

**Health Professions Council
Education and Training committee, 5th December 2006**

2005/36/EC (Professional Qualifications Directive) - Update

Executive Summary and Recommendations

Introduction

Directive 2005/36/EC establishes rules for holders of a professional qualification in a Member State to have access to and allow the pursuit of the profession in which they are qualified in another Member State.

The following paper gives information on the aspects of the Directive that will affect our registration functions.

Decision

This paper is for information only.

Background information

Directive 2005/36/EC will come into force from 20th October 2007.

Resource implications

Not applicable.

Financial implications

Not applicable

Background papers

None

Appendices

None

Date of paper

22nd November 2006

Directive 2005/36/EC (recognition of professional qualifications)

Summary

The directive was published in September 2005. It is currently being translated into UK legislation (we anticipate the draft legislation will be available in the new year, which will greatly assist with detailed planning for the implementation). HPC must comply with the directive no later than the 20th October 2007, and this is part of the cross-departmental projects list for next financial year.

The aim of the directive is to reorganise, rationalise and harmonise all 15 rules relating to professional recognition. All existing European legislation is brought together so that the principles of recognition are standardised across all professions.

There is no impact on UK registrants but is meant to assist non-UK trained applicants for registration. The directive will mean that the HPC EEA applicant scrutiny process, from receipt of all documents, must be completed within three months. A one-month extension will be allowed only if 'absolutely necessary'.

Implementation:

- DfES is the lead department (head: Carol Rowlands).
- DoH (head: Kate Ling) works closely with the DfES and all healthcare regulators

Features:

- 1) Provision of services on a temporary and occasional basis - Articles 5-9
- 2) General system of recognition applying to an applicant whose formal qualification is from a 3rd country if the holder has been practising in a Member States that has previously recognised the qualification – Articles 3(3) & 10(g)
- 3) Derogation on compensation measures (i.e. period of adaptation or aptitude test). The compensation measures can be chosen by regulator rather than applicant – Article 14(3)
- 4) Common platforms – Article 15
- 5) Language competence – Article 53
- 6) Exchange of information between competent bodies – Article 56

1) Temporary and occasional services - Articles 5-9

Summary

This relates to the provision of services on a temporary and occasional basis by a professional who provides services on a permanent basis (established) in another Member State.

We are currently in discussions with the DfES, other regulators and EU bodies seeking further clarification on what is meant by temporary and occasional.

A person applying for temporary registration must have received a decision within a month of HPC's receipt of all relevant documentation; if no response is received from us the applicant can practise under the protected title.

Registration must be at no cost to the applicant for the duration of the service provision, therefore we cannot charge a scrutiny fee or fees for registration.

We are currently working with the Registration Managers to highlight all of the issues brought about by temporary registration and measures that we can take so that we can comply with the Directive whilst still protecting the public.

3) Derogation on compensation measures – Article 14(3)

This allows for the Member State to stipulate an adaptation period or aptitude test under Article 10(g).

4) Common Platforms - Article 15

Summary

Intended to facilitate migration between EU member states by waiving compensation measures where possible, a common platform is a set of educational criteria which make it possible to compensate for the widest range of substantial differences. It is a means of waiving compensation measures for potential registrants who meet pre-agreed criteria. These criteria could, for example, include requirements such as additional training, an adaptation period under supervised practice, an aptitude test, or a prescribed minimum level of professional practice, or a combination of these.

A common platform is a voluntary agreement between member countries, which, with EU Commission approval, will become a legal entity. The agreement is flexible and can be abrogated if necessary.

A fully qualified professional who did not satisfy the criteria of the common platform, were it to be established, could still opt to be assessed for registration under the existing rules which require the usual compensation measure, namely a period of adaptation or an aptitude test.

Listed below are the 3 stages that must be taken for a common platform to be adopted. The Committee may be interested to know that we believe the only attempt at introducing a common platform thus far was presented to the Commission by the Engineers. At this time we understand that it was dismissed by all members of the Commission.

The process set up by the directive for establishing a common platform is laid out below:

Stage 1: Inventory of national regulations

The criteria of the platform will compensate for differences between training requirements in different Member States.

A precise inventory of the existing situations in Member States is required. To do this we must ask:

- “In which Member States is the profession regulated?”
- “What level of qualification is provided or required?”
- “What are the profession’s area of activities and the content of training?”

The inventory allows for comparability between the provisions in Member States. It will be necessary for all professions to come together with those of the same professions in other Member States to decide what constitutes a more or less important component of the profession.

Stage 2: Establishing the platform

Article 15(4) states that the platform cannot be used to force national authorities to modify or harmonise national legislation.

The training level and content must be set at the level of the majority of Member States that regulate the profession.

Stage 3: Adopting the platform

Article 15(2).

- Platform to be set up by either a professional association/organisation or member state that is representative at a national and European level. This can then be presented to the European Commission. Competent Authorities are not mentioned.
- Consultation with Member States and within a panel of experts composed form members of competent national authorities.
- Submitting draft measures to the Committee established by Article 58.
- Adoption by the Committee. Legal force granted by Article 15(3); whoever meets the platform criteria cannot be asked to take compensatory measures.

Article 15(5) allows for a re-examination of the platform through an expert group if a Member State feels it is no longer applicable.

5) Language competence – Article 53

- EU Commission has reaffirmed that systematic language testing is ruled out as a condition of recognition. Confirmed by ECJ case of Wilson (Case C-506/04).

- The EU Commission is to produce a paper on the issue of language competence by the end of the year. A consultation is currently in progress. Responses are being collated by the Department of Health.

6) Exchange of information between competent bodies – Article 56

- Duty to exchange information regarding disciplinary action or criminal sanctions or serious circumstances likely to affect the ability of a person to practice their profession.
- Healthcare Professionals Crossing Borders Agreement.
- Internal Market Information System (IMI).

Documentation:

We can ask for all documents (i.e. proof of qualifications, proof of legal establishment, proof of two years professional experience if profession not regulated in home Member State).

The Executive will keep the Committee updated with further developments in this area.