

Consultation on proposed changes to the Standard of Competence (2004) and the Registration Rules (2004) to implement the Recognition of Professional Qualifications directive 2005/36/EU

Response of the Hearing Aid Council to consultation

Introduction

In August 2007, the Hearing Aid Council published a consultation document on proposed changes to the Standard of Competence (2004) and Registration Rules (2004). The proposed changes arise from the need to implement the Recognition of Professional Qualifications directive 2005/36/EU, which becomes effective on 20th October 2007. The proposed changes were suggested by the Council at its meeting on 4th July, and the consultation document was published on 1st August with a closing date of 21st September 2007. Appendix B includes a copy of the consultation document.

Responses to consultation

The Council received four responses to the consultation document. Two of these were from professional bodies, two from national training companies. All four responses broadly accepted that the proposed changes to the Standard of Competence (2004) and the Registration Rules (2004) were necessary and appropriate to implement recognition of professional qualifications directive 2005. Three of the responses (the two responses from national training companies and one from a professional body) had similar content and raised similar issues with the proposed changes. The two substantial issues raised by these respondents were:

- the proposed new text for rules 5 (c), 5(d) and 11(c) include reference to forms or documents as 'set out by the Registrar'. The respondents considered that this is a break from the remainder of the HAC Code of Trade Practice and Standard of Competence in that it gives power of determination to the Registrar rather than the Council. We suggest that the words, in each instance, are replaced with 'specified by the Council'.
- the respondents noted the proposed change to rule 16 with the addition after the word 'Registrar' of 'or appointed representative'. Respondents considered that such a change is wholly unrelated to the Directive as it is noted that CPD does not apply to migrant workers. Consequently, we believe that changes other than those related to the Directive should not form part of this proposal.

Response of the Hearing Aid Council to consultees

The Hearing Aid Council welcomes the views of stakeholders on its proposed changes to the Standard of Competence (2004) and the Registration Rules (2004).

In relation to the first point outlined above, the Hearing Aid Council does not accept that the proposed changes to Registration Rules 5 (c), 5(d) and 11(c) should be altered to read 'specified by the Council'. The proposed changes to the registration rules do not give the Registrar power to determine the requirements for registration with the Hearing Aid Council. This power lies with Secretary of State (on recommendation of the Council) as set out in its enabling legislation with respect to individuals qualified in the UK and in the directive with respect to individuals qualified outside the UK. Further, the words 'such documents as set out by the Registrar' are entirely consistent with the current regulations. For instance, the current Registration Rule 14 states: '.....details of CPD points attained in a form specified by the Registrar.' and Registration Rule 5 (b) currently states '....and shall be made on the relevant form obtainable for this purpose from the Registrar.'

In relation to the second point outlined above, the Hearing Aid Council accepts the point raised by the three respondees. The Council will not, therefore, propose this specific amendment to ministers.

Next steps

In light of the views of consultees as outlined above, the Hearing Aid Council will amend the proposed changes to the Standard of Competence (2004) and the Registration Rules (2004). A copy of the revised proposals is set out in appendix A of this document. The Council will now recommend these changes to the Secretary of State for Business, Enterprise and Regulatory Reform for his consideration. Subject to the approval of the Secretary of State, the proposed changes will become effective from 19th October 2007. The Council will publish the outcome of this consultation and of the changes to the Standard of Competence (2004) and the Registration Rules (2004).

Appendix A – proposed changes following consultation

Changes to the Standard of Competence

Add new 1(2) to read

Being qualified to practice as a hearing aid dispenser in another European Union member state, European Economic Area member state or Switzerland and accepted by the Council as the designed authority under the provisions of European directives.

Changes to Registration Rules

Add to rule 5(a) at end *No registration fee shall be payable by individuals registered on a temporary and occasional basis under the provisions of European directives.*

Delete rule 5 (c) and replace with:

An application for registration as a dispenser pursuant to section 2(4)(b) of the Act shall be accompanied by such documents as set out by the Registrar and required to demonstrate that the applicant has met the Council's Standard of Competence.

Add new rule 5 (d)

An application for registration on a temporary and occasional basis shall be accompanied by a declaration made pursuant to Article 7 and in a form set out by the Registrar.

Add to rule 6 (a) at end *No retention fee shall be payable by individuals registered on a temporary and occasional basis under the provisions of European directives.*

Add rule 11 (c)

The Registrar may remove from the Register the name of any person registered for the provision of services on a temporary and occasional basis where (a) the person has become established within the UK (b) he is subject to the decision of a competent authority in the relevant member state where he is established, which has the effect that he is no longer lawfully established in that state or he is prohibited (even on a temporary basis) from practising there or (c) he fails to provide the Council with a renewal declaration made pursuant to Article 7 and in a form set out by the Registrar.

Add to rule 14 after the word 'Dispenser' the words *(except those registered to provide services on a temporary or occasional basis)*.

Appendix B – consultation document

1st August 2007

Dear colleague

Implementing the Recognition of Professional Qualifications Directive: Consultation on proposed changes to the Standard of Competence (2004) and Registration Rules (2004)

The Recognition of Professional Qualifications directive is a major piece of European legislation, aimed at ensuring appropriately qualified and regulated professionals can work anywhere in the European Union. The directive replaces and simplifies fifteen existing directives, one of which already covers hearing aid dispensers. It also introduces new 'temporary and occasional basis' provisions, covering short and occasional provision of services in one European country by qualified individuals based in another country.

The Hearing Aid Council needs to make changes to its Standards of Competence (2004) and Registration Rules (2004) as part of the process of implementing this directive. Council members discussed this at their meeting in July 2007, and agreed to consult upon the proposed changes. The Council is not looking for views on the principles of recognising professional qualifications gained in other European states. The directive has to be implemented by 20th October and the UK Government has already put in place arrangements to ensure that the UK meets this timetable. Rather, we are looking for views on the technical aspects of the proposed changes to our regulations. Particularly, we are looking for your views on the following question:

Are the proposed changes appropriate and sufficient to implement the requirements of the Recognition of Professional Qualifications directive?

The attached report was considered and agreed by Council at its July meeting. It sets out the background in relation to the directive, the requirements it places on bodies such as the Hearing Aid Council, and what changes the Council needs to make to ensure it complies with the directive. The appendix at the end of the report sets out the proposed changes to the Standard of Competence (2004) and Registration Rules (2004).

We welcome your comments on this matter. Please submit your views to me by no later than 4 pm on Friday 21st September 2007. You can submit your views by email to chris.o'leary@thehearingaidcouncil.org.uk or by writing to me at the Hearing Aid Council, 70 St Mary Axe, London EC3A 8BD.

Yours sincerely

CHRIS O'LEARY

Director of Policy and Communication

Recognition of professional qualifications from other EU member states

Implementing directive 2005/36/EC

Part 1

Section 1 – Recommendations

Members are asked to note:

1. The obligations currently placed upon the Council as a designated body within the meaning set out in European directive 92/51/EEC and the obligation it places on the Council to receive and consider applications from professionally qualified migrants from other member states of the European Union, the European Economic Union and Switzerland for authority to practice a regulated profession or vocational activity, or for authority to use a protected title or designated letters.
2. That European directive 2005/36/EC will become effective on 20th October 2007 and will:
 - a. Replace and improve the 'general system' for considering applications outlined above; and
 - b. Introduce new obligations to consider applications from professional qualified migrants who wish to practice a regulated profession on a temporary and occasional basis.
3. The consultation process being undertaken by the Department for Education and Skills (as lead department) on the proposed European Communities (Recognition of Professional Qualifications) Regulations 2007 and attached as appendix A, and the consultation process being undertaken by the Department for Health on the proposed European Qualifications (Health and Social Care) Regulations 2007, being statutory instruments to implement the directive in the UK.
4. The guidance for designated authorities for implementing the general system issued by the Department for Education and Skills and attached as appendix B to this report.
5. The discussions at Examining Body on 18th June and Strategy Executive Committee on 21st June regarding this matter, and the excerpts from the draft minutes of these meetings attached in appendix C.

Members are recommended to:

1. Instruct the Chief Executive and Registrar to implement formal procedures for considering applications from professionally qualified migrants from EU member states and others.
2. Approve the changes to the Standard of Competence (2004) and the Registration Rules (2004) required to implement directive 2005/36/EC and attached as appendix D.
3. Instruct the Director of Policy and Communication to consult stakeholders on the technical aspects of the proposed changes to the Standard of Competence and the Registration Rules.
4. Delegate to the Chief Executive and Registrar responsibility for making any technical alterations to the proposed changes to the Standard of Competence and Registration Rules as warranted following the consultation process outlined above.
5. Instruct the Chief Executive and Registrar to seek approval from the Secretary of State in relation to the proposed changes to the Standard of Competence, following the completion of the consultation outlined above.
6. Approve the recommendation of the Chief Executive and Registrar that the Council formally registers professional qualified migrants that wish to provide hearing aid dispensing services in the UK on a temporary and occasional basis and approve the declaration required attached as appendix E.

7. Instruct the Chief Executive and Registrar to implement formal procedures for considering applications from professional qualified migrants for temporary and occasional registration as a hearing aid dispenser at no cost to the Council (as required by directive 2005/36/EC).
8. Instruct the Chief Executive and Registrar to implement changes to the registration form to ensure it complies with the requirements placed on the Council by directive 2005/36/EC.
9. Appoint the Chief Executive and Registrar as the lead officer with respect to the provision of information to the migrant about the profession, its professional rules and codes of ethics in compliance with reg 5 part 1 of the proposed European Communities (Recognition of Professional Qualifications) Regulations 2007.

Section 2 – Delivery of Council Vision and Corporate Plan

This report is brought to members to ensure the Council complies with its obligations as a designated body in relation to European directives relating to the recognition of professional qualifications. It has no direct bearing on the delivery of the Council's vision or corporate plan 2007-9.

Section 3 – Legal, financial and risk management implications

The Council is already obligated to consider applications from professional qualified migrants from relevant European states who wish to establish themselves in the UK. European law is clear on this matter: competent authorities such as the Council must start with the presumption that professionally qualified individuals should be registered.

Directive 2005/36/EC simplifies and liberalises the process for assessing and accepting such applications. It also introduces new requirements for individuals who wish to practice a profession on a temporary or occasional basis. The Hearing Aid Council, as the relevant competent authority, can only require the minimum of information and checks on individuals requesting registration for the provision of temporary or occasional professional services. The Council must do so without charge to the individual applicant.

The revised general system for migrants wishing to establish themselves in the UK and the new temporary and occasional system place additional operational and financial burdens on the Council. These implications include, but are not limited to: the costs of processing registrations, undertaking checks with other competent authorities, undertaking investigations and possible disciplinary cases. Officers will need to closely monitor the burden placed on the Council by this work, and ensure appropriate resources are in place to meet its obligations under European directives and the (currently draft) regulations.

Part 2

Section 4 – Background

Directive 2005/36/EC was adopted on 7 September 2005 and aims to consolidate and improve the rules currently regulating the recognition of professional qualifications. On 20 October 2007, this directive will replace fifteen existing directives in the field of the recognition of professional qualifications. One of the directives being replaced is directive 92/51/EEC, which currently covers the recognition of education and training for hearing aid audiologists across the European Union.

European law in this area covers a number of specific sectors (such as doctors and architects) and also provides a general system for all other regulated professions. The system applies when a member state requires a qualification in order to practise as a profession within its territory. The provisions of the Hearing Aid Council Act 1968 and of the Standard of Competence 2004 satisfy the requirements for coverage in the 1992 directive and its 2005 successor.

The new directive introduces a number of changes and improvements to the existing rules, including greater liberalisation of the provision of services, more automatic recognition of qualifications and increased flexibility in the procedures for updating the directive.

The new directive makes it much easier for a regulated professional to practise across the EU, whether on a permanent or temporary basis. The revised, single general system for recognition of professional qualifications will substantially change whether and how the Chief Executive and Registrar deems individuals as having satisfied the requirements¹ to join the register of hearing aid dispensers. The impact of these changes are outlined below.

The biggest change is the introduction of temporary and occasional rights for individuals with appropriate qualifications and/or experience to practice across national borders, with the minimum of checks and without having to pay a registration fee. Individuals that are legally established in that profession in their own member state or (where the profession is unregulated) attest that they have two years experience in the last ten years are able to provide services on a temporary and occasional basis. Such rights can be exercised regardless of whether the relevant competent authority decides to provide temporary registration services (competent authorities such as the Hearing Aid Council can decide whether to provide temporary registration in this case). Officers strongly recommend to members that the Council should introduce such temporary and occasional registration. While this places an operation and cost burden on the Council, such registration processes will make it simpler for the Council to take disciplinary action against such individuals if they breach the Council's Code of Trade Practice (2004). Members are asked to note, however, that the Council cannot require temporary or occasional registrants to complete CPD.

Of the thirty three states² covered by the terms of the directive, fourteen regulate professionals involved in the provision of hearing aids. Other than the UK, these are Austria, France, Germany, Ireland³, Italy, Liechtenstein, Luxemburg, Norway, Poland, Portugal, Spain, Sweden and Switzerland. For citizens of these states, the Council will be required to automatically register as hearing aid dispensers individuals that request registration and have a professional qualification that is similar to that required under the Council's Standard of Competence.

¹ Rule 5(a) Registration Rules 2004 requires that the Registrar notified individuals deemed as having satisfied the requirements for registration with the Council. These requirements are set out in the Standard of Competence 2004.

² EU member states, accession states such as Turkey and EEA member states.

³ Audiologists are a regulated profession and deemed by the European Commission to be an equivalent profession to hearing aid dispensers.

The introduction of the temporary and occasional registration and the implementation of changes to the general system for professional qualified migrants who wish to be established in the UK necessitate changes to our Standard of Competence and Registration Rules. Proposed changes are set out in appendix B to this report. The Council adopts competence standards under s1(3) of the Hearing Aid Council Act 1968 (as amended) and is required to seek the approval of the Secretary of State for Trade and Industry before implementing any changes to these standards. The Council adopts registration rules under s4 of the Act. It is required to consult with stakeholders on any changes to these rules and to have the changes approved by the Secretary of State.

The directive comes into force on 20th October 2007, and urgent action is therefore required to ensure that the changes outlined in appendix B can be consulted upon and implemented on time. It must be stressed that this consultation will be around the technical aspects of the proposed changes: the Council cannot undertake a consultation on the principle of temporary and occasional service provision rights or on automatic recognition of qualifications held by migrants. As such, a consultation period of two months is considered sufficient in this instance. Members are also asked to delegate to the Chief Executive and Registrar the authority to make amendments to the proposed changes, where such amendments are warranted and appropriate given the responses to consultation. This is necessary as there is not a Council meeting scheduled before the changes need to be implemented.

Appendix: Proposed changes to the Standard of Competence (2004) and Registration Rules (2004)

Add new 1(2) to read

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Changes to Registration Rules

Add to rule 5(a) at end *No registration fee shall be payable by individuals registered on a temporary and occasional basis under the provisions of European directives.*

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Add new rule 5 (d)

An application for registration on a temporary and occasional basis shall be accompanied by a declaration made pursuant to Article 7 and in a form set out by the Registrar.

Add to rule 6 (a) at end *No retention fee shall be payable by individuals registered on a temporary and occasional basis under the provisions of European directives.*

Add rule 11 (c)

The Registrar may remove from the Register the name of any person registered for the provision of services on a temporary and occasional basis where (a) the person has become established within the UK (b) he is subject to the decision of a competent authority in the relevant member state where he is established, which has the effect that he is no longer lawfully established in that state or he is prohibited (even on a temporary basis) from practicing there or (c) he fails to provide the Council with a renewal declaration made pursuant to Article 7 and in a form set out by the Registrar.

Add to rule 14 after the word 'Dispenser' the words *(except those registered to provide services on a temporary or occasional basis).*

Add to rule 16 after the word 'Registrar' the words *or appointed representative*.