

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 4794 GIBRALTAR Thursday 17th December 2020

LEGAL NOTICE NO. 454 OF 2020

EUROPEAN UNION (WITHDRAWAL) ACT 2019

EUROPEAN UNION (WITHDRAWAL AGREEMENT) ACT 2019

RECOGNITION OF PROFESSIONAL QUALIFICATIONS AND SERVICES (AMENDMENTS AND MISCELLANEOUS PROVISIONS)(EU EXIT) REGULATIONS 2020

In exercise of the powers conferred upon him by section 11 and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019 and sections 12, 14 and 25 and paragraph 1 of Schedule 1 of the European Union (Withdrawal Agreement) Act 2020, the Minister has made the following Regulations-

PART 1

Title.

1. These Regulations may be cited as the Recognition of Professional Qualifications and Services (Amendments and Miscellaneous Provisions) (EU Exit) Regulations 2020.

Commencement.

2. These Regulations come into operation on 1 January 2021.

PART 2

Amendment of the Medical and Health Act 1997.

3.(1) The Medical and Health Act 1997 is amended in accordance with this regulation.

(2) In the long title, for the words from “TO TRANSPOSE to LIMITED REGISTRATION” substitute “AND TO DEAL WITH THE CONSTITUTION OF THE MEDICAL REGISTRATION BOARD, QUALIFICATIONS AND REGISTRATION OF MEDICAL PRACTITIONERS AND OTHER HEALTHCARE PROFESSIONALS, INTERNATIONAL CO-OPERATION”.

(3) In section 2-

(a) delete the following definitions-

“Accession of Greece Act”;

“Accession of Spain and Portugal Act”;

“Accession of Austria, Finland and Sweden Act”;

“Act of Accession 2003”;

“IMI”;

“Medical Directive”;

“recognised overseas diploma”;

“visiting EEA dental practitioner entered in the list of such practitioners”;

“visiting EEA medical practitioner”;

(b) after the definition of “EEA State” insert-

““General Dental Council” means the body corporate referred to in section 1(1) of the United Kingdom’s Dentists Act 1984;

“General Medical Council” means the body corporate referred to in section 1(1) of the United Kingdom’s Medical Act 1983;

“General Pharmaceutical Council” means the body corporate referred to in article 4(1) of the United Kingdom’s Pharmacy Order 2010.”.

(c) for the definition of “Recognition Directive” substitute ““Recognition Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 1995 on the recognition of professional qualifications, as it was in force immediately before 1 January 2021;”;

(d) after the definition of “register” insert-

““relevant European State” means an EEA State or Switzerland;”;

(e) delete subsection (3);

(f) in subsection (4), delete “sections 8(4) to (10) and”.

(4) In section 8 –

(a) in subsection (1) delete “Subject to section 23,”

(b) in subsection (1)(a), for “dental register” substitute “register established by the General Dental Council”;

- (c) in subsection (1)(b), delete “(other than EEA)” and (b)
 - (d) in subsection (4), delete “Subject to section 21B”;
 - (e) in subsection (4B), delete “Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009,”;
 - (f) delete subsection (5);
 - (g) in subsection (6), delete “Provided that” to “Qualifications (Right to Practise) Act 2009.
- (5) In section 9-
- (a) in subsection (1), delete “and section 21B”;
 - (b) delete subsections (2A) and (2B);
 - (c) in subsection (3)(c) after “Schedule” insert “and has made an application for registration before 1 January 2021; or”;
 - (d) delete subsection (3A);
 - (e) in subsection 4-
 - (i) in paragraph (d) after “Recognition Directive” insert “and has made an application for registration before 1 January 2021;
 - (ii) after paragraph (d), delete “;or”
 - (iii) delete paragraph (e).
 - (f) in subsection (4B)-
 - (i) in paragraph (a), delete “or”;
 - (ii) delete paragraph (b);
 - (g) in subsection (4C), delete “Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009”;
 - (h) in subsection (5), for “national of an EEA State” substitute “person”;
 - (i) in subsection (6)-
 - (i) in paragraph (c), delete “(other than one granted in an EEA State)”;

- (ii) after paragraph (c), insert-
 - “(d) he is a person who holds a relevant European qualification within the meaning of section 21B of the United Kingdom’s Medical Act 1983, where that qualification is for the time being accepted by the General Medical Council as qualifying a person to practice as a medical practitioner in the United Kingdom.”.
 - (j) delete subsection (8);
 - (k) in subsection (9), delete paragraph (b);
 - (l) in subsection (10), delete “Except where an appeal is made pursuant to the provisions of the Qualifications (Right to Practise) Act 2009”.
- (6) In section 10-
- (a) delete subsections (1) and (3);
 - (b) in subsection (4) delete “merely because he has the acquired right specified in the Qualifications (Right to Practise) Act 2009”.
- (7) In section 11-
- (a) in the title, after “in” insert “the United Kingdom or”;
 - (b) in subsection (1)-
 - (i) after “subject to” insert “disqualification in the United Kingdom”;
 - (ii) delete “(which includes disqualification in the United Kingdom)”.
 - (c) in subsection (2) after “of” insert “the United Kingdom or the”.
- (8) Delete sections 12 and 13.
- (9) In section 21A for “Royal Pharmaceutical Society” substitute “General Pharmaceutical Council”;
- (10) Delete section 21B.
- (11) In section 22(b) delete the words from “(subject to” to the end.
- (12) Delete section 23, 23A and 24.
- (13) In section 28, delete “or section 32” on both occasions on which it appears.
- (14) In section 29(3), for “sections 30, 31 and 32” substitute “sections 30 and 31”.

(15) For section 31, substitute-

“Admission to register of Nurses, Midwives, and Health Visitors trained in countries other than Gibraltar and the United Kingdom.

31.(1) A person who wishes to be admitted to practise as a nurse, midwife or health visitor in Gibraltar and who-

- (a) proves to the satisfaction of the Board that he has elsewhere than in Gibraltar or the United Kingdom, undergone training in nursing or midwifery and the Board is satisfied that his qualification attests to a standard of proficiency comparable to that attested by a qualification leading to registration as referred to in section 30; and
- (b) satisfies the Board as to his identity and good character;

may either after examination or without examination, and upon payment of the prescribed fee, be registered in the appropriate part of the Register.

- (2) The Board shall determine procedures to assess whether a qualification awarded outside the United Kingdom or Gibraltar is of a comparable standard to a qualification mentioned in subsection (1)(a) and it shall, where it sees fit, keep a list of qualifications which are of a comparable standard which it shall keep under review.
- (3) A relevant European qualification is to be treated as a qualification as to which the Board is satisfied as set out in section 31(1)(a) (and accordingly included in any list kept under section 31(2)).
- (4) In this section, “relevant European qualification” means a qualification that falls within section 31A and has not been designated by the Nursing and Midwifery Council in the United Kingdom as not approved.
- (5) The Board shall notify the applicant in writing of its decision within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application and when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant’s right of appeal under section 45(1A).
- (6) Failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under sub- section (3B).”

(16) After section 31, insert-

“European qualifications.

- 31A.(1) Subject to the following provisions, a qualification falls within this section if it was awarded in a relevant European State and –
- (a) in relation to registration as a nurse it is listed in Annex V, point 5.2.2 of the Recognition Directive;
 - (b) in relation to registration as a midwife, it is listed in Annex V, point 5.2.2 of the Recognition Directive.
- (2) A qualification within paragraph (1)(b) falls within this section only if-
- (a) it attests to training that satisfied the conditions in paragraph (1)(a), (b) or (c) of article 41 of the Recognition Directive, and
 - (b) in the case mentioned in paragraph (1)(c) of that article, it is accompanied by a certificate of the sort described in paragraph (2) of that article.
- (3) A qualification does not fall within this section if it was awarded before the reference date, or on or after that date in respect of a course of training begun before that date.
- (4) In subsection (3), “reference date” means-
- (a) in the case of a qualification within section 31A(1)(a), the date listed in relation to the State in which the qualification was awarded in the column entitled “reference date” in Annex V, point 5.2.2 of the Recognition Directive;
 - (b) in the case of a qualification within section 31A(1)(b), the date listed in relation to the State in which the qualification was awarded in the column entitled “Reference date” in Annex V, point 5.5.2 of the Recognition Directive.
- (5) The Board shall notify the applicant in writing of its decision within three months of the date when the Board received all documents (or any remaining documents) that it needed to determine the application and when that decision is unfavourable to the applicant, of its reasons for that decision and of the applicant’s right of appeal under section 45(1A).
- (6) Failure to notify an applicant of a decision within the specified period shall be treated as a decision from which an applicant may appeal under subsection (5).”.
- (17) Delete sections 32, 33 and 34.
- (18) In section 37-
- (a) delete subsection (3);

- (b) in subsection (4) for “shall have a duty” substitute “may”.
- (19) In section 44-
- (a) delete subsection (1)(d);
 - (b) in subsection (2) for “an EEA state (including the United Kingdom)” substitute “another jurisdiction”;
 - (c) in subsection (7) for “may issue an alert under the IMI for a professional who” substitute “may notify relevant European States or the United Kingdom where a professional”.
- (20) In section 45, delete subsection (3).
- (21) In section 50, delete “and every visiting EEA medical practitioner”.
- (22) In section 51-
- (a) in subsection (1) delete “and every visiting EEA medical or dental practitioner entered in the list of such practitioners”;
 - (b) in subsection (2) delete “or was a visiting EEA medical or dental practitioner entered in the list of such practitioners.”.
- (23) In section 52, delete “or who is a visiting EEA dental practitioner entered in the list of such practitioners” and “or such a visitor”.
- (24) In section 56, delete “Subject to section 13(6).
- (25) Delete Schedule 7.
- (26) Delete Schedule 10.

PART 3

Amendment of the Qualifications (Right to Practise) Act 2009.

4.(1) The Qualifications (Right to Practise) Act 2009 is amended in accordance with this regulation.

(2) In section 2-

(a) delete the following definitions:

“adaptation period”;

“aptitude test”;

“European Credit Transfer and Accumulation System”;

“European Professional Card or EPC”;

“IMI”;

“lifelong learning”;

“manager of an undertaking”;

“overriding reasons of general interest”;

“professional experience”;

(b) after the definition of “regulated profession” insert-

““relevant European State” means an EEA State or Switzerland;”;

(c) delete subsection (3).

(3) Delete section 3.

(4) After section 3 insert-

“3A.(1) This Act does not apply to any regulated profession in relation to which, immediately before 1 January 2021-

(i) specific arrangements directly related to the recognition of professional qualifications were made in any EU Regulation, EU Directive, EU decision or EU tertiary legislation; and

(ii) the effect of those arrangements excluded the application of the Recognition Directive.”

(2) This Act does not apply to professions regulated by the Medical and Health Act 1997.”.

(5) Delete section 4(3).

(6) Delete section 5(4) and (5).

(7) In section 6-

(a) in subsection (2) for “wishes” substitute “applies for authorization”;

- (b) delete subsection (4).
- (8) Delete Part II (sections 7 to 15: European Professional Card).
- (9) Delete Part III (sections 16 to 22: freedom to provide services on a temporary basis).
- (10) For the heading to Part IV (freedom of establishment), substitute “Applications for Authorisation”.
- (11) Delete section 23.
- (12) In section 24, delete paragraph (a).
- (13) Delete section 25.
- (14) In section 26-
 - (a) for subsection (1) substitute-
 - “(1) If access to, or pursuit of, a regulated profession in Gibraltar is contingent on possession of specific qualifications, the CPC and the relevant Competent Authority must permit access to, and pursuit of, that profession to an applicant, where that applicant possesses evidence of formal qualifications required by a relevant European State, where the profession is regulated, in order to gain access to and pursue the same profession in that relevant European State.”;
 - (b) after subsection (1), insert-
 - “(1A) The requirement on the Competent Authority in subsection (1) does not apply where-
 - (a) the training the applicant has received covers substantially different matters than those covered by the evidence of formal qualifications required for the regulated profession in Gibraltar; or
 - (b) the regulated profession in Gibraltar-
 - (i) comprises one or more regulated professional activities which do not exist in the profession in the applicant’s home State; and
 - (ii) the specific training which is required by the regulated profession covers substantially different matters from those covered by the applicant’s evidence of formal qualifications; or

(c) the level of the professional qualifications of the applicant is lower than the level of the specific professional qualifications required to access and pursue the regulated profession in Gibraltar.

(1B) In subsection (1A), “substantially different matters” means matters of which knowledge, skills and competences acquired are essential for pursuing the profession and with regard to which the training received by the applicant shows significant differences in terms of duration or content from the training required in Gibraltar.”;

(c) in subsection (2) –

(i) delete “attestations of competence or”;

(ii) in paragraph (a), delete “and”;

(ii) delete paragraph (b);

(d) for subsection (3), substitute-

“(3) Nothing in subsections (1) or (1A) prevents a competent authority from exercising any other powers it may have to permit an applicant to access and pursue a regulated profession.”;

(e) delete subsections (4) and (5).

(15) Delete sections 27 to 65.

(16) In section 66-

(a) for subsection (1) substitute-

“(1) When considering an application for authorisation to pursue a regulated profession, the CPC or Competent Authority may require any information or documentation necessary to it to assess the application, including-

(a) evidence of formal qualifications, and any information necessary to determine the level and content of those qualifications;

(b) information concerning the applicant’s training to the extent necessary to determine existence of potential differences to the training requirements in Gibraltar;

(c) the applicant’s fitness to practice and professional or financial standing;

(d) the applicant’s insurance cover.”;

(b) delete subsection (2);

(c) for subsection (3)(a) substitute-

“(a) may request from the competent authority of an EEA State confirmation of the authenticity of the evidence of formal qualifications awarded in that EEA State.”;

(d) in subsection (3)(b) after “CPC” insert “and the Competent Authority”;

(e) in subsection (3)(c) for “require” substitute “request”;

(f) after subsection (3), insert -

“(3A) Where a competent authority of an EEA State does not provide the confirmation required or the verification sought by the CPC or the Competent Authority under this section before the expiry of the time limit for notifying the applicant of its decision under section 67(2), the CPC or Competent Authority may refuse the application.”;

(g) delete subsections (4) and (5);

(h) after subsection (6) insert-

“(7) The Competent Authority must keep confidential all such information received by it.”.

(17) In section 67-

(a) for the heading substitute “Decisions of CPC.”;

(b) in subsection (1) for “1 month” substitute “4 months”;

(c) subsection (2) delete “Subject to subsection (3)” and replace “the” with “The”;

(d) delete subsection (3).

(18) In section 68-

(a) in every place it occurs, for “nationals of EEA States” substitute “applicants”;

(b) delete subsection (3).

(19) In section 69(2) delete “or the issue of a EPC”.

(20) In section 70(1) for “to carry out professional services” substitute “for authorization to practise a regulated profession”.

- (21) In section 71 for “sections 18,19, 20 and” substitute “section”.
- (22) Delete section 72.
- (23) In section 73-
- (a) delete subsection (1);
 - (b) in subsection (2) -
 - (i) for “must” substitute “may”;
 - (ii) after “EEA States” insert “and the United Kingdom”;
 - (iii) for “the Data Protection Act 2004” substitute “the data protection legislation (within the meaning of section 2(1) of the Data Protection Act 2004)”;
 - (c) in subsection (3), for “must” substitute “may”;
 - (d) delete subsection (4);
 - (e) in subsection (5)-
 - (i) in paragraph (c) delete “such as on the conditions for access to regulated professions in Gibraltar”;
 - (ii) delete paragraphs (d) and (f);
 - (f) in subsection (7) after “professional body” insert “in Gibraltar”.
- (24) Delete section 74.
- (25) In section 75-
- (a) delete subsections (1)(b) and (c);
 - (b) in subsection (e), delete “18, 19,20”.
- (26) In section 76-
- (a) delete subsection (3);
 - (b) in subsection (4) for “sections 20 and” substitute “section”.
- (27) Delete sections 77(2) and (4).

- (28) Delete section 80.
- (29) Delete section 84.
- (30) For the heading “Annex I” substitute “SCHEDULE 1”.
- (31) Delete Annexes IV, V, VI and VII.

PART 4

Equal treatment and administrative cooperation

5. In Parts 4 and 5 of these Regulations -

“the 2009 Act” means the Qualifications (Right to Practise) Act 2009;

“EEA EFTA citizens’ rights agreement” means the Agreement signed at London on 2 April 2019 between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom or Great Britain and Northern Ireland on arrangements regarding citizens’ rights following the withdrawal of the United Kingdom from the European Union and the EEA Agreement

“enforceable EU right” means a right recognised and available in domestic law, immediately before 1 January 2021, by virtue of section 3(1) of the European Communities Act;

“existing contract” means a written contract which was concluded, and the performance of which started, before 1 January 2021;

“qualifying applicant” means an individual –

- (a) who is a UK or Swiss national, or a third country national who was, immediately before 1 January 2021, by virtue of any enforceable EU right entitled to be treated no less favourably than a UK or Swiss national for the purposes of access to and pursuit of a regulated profession,
- (b) who wishes to access and pursue a regulated profession in Gibraltar on a permanent basis, whether in an employed or self-employed capacity;
- (c) who has obtained a relevant qualification,
- (d) who, if that relevant qualification was obtained in a third country, has three years’ professional experience in the profession concerned in the territory of Switzerland and certified by a Swiss competent authority, and

- (e) who, if that relevant qualification is a professional qualification obtained in an EEA State, is legally established in Switzerland, unless the individual is a Swiss national;

“the Recognition Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as it had effect immediately before 1 January 2021;

“relevant applicant” means an individual-

- (a) who provides services in a regulated profession in Gibraltar on a temporary and occasional basis on the basis of an existing contract,
- (b) who, began providing, or begins to provide, the services mentioned in paragraph (a), either-
 - (i) before 1 January 2021, in an employed or self-employed capacity, or
 - (ii) on or after 1 January 2021, as an employee posted for the purpose of carrying on professional activities in Gibraltar by their employer who is established in Gibraltar or Switzerland,
- (c) who is a UK or Swiss national, or a third country national, who was, immediately before 1 January 2021, by virtue of any enforceable EU right entitled to be treated no less favourably than a UK or Swiss national for the purposes of access to and pursuit of a regulated profession,
- (d) who is legally established in Switzerland for the purpose of pursuing the same profession there, and
- (e) who, if neither the regulated profession the individual wishes to access and pursue in Gibraltar nor the education and training leading to it is regulated in Switzerland, has pursued that profession in Switzerland for at least two years during the ten years preceding the provision of services;

“relevant European State” means an EEA State or Switzerland;

“relevant qualification” means –

- (a) a professional qualification obtained in an EEA State or Switzerland before 1 January 2021;
- (b) a professional qualification started in an EEA State or Switzerland but not completed before 1 January 2021;
- (c) a third country professional qualification recognised by a competent authority in Switzerland pursuant to Article 2(2) of Directive 2005/36/EC before 1 January 2021;

- (d) a third country professional qualification for which an application for recognition pursuant to Article 2(2) of Directive 2005/36/EC has been submitted to a competent authority in Switzerland before 1 January 2021, where that application is successful;

“same profession” means the profession for which the applicant is qualified in the applicant’s home State if the activities covered are comparable;

“Swiss applicant” means a person who is-

- (a) a UK national;
- (b) a national of Switzerland, or
- (c) a third country national, who was, immediately before 1 January 2021, by virtue of an enforceable EU right entitled to be treated, for the purposes of access to and pursuit of a particular profession, no less favourably than a UK national or a national of Switzerland;

“Swiss citizens’ rights agreement” means (as modified from time to time in accordance with any provision of it) the Agreement signed at Bern on 25 February 2019 between the United Kingdom of Great Britain and Northern Ireland and the Swiss Confederation on citizens’ rights following the withdrawal of the United Kingdom from -

- (a) the European Union; and
- (b) the free movement of persons agreement,

so far as the Agreement operates for the purposes of the case where “specified date” for the purposes of that Agreement has the meaning given in Article 2(b)(ii) of that Agreement;

“Swiss recognition period” means the period of four years beginning with the day immediately after 1 January 2021;

“third country” means a country which is not an EU Member State or Switzerland;

“UK national” has the same meaning as in the Swiss citizens’ rights agreement;

“visiting practitioner transitional period” means the period of five years beginning with 1 January 2021 or, if the period is extended in accordance with Article 23(2) of the Swiss citizens’ rights agreement, that period as extended.

Equal treatment and administrative co-operation under the Swiss citizens' rights agreement.

6.(1) In dealing with a relevant applicant who provides services in Gibraltar pursuant to a relevant savings provision in relation to any matter, the competent authority must treat that person no less favourably than it would treat a local applicant providing those services in Gibraltar in relation to that matter.

(2) In this regulation, a "local applicant" means a person whose qualifications were obtained wholly within the United Kingdom or Gibraltar applying to a competent authority for authorisation to practise for the purposes of access to or pursuit of a regulated profession, or any professional lawfully pursuing that profession in Gibraltar.

(3) Where an individual is providing services on a temporary and occasional basis in Switzerland pursuant to Article 23 of the Swiss citizens' rights agreement, the appropriate competent authority in Gibraltar must co-operate with and provide the appropriate competent authority in Switzerland with any information relevant to the legality of the individual's establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature.

(4) Where an individual has made or makes an application falling within Articles 31(1) or 32(1) or (5) of the Swiss citizens' rights agreement to a competent authority in Switzerland for recognition of a professional qualification awarded or recognised by a competent authority in Gibraltar, the appropriate competent authority in Gibraltar must-

- (a) co-operate with the competent authority or contact point in Switzerland or the individual (as the case may be), and
- (b) provide information to the competent authority in Switzerland regarding disciplinary action or criminal sanctions taken, or any other serious, specific circumstances which are likely to have consequences for the pursuit of professional activities by that individual.

(4) A competent authority in Gibraltar must process information for the purposes of subregulations (2) and (3) in accordance with data protection legislation within the meaning of the Data Protection Act 2004.

Administrative cooperation under the EEA EFTA citizens' rights agreement.

7.(1) Where an individual has, before 1 January 2021, made an application falling under Article 26 of the EEA EFTA citizens' rights agreement to a competent authority in Iceland, Norway or Liechtenstein for recognition of a professional qualification obtained in Gibraltar, the appropriate competent authority in Gibraltar must-

- (a) co-operate with the competent authority or assistance centre in Iceland, Norway or Liechtenstein, or with the individual (as the case may be); and

- (b) provide information to the competent authority in Iceland, Liechtenstein or Norway regarding disciplinary action or criminal sanctions taken, or any other serious, specific circumstances which are likely to have consequences for the pursuit of professional activities by that individual.

(2) Competent authorities must process information for the purposes of subregulation (1) in accordance with data protection legislation within the meaning given in the Data Protection Act 2004.

Administrative cooperation under the withdrawal agreement and the EEA EFTA separate agreement.

8.(1) This regulation applies where an individual has, before 1 January 2021, made an application falling under Article 28 of the withdrawal agreement or Article 27 of the EEA EFTA separation agreement to a competent authority in an EEA state for recognition of a professional qualification awarded or recognised by a competent authority in Gibraltar.

(2) Where subregulation (1) applies, the competent authority in Gibraltar –

- (a) must co-operate with the competent authority or assistance centre in the EEA State, or with the individual (as the case may be), in accordance with section 5 of the 2009 Act as if it had not been amended by these Regulations;
- (b) for the purposes of paragraph (a), may exchange information for the purposes of the regulation in accordance with data protection legislation within the meaning of s 2 of the Data Protection Act 2004, and through use of the IMI procedure where appropriate, in accordance with Article 29(2) of the Withdrawal Agreement.

PART 5

Transitional and saving provision

Saving of decisions etc. taken before 1 January 2021.

9. The amendments and revocations made by these Regulations do not affect the validity of any action or decision taken or right accrued under the 2009 Act or the Medical Health Act 1997 before 1 January 2021 except as provided in these Regulations.

Pending applications under the Medical and Health Act 1997.

10. Where an application for entry in, or restoration to, any Register kept under the Medical and Health Act 1997 is received before 1 January 2021, any provision made by or under that Act continues to apply in relation to the application (including any appeal arising from it) without the amendments made by Parts 2 and 3 of these Regulations.

Applications begun before 1 January 2021 – establishment under Chapters 1 and 2 of Part IV of the 2009 Act - transitional and saving provision.

11.(1) This regulation applies where-

- (a) before 1 January 2021 an applicant has made an application to the CPC or the Competent Authority under, or relying on an entitlement under Chapters 1 and 2 of Part IV of the 2009 Act; and
- (b) the application has not been finally determined before 1 January 2021.

(2) For the purposes of subregulation (1), an application is finally determined when –

- (a) the competent authority has notified or is deemed to have notified the applicant of its decision; and
- (b) either –
 - (i) the period for appeal against that decision has expired without an appeal being made;
 - (ii) an appeal made under section 79 of the 2009 Act has been determined.

(3) The provisions of the 2009 Act continue to apply on and after 1 January 2021 as they had effect immediately before 1 January 2021, but subject to the modifications specified in subregulation (4), in relation to –

- (a) the application concerned; and
- (b) any appeal under section 79 of the 2009 Act in relation to that application.

(4) The modifications to the 2009 Act are as follows-

- (a) Gibraltar is to be treated as falling within the definition of “EEA State”;
- (b) section 5 is to be read as if -
 - (i) for subsection (4) there were substituted-

“(4) A competent authority must, using the IMI procedure, where appropriate in accordance with Article 29(2) of the withdrawal agreement-

- (a) work in close collaboration with competent authorities of other relevant European States; and

(b) provide assistance to competent authorities of other relevant European States in order to facilitate application of this Act.”.

(ii) after subsection (4) there were inserted-

“(4A) The CPC must –

(a) act as a single contact for their regulated professions;
and

(b) provide applicants with all information about the requirements, procedures and formalities they need to complete to gain access to and pursue their regulated professions.”;

(5) Section 66 is to be read as if-

(a) for “require” in subsections (1) and (3), there were substituted “request”;

(b) subsection (4) is to be ignored.

(6) Section 74 is to be ignored, save to the extent that regulation 16 of these Regulations applies.

(7) Section 79, so far as it relates to an appeal under s 74 is to be ignored, save to the extent that regulation 16 of these regulations applies.

(8) In this regulation-

“applicant” means an individual –

(a) who wishes to access and pursue a regulated profession in Gibraltar on a permanent basis, whether in an employed or self- employed capacity;

(b) who is a national of an EEA State or Switzerland or who, although not a national of such a State, is by virtue of any enforceable EU right entitled to be treated, for the purposes of access to and pursuit of a regulated profession, no less favourably than a national of such a State;

(c) whose qualifications were obtained in an EEA State or Switzerland or a third country; and

(d) who, if their qualifications were obtained in a third country, has three years’ professional experience in the profession concerned on the territory of an EEA State or Switzerland which recognised the formal qualifications obtained in the third country by permitting the applicant to pursue the profession on its territory in accordance with its rules, and certified by that State.

Swiss practitioners qualifying outside Gibraltar – saving of old law.

12. Where an application for registration in a register kept under the Medical and Health Act 1997 from a Swiss qualifying applicant is received before the end of the Swiss recognition period, any provision made by the Medical and Health Act or the 2009 Act continues to apply in relation to the application (including any appeal arising from it) without the amendments made in Parts 2 and 3 of these Regulations.

Language testing – transitional and saving provision

13.(1) Where the CPC or a Competent Authority has recognised a professional qualification-

- (a) before 1 January 2021, under the 2009 Act; or
- (b) pursuant to Part 5 of these regulations,

the provisions of the 2009 Act specified in subregulation (2) continue to apply on and after 1 January 2021 as they had effect immediately before 1 January 2021.

(2) The specified provisions are-

- (a) section 69;
- (b) section 79, so far as it relates to appeals against a decision of a competent authority under section 69; and
- (c) any other provision of the 2009 Act so far as they relate to those provisions.

Temporary and occasional provision of services – Part 3 of 2009 Act – transitional and saving provision.

14.(1) This regulation applies where, before 1 January 2021, an applicant has submitted or renewed a declaration in accordance with section 18 of the 2009 Act to the appropriate competent authority, and, on 1 January 2021, has not lost entitlement to provide services.

(2) The provisions of the Medical and Health Act 1997 relating to the provision of services on a temporary and occasional basis continue to apply on and after 1 January 2021 in relation to a relevant applicant as they had effect immediately before 1 January 2021 until the earlier of the following-

- (a) the day before that on which renewal of the declaration in accordance with section 18(1)(b) would have been required but for the modification specified in subregulation (4); or
- (b) 30 January 2021.

(3) The provisions of the 2009 Act relating to the provision of services on a temporary and occasional basis continue to apply on and after 1 January 2021 in relation to the applicant concerned, as they had effect immediately before 1 January 2021 but subject to the modifications specified in subregulation (4), until the earlier of the following-

- (a) the day before that on which renewal of the declaration in accordance with section 18(1)(b) would have been required but for the modification specified in subregulation (4); or
- (b) 30 January 2021.

(4) The modifications to the 2009 Act are as follows-

- (a) Gibraltar is to be treated as falling within the definition of “EEA State”;
- (b) section 5 is to be read as if for subsection (4), there were substituted-

“(4) A competent authority must-

- (a) work in close collaboration with competent authorities of other relevant European States; and

- (b) provide assistance to competent authorities of other relevant European States in order to facilitate application of this Act.”;

- (c) section 18 is to be read as if subsection (1)(b) was deleted;

- (d) section 21 is to be read as if –

- (i) after subsection (1), there were inserted-

“(1A) If the competent authorities of the home State fail to provide the information requested under subsection (1) within such period as may be specified in the request, the applicant will no longer be entitled to provide services in the profession that the applicant is pursuing in Gibraltar in accordance with this Part nor retain any temporary registration.”

- (ii) subsection (3) were deleted;

- (e) after section 76(5), there were inserted subsection (6)

“(6) If the applicant does not provide any certified copies requested under paragraph (2) before the expiry of the time limit for the competent authority to notify the applicant of its decision under section 67, the competent authority may refuse the application.”;

- (f) Part II and Chapter 4 of Part IV are to be ignored;
 - (g) in section 73, subsections (1) and (2) are to be read as if for “must” there were substituted “may”;
 - (h) section 74 is to be ignored, save to the extent that regulation 17 applies;
 - (i) a visiting EEA practitioner’s entitlement does not continue (or further continue) under subregulation (2) where the practitioner’s entitlement expires, or they have been convicted of a criminal offence or been guilty of serious professional misconduct.
- (5) In this regulation –

“applicant” means an individual-

- (a) who wishes to access and pursue a regulated profession in Gibraltar on a temporary and occasional basis, whether in an employed or self-employed capacity;
- (b) who is a national of an EEA State or Switzerland or who, although not a national of such a State is, by virtue of any enforceable EU right entitled to be treated, for the purposes of access to a pursuit of a regulated profession, no less favourably than a national of such a State;
- (c) whose qualifications were obtained in an EEA State or Switzerland or a third country;
- (d) who is legally established in their home State for the purpose of pursuing the same profession there; and
- (e) who, if neither than profession nor the education and training leading to it is regulated in their home State, has pursued that profession in that State for at least one year during the ten years preceding the provision of services.

Temporary and occasional provision of services - additional rights under the Swiss citizens’ rights agreement.

15.(1) This paragraph applies in relation to a relevant applicant.

(2) In this paragraph, a “relevant applicant” means an individual –

- (a) who provides services in a regulated profession in Gibraltar on a temporary and occasional basis on the basis of a written contract which was concluded, and the performance of which started, before 1 January 2021;

- (b) who began performing the services described in paragraph (a) either-
 - (i) before 1 January 2021, in an employed or self-employed capacity; or
 - (ii) on or after 1 January 2021, as an employee posted for the purpose of carrying on professional activities in Gibraltar by their employer who is established in Gibraltar or Switzerland;
- (c) who is a UK national, or a national of Switzerland, or a third country national who was, immediately before 1 January 2021, by virtue of any enforceable EU right entitled to be treated no less favourably than a national of either the UK or Switzerland, for the purpose of access to and pursuit of a regulated profession;
- (d) who is legally established in Switzerland for the purpose of pursuing the same profession there; and
- (e) who, if neither the regulated profession the individual wishes to access and pursue in Gibraltar nor the education and training leading to it is regulated in Switzerland, has pursued that profession in Switzerland for at least two years during the ten years preceding the provision of services in Gibraltar,

and “same profession” means the profession for which the applicant is qualified in his home State if the activities covered are comparable.

(3) The provisions of the Medical and Health Act 1997 relating to the provision of services on a temporary and occasional basis continue to apply on and after 1 January 2021 in relation to a relevant applicant as they had effect immediately before 1 January 2021 until the end of the period of five years beginning with 1 January 2021 subject to the provisions of regulations 18 and 19.

(4) The provisions of the 2009 Act relating to the provision of services on a temporary and occasional basis shall apply to a relevant applicant on and after 1 January 2021 until the end of the period of five years beginning with 1 January 2021 as if they had not been amended by these regulations but subject to the modifications in subregulation (5).

(5) The modifications to the 2009 Act referred to in subregulation (4) are-

- (a) in Part III, the definition of “applicant” is to be read as meaning a relevant applicant as defined in subregulation (2);
- (b) section 17 is to be read as if for “an EEA State” there were substituted “Switzerland”;
- (c) section 18 is to be read as if-
 - (i) in subsection (1) before “a person to whom this Part applies” there were inserted “from Switzerland”;

- (ii) in subsection (2)
 - (aa) before “or if there is a material change”, there were inserted, “where a person first renews the declaration following 1 January 2021,”;
 - (bb) in paragraph (b) for “an EEA State” there were substituted “Switzerland”;
 - (cc) after paragraph (g), there were inserted –
 - “(h) evidence of the written contract which was concluded, and the performance of which started, before 1 January 2021.”;
- (d) section 19 is to be read as if-
 - (i) in subsection (1)(a)-
 - (aa) for “his EEA State” there were substituted “Switzerland”;
 - (bb) for “that EEA State” there were substituted “Switzerland”;
 - (ii) in subsection (1)(b) for “his EEA State” there were substituted “Switzerland”;
 - (iii) in subsection (1)(c) for “his EEA State” in both places there were substituted “Switzerland”.
- (e) section 21 is to be read as if-
 - (i) in subsection (1), for “the applicant’s EEA State” there were substituted “Switzerland”;
 - (ii) in subsection (2) for “an EEA State” there were substituted “Switzerland”.
- (f) section 22 is to be read as if –
 - (i) for “the applicants’ EEA State” there were substituted “Switzerland”;
 - (ii) in paragraph (b)-
 - (aa) for “under the EEA State” there were substituted “in Switzerland”,
 - (bb) for “in that EEA State” there were substituted “in Switzerland”.

Alert mechanism – saving provision.

16.(1) This regulation applies where a designated competent authority has, before 1 January 2021, sent an alert under section 74 of the 2009 Act.

(2) Sections 74 and 79 of the 2009 Act continue to apply on or after 1 January 2021 as they had effect immediately before 1 January 2021, but subject to the modifications in subregulation (3), in relation to-

- (a) the decision to send the alert;
- (b) any appeal made in relation to that decision.

(3) The modifications to the 2009 Act are as follows-

- (a) section 74(1) to (6) are to be ignored;
- (b) section 74(8) is to be read as if for “qualify the alert to show that it” there were substituted “notify the Commission that the alert”;
- (c) section 74(9) is to be read as if for the words “delete” to “it”, there were substituted “notify the Commission within three days of a decision revoking the alert”;
- (d) section 79(4) is to be read as if there were substituted –

“The Professional Qualification Appeal Tribunal shall have the power to dismiss the appeal, or to allow the appeal and direct the designated competent authority to take such steps as the Appeal Tribunal thinks fit to draw the findings of the Appeal Tribunal to the attention of the European Commission.”.

Qualifications begun before 1 January 2021 – extended period for applications under the Swiss citizens’ rights agreement.

17.(1) This regulation applies in relation to a qualifying applicant.

(2) In this paragraph, a “qualifying applicant” means an individual who-

- (a) is a UK national, or a Swiss national, or a third country national who was, immediately before 1 January 2021, by virtue of any enforceable EU right entitled to be treated no less favourably than a UK national, or a Swiss national, for the purposes of access to and pursuit of a regulated profession;
- (b) wishes to access and pursue a regulated profession in Gibraltar on a permanent basis, whether in an employed or self-employed capacity;

- (c) has obtained a relevant qualification;
- (d) if that relevant qualification was obtained in a third country, has three years' professional experience in the profession concerned in the territory of Switzerland and certified by a competent authority in Switzerland; and
- (e) if that relevant qualification is a professional qualification obtained in an EEA State, is legally established in Switzerland, unless the individual is a Swiss national.

(3) In this regulation, “relevant qualification” means-

- (a) a professional qualification obtained in an EEA State or Switzerland before 1 January 2021;
- (b) a professional qualification started in an EEA State or Switzerland before 1 January 2021 but completed after 1 January 2021;
- (c) a third country professional qualification recognized by a competent authority in Switzerland pursuant to Article 2(2) of Directive 2005/36/EC before 1 January 2021;
- (d) a third country professional qualification for which an application for recognition pursuant to Article 2(2) of Directive 2005/36/EC has been submitted to a competent authority in Switzerland before 1 January 2021, where that application is successful after 1 January 2021.

(4) In this regulation –

“Directive 2005/36/EC” means Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as it had effect immediately before 1 January 2021”;

“competent authority”, “professional qualification” and “EEA state” and “third country” have the meanings in the 2009 Act as they had effect immediately before 1 January 2021.

(5) Where a qualifying applicant makes an application to a competent authority for recognition of a relevant qualification before the end of the period of four years beginning with 1 January 2021, the provisions of the 2009 Act continue to apply on and after 1 January 2021 as that Act had effect immediately before 1 January 2021 but as if references to EEA States were taken to include Switzerland.

Visiting Swiss dentists- saving of old law during Swiss recognition period.

18.(1) A Swiss visiting dentist who is lawfully established as a dentist in Switzerland, will continue to be entitled practise as a visiting practitioner under the Medical and Health Act

1997 without the amendments made by these regulations but subject to the modifications sent out in subregulation (2) during the Swiss recognition period.

(2) The modifications mentioned in subregulation (1) to Schedule 7 of the Medical and Health Act 1997 are-

(a) Schedule 7 is to be read as if there were substituted-

“1. This Schedule applies to a Swiss visiting dentist who is established in dental practice in Switzerland.

2. In this Schedule, “Swiss visiting dentist” means a visiting dentist who —

(a) is a UK national or a Swiss national; or

(b) is a third country national, who was, immediately before 1 January 2021, by virtue of an enforceable EU right entitled to be treated, for the purposes of access to and pursuit of a dental care profession, no less favourably than a UK national or a Swiss national.

3. In this Schedule—

(a) an “existing contract” means a written contract which was concluded, and performance of which started, before 1 January 2021;

(b) a “visiting practitioner” means a Swiss visiting dentist;

(c) the “home State”, in relation to a visiting practitioner, means Switzerland; and

(d) a reference to the provision of occasional dental services is a reference to the provision of dental services in Gibraltar on a temporary and occasional basis-

(i) on the basis of one or more existing contracts; and

(ii) for a period not exceeding 90 days in total in any calendar year.

4.(1) A person to whom this Schedule applies shall provide the Board with the required documents before providing any such services.

(2) The required documents are—

(a) a written declaration that—

- (i) states the practitioner's wish to provide occasional dental services,
 - (ii) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability;
 - (iii) confirms that the practitioner does not have a criminal conviction; and
 - (iv) confirms that the practitioner is not subject to a temporary or final suspension preventing practice as a dentist;
- (b) a written declaration as to whether the practitioner has the necessary knowledge of English;
 - (c) if the practitioner is a UK national or a Swiss national, proof of nationality;
 - (d) if the practitioner is not a UK national or a Swiss national, proof of the enforceable EU right by virtue of which the practitioner is a Swiss visiting dentist;
 - (e) evidence of dental qualifications; and
 - (f) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—
 - (i) that the practitioner is lawfully established in dental practice in that State, and
 - (ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising dentistry there.
- (3) A declaration under sub-paragraph (2)(a) may be supplied by any means.
- (4) In registering a visiting practitioner in the list of visiting dental practitioners on the basis of entitlement under this Schedule, the Board must enter against the practitioner's name in the list details of the qualifications of which the practitioner supplied evidence for the purposes of sub-paragraph (2)(e).
- (5) If the visiting practitioner wishes to renew their application they must provide to the Board the required renewal documents.
- (6) In relation to a visiting practitioner "the required renewal documents" are—
 - (a) a renewal declaration; and

(b) each evidence of change document (if any).

(7) In this paragraph “renewal declaration”, in relation to a visiting practitioner, means a written declaration that—

(a) contains details of the existing contract or contracts on the basis of which the occasional dental services will continue to be provided;

(b) if the practitioner is a UK national or a Swiss national, contains proof of nationality;

(c) if the practitioner is not a UK national or a Swiss national, contains proof of the enforceable EU right by virtue of which the practitioner is a Swiss visiting dentist.

(d) states the practitioner’s wish to provide occasional dental services in a further year; and

(e) contains details of the insurance cover, or other means of personal or collective protection, that the practitioner has with regard to professional liability.

(8) Where a document—

(a) is, in relation to a visiting practitioner, one of the required documents for the purposes of paragraph 5;

(b) is not a declaration under paragraph 5(2)(a); and

(c) substantiates a matter as respects which there has been a material change since the practitioner last (whether under paragraph 5 or this paragraph) supplied the then-current version of the document to the registrar,

the version of the document current when under this paragraph the practitioner supplies a renewal declaration to the registrar is an “evidence of change document” for the purposes of paragraph (5)(b).

(9) A renewal declaration supplied under this paragraph may be supplied by any means.

(10) The entitlement ceases at the end of the year that begins on the day on which the Board received the documents whose receipt gave rise to the entitlement.

(11) The visiting practitioner may apply for a renewal declaration for a further year, and the renewal application must contain details of the

existing contract or contracts on the basis of which those services will continue to be provided.

(12) An entitlement under this Schedule to provide occasional dental services ceases if—

(a) the visiting practitioner concerned becomes established in dental practice in Gibraltar; or

(b) a disqualifying decision is made against the visiting practitioner concerned;

(13) In paragraph (11) “disqualifying decision”, in relation to a visiting practitioner, means a decision made by a competent or judicial authority in the practitioner’s home State or, if different, a relevant European State in which the practitioner practises or has practised as a dental professional that has the effect that the practitioner—

(a) ceases to have a valid contract to provide occasional dental services, because the existing contract, or last of the existing contracts, on the basis of which the visiting practitioner was providing occasional dental services, is terminated or otherwise expires; or

(b) ceases in that State to be registered or otherwise officially recognised as a dental practitioner; or

(c) is prohibited (whether on a permanent or temporary basis) from practising dentistry in that State.

(14) If in the case of a visiting practitioner—

(a) the practitioner’s registration in the list of visiting dentists from relevant European States is suspended or the practitioner’s name is erased from that list; and

(b) immediately before the time when the suspension or (as the case may be) erasure takes effect, the practitioner is entitled under this Schedule to provide occasional dental services,

that entitlement ceases at that time.

(15) A Swiss visiting dentist’s entitlement does not continue (or further continue) on or after the end of the visiting practitioner transitional period.”.

Visiting Swiss nurses – saving of old law during Swiss recognition period.

19.(1) A Swiss visiting nurse who is lawfully established as a nurse in Switzerland, or a Swiss visiting midwife who is lawfully established as a midwife in Switzerland will continue to be entitled to registration in the appropriate part of the register established under the Medical and Health Act 1997 without the amendments made by these regulations (but subject to the modifications set out in subregulation (2)) during the Swiss recognition period.

(2) The modifications mentioned in subregulation (1) to Schedule 10 of the Medical and Health Act 1997 are-

(a) paragraph 2 is to be read as if there were substituted-

“2. This Schedule has effect for the purpose of enabling a Swiss visiting nurse or a Swiss visiting midwife who wishes to provide services in Gibraltar temporarily for not more than 90 days in total in any calendar year to do so without being registered in the register established under the Medical and Health Act 1997, provided that an application is made under paragraph 2A.

(b) there were inserted paragraph 2A-

“2A.(1) A Swiss visiting nurse or a Swiss visiting midwife who proposes to provide occasional nursing or midwifery services must produce to the Board the required documents.

(2) The required documents are-

(a) a written declaration-

(i) that states the practitioner’s wish to provide occasional nursing services or occasional midwifery services;

(ii) that contains details of any insurance cover or other means of person or collective protection with regard to professional liability;

(iii) as to whether the practitioner has the necessary knowledge of English;

(iv) which confirms that the practitioner does not have a criminal conviction; and

(v) which confirms that the practitioner is not subject to a temporary or final suspension preventing practice as a nurse or midwife;

(b) if the practitioner is a national of Switzerland, contains proof of nationality;

- (c) if the practitioner is not a national of Switzerland, proof of the Community right by virtue of which the practitioner is an exempt person;
- (d) evidence of qualifications in nursing or midwifery; and
- (e) a certificate (or certificates) issued by a competent authority in the practitioner's home State confirming—
 - (i) that the practitioner is lawfully established as a nurse or midwife in that State; and
 - (ii) that the practitioner is not prohibited (whether on a permanent or temporary basis) from practising as a nurse or midwife there.”.

(c) paragraph 3 is to be read as if there were substituted-

“3. In this Act “Swiss visiting nurse” and “Swiss visiting midwife” mean-

- (a) a UK national or a Swiss national; or
- (b) a third country national, who was, immediately before 1 January 2021, by virtue of an enforceable EU right entitled to be treated, for the purposes of access to and pursuit of the medical profession, no less favourably than a UK national or a Swiss national,

who provides services on the basis of an existing contract for a period not exceeding 90 days in total in any calendar year.

- (d) in every place it occurs in Schedule 10 as if for “visiting EEA nurse” or “visiting EEA nurse” there were substituted “Swiss visiting nurse” or “Swiss visiting midwife”.
- (e) paragraph 5(c) is to be read as if it were deleted;
- (f) after paragraph 5, as if there were inserted-

“6. In this Schedule-

- (a) a “visiting practitioner” means a Swiss visiting nurse or a Swiss visiting midwife;
- (b) a reference to the provision of occasional nursing or midwifery services is a reference to the provision of midwifery services in Gibraltar on a temporary and occasional basis on the basis of one or more existing contracts and for a period not exceeding 90 days in total in any calendar year.

(c) “existing contract” means a written contract which was concluded, and the performance of which started, before 1 January 2021.

7. The entitlement ceases at the end of the year that begins on the day on which the Board received the documents whose receipt gave rise to the entitlement.

8. The Swiss visiting nurse or Swiss visiting midwife may apply for a renewal declaration for a further year, and the renewal application must contain details of the existing contract or contracts on the basis of which those services will continue to be provided.

9. The Swiss visiting nurse’s or Swiss visiting midwife’s entitlement shall not continue after the end of the visiting practitioner transitional period.”.

European Professional Card.

20.(1) This regulation applies where immediately before 1 January 2021 –

- (a) a person held a valid European professional card for establishment as a nurse or pharmacist in Gibraltar, or
- (b) the CPC was in receipt of a person’s applications for such a card, the application having been transmitted to it under Article 4d(1) of the Recognition Directive.

(2) For the purposes of registration in the register under the Medical and Health Act, the person is not required to resubmit any document or evidence held by the Board which is derived from the person’s IMI file and which does not appear to the Board to have become invalid.

(3) In this regulation-

- (a) “the Recognition Directive” means Directive 2005/36/EC of the European Parliament and of the Council of 7th September 2005 on the recognition of professional qualifications as it had effect immediately before 1 January 2021;
- (b) “IMI file” means the Internal Market Information System, the online, secure messaging system developed by the European Commission.

(4) The provisions of the 2009 Act in relation to European professional cards continue to apply to a person identified in subregulation (1) as it had effect immediately before 1 January 2021.

(5) A European professional card that was issued before 1 January 2021 is to be treated as becoming invalid on the expiry of 18 months beginning with the day on which it was issued.

(6) A decision within the 2009 Act taken before 1 January 2021, or a failure to do so arising before 1 January 2021, continues to be appealable for the purposes of section 79 of the 2009 Act.

(7) In disposing of such an appeal, the powers of the appeal body are to

(a) dismiss the appeal, or

(b) allow the appeal and –

(i) direct that such steps be taken as the appeal body thinks fit to draw the findings of the appeal body to the attention of the European Commission;

(ii) direct that the person in respect of whom the decision was taken (or the failure arose) is to be treated as a person who, for the purposes of this regulation, held a valid European professional card immediately before 1 January 2021.

Further provisions relating to the Swiss citizens' rights agreement.

21.(1) In dealing with a relevant applicant (as defined in regulation 15) who provides services in Gibraltar pursuant to regulation 15, a competent authority must treat the applicant no less favourably than it would treat a local applicant applying to a competent authority for authorisation to practise a regulated profession in Gibraltar.

(2) In this regulation, a “local applicant” means a person whose qualifications were obtained wholly within the United Kingdom or Gibraltar applying to a competent authority for authorisation to practise for the purposes of access to or pursuit of a regulated profession, or any professional lawfully pursuing that profession in Gibraltar.

(4) Where an individual is providing services on a temporary and occasional basis in Switzerland pursuant to Article 23 of the Swiss citizens' rights agreement, the appropriate competent authority in Gibraltar must cooperate with and provide the appropriate competent authority in Switzerland with any information relevant to the legality of the individual's establishment and good conduct, as well as the absence of any disciplinary or criminal sanctions of a professional nature.

(5) Where an individual has made or makes an application falling within Article 31(1) or Article 32(1) or (5) of the Swiss citizens' rights agreement to a competent authority in Switzerland for recognition of a professional qualification awarded or recognised by a competent authority in Gibraltar, the appropriate competent authority in Gibraltar must cooperate with and provide information to the competent authority or contact point in Switzerland, or the individual (as the case may be).

(6) Competent authorities in Gibraltar must exchange information for the purposes of subregulations (2) and (3) in accordance with data protection legislation within the meaning of section 2 of the Data Protection Act 2004.

PART 6

CESSATION OF DIRECTLY EFFECTIVE TREATY RIGHTS.

Interpretation of this Part.

22. In this Part, “the Swiss Agreement” means the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons signed in Luxembourg on 21st June 1999.

Cessation on freedom of movement in relation to the recognition of professional qualifications.

23.(1) Any rights, powers liabilities, restrictions, remedies and procedures which-

- (a) continue by virtue of section 7 of the European Union (Withdrawal) Act 2019; and
- (b) are derived (directly or indirectly) from-
 - (i) Article 45 of the Treaty on the Functioning of the European Union;
 - (ii) Article 28 of the EEA Agreement,

so far as they relate to the recognition of professional qualifications, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

(2) In paragraph (1), “professional qualifications” has the same meaning as in Article 3(1)(b) of Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications, as it had effect immediately before 1 January 2021.

Cessation of directly effective treaty rights in relation to recognition of professional qualifications under the Swiss Agreement.

24. Any rights, powers, liabilities, obligations, restrictions, remedies and procedures which –

- (a) continue by virtue of section 7 of the European Union (Withdrawal) Act 2019; and
- (b) are derived (directly or indirectly) from Article 9 of, and Annex 3 to, the Swiss Agreement,

cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

Cessation of discrimination on the grounds of nationality.

25. The prohibitions on discrimination on the grounds of nationality which-

- (a) continue by virtue of section 7 of the European Union (Withdrawal) Act 2019; and
- (b) are derived from-
 - (i) Article 18 of the Treaty on the Functioning of the European Union;
 - (ii) Article 4 of the EEA Agreement;
 - (iii) Article 2 of the Swiss Agreement,

so far as they relate to the cessation effected by regulations 23 and 24, cease to be recognised and available in domestic law (and to be enforced, allowed and followed accordingly).

PART 7

Revocation of retained direct EU legislation.

26. The following instruments are revoked-

- (a) Commission Implementing Regulation (EU) 2015/983 of 24 June 2015 on the procedure for issuance of the European Professional Card and the application of the alert mechanism pursuant to Directive 2005/36/EC of the European Parliament and of the Council;
- (b) Commission Delegated Decision (EU) 2016/790 of 13 January 2016 amending Annex V to Directive 2005/36/EC of the European Parliament and of the Council as regards the evidence of formal qualifications and the titles of training courses;
- (c) Commission Regulation (EU) No 623/2012 of 11 July 2012 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications;
- (d) Commission Regulation (EU) 213/2011 of 3 March 2011 amending Annexes II and V to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications;
- (e) Commission Regulation (EC) No 279/2009 of 6 April 2009 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on recognition of professional qualifications;
- (f) Commission Regulation (EC) No 755/2008 of 31 July 2008 amending Annex II to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications;

- (g) Commission Regulation (EC) No 1430/2007 of 5 December 2007 amending Annexes II and III to Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications;
- (h) Commission Delegated Regulations (EU) 2019/907 of 14 March 2019 establishing a Common Training Test for ski instructors under Article 49b of Directive 2005/36/EC of the European Parliament and of the Council on the recognition of the professional qualifications;
- (i) Commission Delegated Decision (EU) 2019/608 of 16 January 2019 amending Annex V to Directive 2005/36/EC of the European Parliament and of the Council as regards the evidence of formal qualifications and titles of training courses;
- (j) Commission Delegated Decision (EU) 2017/2113 of 11 September 2017 amending Annex V to Directive 2005/36/EC of the European Parliament and of the Council as regards evidence of formal qualifications and titles of training courses.

Amendment to Annex 20 to the EEA Agreement.

27. In Annex 7 to the agreement on the European Economic Area signed at Oporto on 2nd May 1992, together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, so far as it forms part of domestic law by virtue of section 7 of the European Union (Withdrawal) Act 2019, in Part A, delete point 1b.

Dated: 10th December 2020.

P J BALBAN,
Minister for Employment.

EXPLANATORY MEMORANDUM

These Regulations are made in exercise of the powers conferred by section 11 and paragraph 1(b) of Schedule 3 of the European Union (Withdrawal) Act 2019 and sections 12, 14 and 25 and paragraph 1 of Schedule 1 of the European Union (Withdrawal Agreement) Act 2020.

Part 2 amends the Medical and Health Act 1997.

Part 3 amends the Qualifications (Right to Practise) Act 2009.

Part 4 makes provisions in relation to equal treatment and administrative cooperation under the Swiss citizens' rights agreement, the EEA EFTA citizens' rights agreement and the Withdrawal Agreement.

Part 5 makes transitional and saving provisions in relation to the Qualifications (Right to Practise) Act 2009 and the Medical and Health Act 1997, including extending rights to provide professional services and for recognition of a professional qualification in accordance with the Swiss citizens' rights agreement.

Part 6 provides that any directly effective rights in domestic law which continue by virtue of section 6 of the 2019 Act and which are derived from certain provisions on recognition of professional qualifications in the Agreement between the European Community and its Member States and the Swiss Confederation on the free movement of persons, cease. This part also provides that the prohibitions on discrimination on the grounds of nationality in the agreements listed in regulation 25 cease to be recognised so far as those prohibitions relate to the cessation of the provisions on free movement of workers and recognition of professional qualifications provided for in regulations 23 and 24.

Part 7 revokes retained direct EU legislation. Regulation 27 amends Annex 7 to the EEA agreement so far as that Annex forms part of domestic law.