect their pursuit of the profession. However, exchange of information is only required upon request and is subject to the member state's domestic data protection legislation.
- Migrants should "have a knowledge of languages necessary for practising the profession in the host member state", but this cannot be required as a condition for recognising their qualification, only for their subsequent pursuit of the profession.

For more information, see: http://ec.europa.eu/internal_market/qualifications/future_en.htm

number of EU member states and the complexity involved in recognising an ever-increasing number of qualifications stemming from very diverse training regimes.

The current consultation

On 7 January 2011 the Commission published a broad consultation¹ reviewing the Directive. The NHS European Office has produced a summary of the consultation, which can be found at:

www.nhsemployers.org/europe

The deadline for responses to the Commission's consultation is 15 March 2011. The NHS European Office will be coordinating a response on behalf of the NHS and would welcome contributions to this by **3 March 2011**.

Following the consultation, a final evaluation report will be published, together with a European Commission Green Paper suggesting the way forward, in autumn 2011. There will be an opportunity for the NHS to input further views at this stage.

Key issues for NHS employers:

Simplification

The Commission's paper focuses on **simplifying and speeding up recognition procedures** and makes suggestions about how this might be done. Ideas are shown below.

Developing a portable European professional card

The Commission has set up an expert group to report to it on the idea of developing portable, Europe-wide 'professional cards' which could speed up the exchange of information about a professional's

credentials. A professional could carry a card certifying their qualifications and their legal status as a professional established in a member state. The card could also carry other information.

The Commission suggests that holding such a card could be voluntary, but that the relevant authorities should be required to accept it. It asks who should issue such a card, what information it should contain and how it would be updated.

The Commission appears to envisage that the card could replace the declaration currently required by member states (including the UK) when a migrant wants to provide services on a "temporary and occasional" basis in another member state.

Do you support the idea of a European professional card? What advantages or drawbacks do you envisage? What information should it hold and how could it be reliably updated?

Making it easier for professionals to provide "temporary and occasional" services in another member state

The Directive provides for a professional who lawfully practises his or her profession in another member state to pursue this profession temporarily without having to satisfy all the checks usually required for permanent establishment. The Directive allows member states to require an annual declaration from the migrant to the regulatory body informing them of their intention to provide services. The UK has transposed this requirement into domestic legislation.

The Directive is vague about the definition of "temporary and occasional". Regulators have had to interpret this on a case by case basis.

The Commission also raises the anomalous situation of providers in one member state who provide services remotely to people or organisations in another member state but who do not need to provide a declaration because the Directive only covers situations where the professional moves physically.

The Commission would like to simplify the current regime and suggests that a declaration might not be required where the "essential part" of the service is provided online. It also suggests that either the term "temporary and occasional" be clarified, or the criteria for permanent registration be simplified, so that anyone who does not meet them would, by default, be regarded as providing services on a "temporary and occasional" basis only.

Can you suggest changes or improvements which could be made to the current rules on the provision of services on a "temporary and occasional" basis? Is it necessary to require a declaration from an incoming migrant where the core component of their service is provided remotely? Should the term "temporary or occasional" or the criteria for permanent establishment be clarified?

Improving the arrangements for compensation measures
Currently, regulatory bodies can require "compensation measures" – periods of adaptation/supervised practice in clinical settings, or

aptitude tests – for incoming migrants whose qualifications are not automatically recognised and fall short of standards (duration and/or content of training) in the host member state. The migrant cannot register until they have demonstrated they have ‘bridged the gap’ and reached the standard expected of domestic registrants.

Compensation measures can act as a deterrent to incoming professionals and discourage mobility if they are very long or burdensome. However, it is important to UK regulators to maintain the minimum standards which employers, fellow professionals and the public expect of incoming professionals.

On a practical level, it is often difficult for migrants to find suitable training courses and/or clinical placements in the UK, and for regulators to devise suitable aptitude tests. The Commission asks whether it would be helpful for competent authorities to be invited to develop Europe-wide codes of conduct on compensation measures.

Do you have experience (positive or negative) of providing placements for incoming migrants undertaking a period of adaptation? Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?

In the longer term the Commission suggests it might be possible to develop a European curriculum, based on common sets of competences, for each profession, to supplement, not replace, national training programmes.

Increasing trust and confidence in the system

The Commission acknowledges that there can be difficulties operating the current system. For automatic recognition to work well, regulators need to be able to trust that the information they receive from each other (for example, on the content of training programmes) is as reliable and up to date as possible. It asks whether the minimum training requirements outlined for each profession in the Directive need modernising, and whether, in addition to specifying duration of training programmes, the minimum requirements could also specify training outcomes (i.e. the minimum competences acquired at the end of training).

The Commission also picks up on concerns about quality and safety highlighted by regulators and asks about the areas below.

Continuing professional development (CPD)

The Commission received feedback from competent authorities (regulators) suggesting that the Directive needs updating in various ways. Currently, it contains no requirement for incoming migrants to demonstrate that they are up to date in their field of practice, as for many professions in most member states this is not required for continuing registration (their initial qualification is sufficient).

Suggestions include a provision in the Directive that a professional who has not satisfied CPD requirements (where these exist) in their own member state should not be recognised automatically in the host member state, or even that a minimum level of CPD should be obligatory across member states.

Should CPD requirements be included in a revised directive? If so, how?

Exchanging information more efficiently between competent authorities

The Directive requires regulatory bodies across Europe to cooperate and assist each other in operating the rules on professional mobility. Currently, they can request information from each other reactively on a case by case basis, for example when a migrant applies for registration and they wish to check his or her credentials. However, they cannot inform other regulators proactively where they have justified concerns about a given individual.

The consultation asks under what circumstances should such an alert be triggered by a member state without waiting for a request from another member state, in relation to health professionals.

It also asks whether the use of the Commission’s electronic Internal Market Information (IMI) system should be mandatory for healthcare professions, to speed up information exchange. Feedback from competent authorities to the Commission suggests its voluntary use has been helpful. The mandatory extension of the IMI system to health professions could include an obligation to issue alerts, in appropriate cases.

Should a mandatory proactive alert mechanism be set up for health regulatory bodies to warn each other about, for example, potentially fraudulent or dangerous professionals? If so, in what situations should it apply?

Language competence

The Directive states that migrants should “have a knowledge of

languages necessary for practising the profession in the host member state". However, language requirements should be justified and proportionate in view of the activity that the professional wishes to carry out.

This has given rise to concern in the UK where the regulatory body does not usually know precisely the kind of job the individual will be performing and it is therefore hard to know whether testing their language skills would be proportionate. In exceptional cases, where it is clear to the regulator that

the individual cannot demonstrate language competence, it may be appropriate to test at the point of registration. However, case law makes it clear that blanket testing of **all** potential registrants (for example, by making them all sit the same test, even though they may be able to demonstrate their competence in other ways) is unacceptable.

Recognition of qualifications by the regulatory body does not guarantee that the registrant has the language skills to perform a particular job.

Even if the regulator were to

test language skills, **it remains the responsibility of employers to satisfy themselves that where an individual applies for a particular job they have the necessary clinical and linguistic skills for that post** – 'fit for purpose' rather than 'fit for practice'. This raises issues where, for example, an individual goes into private practice and has no employer.

How should migrants' language skills be assessed, and by whom? Can you give examples where lack of linguistic competence has caused problems, and why was this not picked up when the person was recruited?

Help shape our response on your behalf

The NHS European Office needs you to tell us the issues which matter to you about recruiting staff from elsewhere in Europe. We will be responding to the Commission on behalf of the NHS and would like to reflect your feedback in our response. We would specifically like to know your views on the questions below.

General questions

- Have you experienced problems in employing healthcare professionals from Europe?
- If so, can you give specific examples of the kind of problem?
- Would any of the suggestions in the Commission's paper prevent or improve these problems? Or make them worse?
- Can you suggest ways in which the current arrangements could be improved?

Specific questions

- Do you support the idea of a European professional card? What advantages or drawbacks do you envisage? What information should it hold and how could it be reliably updated?
- Can you suggest changes or improvements which could be made to the current rules on the provision of services on a "temporary and occasional" basis?
- Is it necessary to require a declaration from an incoming migrant where the core component of their

service is provided remotely? Should either the term "temporary or occasional" or the criteria for permanent establishment be clarified?

- Do you have experience (positive or negative) of providing placements for incoming migrants undertaking a period of adaptation? Do you support the idea of developing Europe-wide codes of conduct on aptitude tests or adaptation periods?
- Should continuing professional development (CPD) requirements be included in a revised directive? If so, how?
- Should a mandatory proactive alert mechanism be set up for health regulatory bodies to warn each other about, for example, potentially fraudulent or dangerous professionals. If so, in what situations should it apply?
- How would you suggest migrants' language skills should be assessed, and by whom? Can you give examples where lack of linguistic competence has caused problems, and why was this not picked up when the person was recruited?

How you can input

Please email your views on the questions above to kate.ling@nhsconfed.org or complete the **online web survey** at www.nhsemployers.org/europe, by **3 March 2011**.

References

1. See: http://ec.europa.eu/internal_market/consultations/docs/2011/professional_qualifications/consultation_paper_en.pdf

The NHS European Office

The NHS European Office has been established to represent NHS organisations in England to EU decision-makers. The office is funded by the strategic health authorities and is part of the NHS Confederation. EU policy and legislation have an increasing impact on the NHS as a provider and commissioner of healthcare, as a business and as a major employer in the EU.

Our work includes:

- monitoring EU developments which have an impact on the NHS
- informing NHS organisations of EU affairs
- promoting the priorities and interests of the NHS to European institutions
- advising NHS organisations of EU funding opportunities.

To find out more about us, and how you can engage in our work to represent the NHS in Europe, visit www.nhsconfed.org/europe or contact european.office@nhsconfed.org

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