

Qualifications (Right to Practise) Act 2009

Principal Act

Act. No. 2009-42	<i>Commencement (LN.2009/069)</i>	26.11.2009
	<i>Assent</i>	5.11.2009

Amending enactments	Relevant current provisions	Commencement date
LN. 2013/138	ss. 25(6), (6)(a)-(c), 47A, 54(2)(ca), Schs. 2-3, 6	1.7.2013
2016/101	Part 1 – Sch. 7	6.5.2016 ¹
2016/224	Annex V	21.11.2016
2020/454	ss. 2, (3), 3, 3A, 4(3), 5(4)-(5), 6(2), (4), 7-23, 24(a), 25, 26(1), (1A)-(1B), (2), (a)-(b), (3)-(5), 27-65, 66(1)-(2), (3)(a)-(c), (3A), (4)-(5), (7), 67(1)-(3), 68, (3), 69(2), 70(1), 71-72, 73(1)-(4), (5)(c)-(d), (f), (7), 74, 75(1)(b)-(c), (e), 76(3)-(4), 77(2), (4), 80, 84, Annex I, IV-VII	1.1.2021
2021/228	ss. 3, 3A(1)(ii)	1.1.2021

Transposing:

Directive 2005/36/EC

Directive 2013/25/EU

Directive 2013/55/EU

Decision (EU) 2016/790

¹ LN. 225/2016 – Notice of Commencement - 21 November 2016 has been appointed as the day that the Qualifications (Right to Practise) Act 2009 (Amendment) Regulations 2016 comes into operation in relation to doctors, specialised doctors, nurses, dental practitioners, specialised dental practitioners, veterinary surgeons, midwives and pharmacists.

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**SCHEDULE 1
List of professional associations or organisations fulfilling the conditions of Article 3(2)**

AN ACT TO TRANSPOSE INTO THE LAW OF GIBRALTAR DIRECTIVE 2005/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 7 SEPTEMBER 2005 ON THE RECOGNITION OF PROFESSIONAL QUALIFICATIONS AS AMENDED FROM TIME TO TIME, AND MATTERS CONNECTED THERETO.

Title.

1. This Act may be cited as the Qualifications (Right to Practise) Act 2009 and comes into operation on such day as the Minister may appoint by notice in the Gazette.

PART I**PRELIMINARY AND INTERPRETATION****Interpretation.**

2.(1) In this Act, and unless the context otherwise requires—

“Central Point of Contact” or “CPC” means the person or body appointed by the Minister by notice in the Gazette to act as the point of contact for all communications relating to this Act;

“Competent Authority” means the person or persons appointed for the purposes of performing the functions required by this Act;

“Directive” means Directive 2005/36 of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications as may be amended from time to time;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2 May 1992 as amended from time to time;

“evidence of formal qualifications” means diplomas, certificates and other evidence issued by an authority in Gibraltar or an EEA State designated pursuant to legislative, regulatory or administrative provisions of Gibraltar or that EEA State and certifying successful completion of professional training obtained mainly in Gibraltar or the EEA, and where the foregoing does not apply, evidence of formal qualifications referred to in subsection (3) is, for the purpose of this Act, evidence of formal qualifications;

“Minister” means the Minister with responsibility for Employment;

“professional qualifications” means a qualification attested by evidence of formal qualifications, an attestation of competence referred to in section 24(a) and/or professional experience;

“professional traineeship” without prejudice to sections 70(3) and (4) means, a period of professional practice carried out under supervision provided it constitutes a condition for access to a regulated profession and takes place either during or after completion of an education leading to a diploma;

“regulated education and training” means any training which is specifically geared to the pursuit of a given profession and which comprises a course or courses complemented, where appropriate, by professional training, or probationary or professional practice as determined monitored or approved under the laws, regulations or administrative provisions of Gibraltar or the EEA State concerned;

“regulated profession” means—

(a) a professional activity or group of professional activities—

(i) access to which;

(ii) the pursuit of which; or

(iii) one of the modes of pursuit of which,

is subject, directly or indirectly, and by virtue of Gibraltar law, to the possession of specific professional qualifications; or

(b) a profession where the use of a title is limited by Gibraltar law to holders of a given qualification,

and where paragraphs (a) and (b) of this definition do not apply, a profession referred to in subsection (2) is, for the purpose of this Act, a regulated profession;

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

“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 important or significant differences in terms of content from the training required in Gibraltar;

“third country” means a State which is not an EEA State;

(2) For the purposes of this Act, a profession practised by the members of an association or organisation listed in Schedule 1 must be treated as a regulated profession.

3. *Deleted*

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

Professional organisations.

4.(1) The Minister may by Order designate associations and organisations that comply with the provisions of this section and Schedule 1 shall be amended by such Order.

(2) The Minister may designate an association or organisation pursuant to subsection (1) where that association or organisation—

- (a) promotes and maintains a high standard in the professional field concerned;
- (b) awards evidence of formal qualifications to their members;
- (c) ensures that their members respect the rules of professional conduct which they prescribe; and
- (d) confers on members the right to use a title or designatory letters or to benefit from a status corresponding to those formal qualifications.

The CPC and Competent Authority.

5.(1) The Minister must by notice in the Gazette appoint-

- (a) a person or body to act as the CPC for the purposes of this Act; and
- (b) a Competent Authority for a specific regulated profession to execute the provisions of this Act in relation to that specific regulated profession and different persons may be appointed for different provisions, and this includes any person or body who had, on 18 January 2016, competence over any profession regulated by any enactment.

(2) Subject to subsection (3) the CPC must upon receiving applications by applicants, under this Act, liaise with the relevant Competent Authority for that profession to discuss and consider the application.

(3) The Competent Authority referred to in subsection (2) must endeavour to assist the CPC with any query or consideration of an application under this Act.

Effects of recognition.

6.(1) The recognition of professional qualifications pursuant to this Act allows the holder of such qualification to gain access in Gibraltar to the same profession as that for which the holder of the qualification is qualified in an EEA State in which he obtained that qualification, and to pursue it in Gibraltar under the same conditions as British nationals in Gibraltar who are qualified to practise that profession in Gibraltar.

(2) For the purposes of this Act, the profession which an applicant applies for authorization to pursue in Gibraltar must be the same as that for which he is qualified in his EEA State where the activities covered by that qualification are comparable.

(3) For the purposes of this Act, the effect of recognition must also apply to professional traineeships, but must not apply to notaries who are appointed under the Commissioners for Oaths and Public Notaries Act.

PART II

7. – 15. Deleted

PART III

16. – 22. Deleted

PART IV

APPLICATIONS FOR AUTHORISATION

CHAPTER 1

General System for the Recognition of Evidence of Training

23. Deleted

Levels of qualification.

24. For the purpose of applying conditions of recognition under section 26, the professional qualifications are grouped under the following levels–

- (a) *Deleted*
- (b) a certificate attesting to a successful completion of a secondary course either–
 - (i) general in character, supplemented by a course of study or professional training other than those referred to in paragraph (c) or by the probationary or professional practice required in addition to that course; or
 - (ii) technical or professional in character, supplemented where appropriate by a course of study or professional training as referred to in subparagraph (i), or by the probationary or professional practice required in addition to that course;
- (c) a diploma certifying successful completion of either–
 - (i) training at post-secondary level other than that referred to in paragraphs (d) and (e) of a duration of at least 1 year or of an equivalent duration on a part-time basis, one of the conditions of entry of which is, as a general rule, the successful completion of the secondary course required to obtain entry to university or higher education or the completion of equivalent school education of the second secondary level, as well as the professional training which may be required in addition to that post-secondary course; or
 - (ii) regulated education and training or, in the case of a regulated profession, vocational training with a special structure, with competences going beyond what is provided for at paragraph (b), equivalent to the level of training provided for under subparagraph (i), if such training provides a comparable professional standard and prepares the trainee for a comparable level of responsibilities and functions provided that the diploma is accompanied by a certificate from the applicants' EEA State;
- (d) a diploma certifying successful completion of training at post-secondary level of at least 3 and not more than 4 years duration, or of an equivalent duration on a part-time basis, which may in addition be expressed with an equivalent number of ECTS credits, at a university or establishment of higher education or another establishment providing the same level of training, and that the applicant has successfully completed the professional training which may be required in addition to that post-secondary course;
- (e) a diploma certifying that the holder has successfully completed a post-secondary course of at least 4 years duration, or of an equivalent duration on a part-time basis, which may in addition be expressed with an equivalent number of ECTS

credits, at a university or establishment of higher education or another establishment of equivalent level and, where appropriate, that he has successfully completed the professional training required in addition to the post-secondary course.

25. Deleted

Conditions for recognition.

26.(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.

(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.

(2) Subject to subsection (3) evidence of formal qualifications must satisfy the following conditions-

- (a) they must have been issued by a competent authority of an EEA State;
- (b) Deleted

(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.

27. – 65. *Deleted*

CHAPTER 5

Common Provisions on Establishment

Documentation and formalities.

66.(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.
- (2) *Deleted.*
- (3) In the event of duly justified doubts, the CPC–
- (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.
 - (b) where evidence of formal qualifications, as defined in this Act, has been issued by a competent authority and includes training received in whole or in part in an establishment legally established in the territory of an EEA State, the CPC and the Competent Authority must be entitled to verify with the competent authority in the EEA State of origin of the award–
 - (i) whether the training course at the establishment which gave the training has been formally certified by the educational establishment based in the EEA State of origin of the award;

- (ii) whether the evidence of formal qualifications issued is the same as that which would have been awarded if the course had been followed entirely in the EEA State of origin of the award; and
- (iii) whether the evidence of formal qualifications confers the same professional rights in the territory of the EEA State of origin of the award; and
- (c) may request confirmation from a competent authority of a relevant EEA State that the applicant is not suspended or prohibited from the pursuit of the profession as a result of serious professional misconduct or conviction of criminal offences relating to the pursuit of any of the applicant's professional activities.

(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.

(4) *Deleted*

(5) *Deleted*

(6) Documents produced to the CPC under this section must not be disclosed without the consent of the applicant, except to the relevant Competent Authority, and must at all times be handled so as to guarantee the confidentiality of the information contained therein.

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

Decisions of CPC.

67.(1) The CPC must acknowledge receipt of an application to practise a regulated profession in Gibraltar under this Act within 4 months of receipt and inform the applicant of any missing document.

(2) The procedure for examining an application for authorisation to practise a regulated profession must be completed as quickly as possible and lead to a duly substantiated decision by the CPC in any case within 3 months after the date on which the applicant's complete file was submitted.

(3) *Deleted*

(4) The decision, or failure to reach a decision within the deadline is subject to appeal under the procedure in section 79.

Use of professional titles.

68.(1) Where, under Gibraltar law, the use of a professional title relating to one of the activities of a profession covered by this Act is regulated, applicants who are authorised to practise such a profession on the basis of Part IV must use the professional title regulated under Gibraltar law, which corresponds to that profession in that EEA State, and make use of any associated initials.

(2) Where a profession is regulated in Gibraltar by an association or organisation within the meaning of this Act, applicants are not authorised to use the professional title issued by that organisation or association, or its abbreviated form—

- (a) unless they furnish proof that they are members of that association or organisation; and
- (b) where the association or organisation makes membership contingent upon certain qualifications, it may do so, only under the conditions laid down in this Act, in respect of applicants who possess professional qualifications.

PART V

DETAILED RULES FOR PURSUING THE PROFESSION

Knowledge of languages.

69.(1) The CPC and the relevant Competent Authority may request that persons benefiting from the recognition of professional qualifications under this Act have a knowledge of English necessary for practising the profession in Gibraltar and may impose controls—

- (a) in cases where the profession has patient safety implications; or
- (b) where there is serious and concrete doubt about the applicant's knowledge of English in respect of the professional activities the applicant intends to pursue.

(2) Any such controls may only be carried out after the recognition of the professional qualification.

(3) Any controls imposed must be proportionate to the activity to be pursued.

(4) A person may appeal such controls under section 79.

Recognition of professional traineeship.

70.(1) Subject to subsection (2) the CPC and the relevant Competent Authority must, when considering an application for authorization to practise a regulated profession where access is conditional on completion of a professional traineeship, recognise professional traineeships

that have been carried out in a third country or an EEA State as long as they are in accordance with the published guidelines mentioned in subsection (2).

(2) The relevant Competent Authority may impose a reasonable time limit to the duration of any traineeship which can be carried out abroad.

(3) The relevant Competent Authority must publish guidelines on the organisation and recognition of professional traineeships carried out in EEA States or in a third country, and in particular on the role of the supervisor of the professional traineeship.

(4) Recognition of a professional traineeship does not replace any requirements to pass an examination in order to gain access to the profession.

Use of academic titles.

71.(1) Without prejudice to section 68, the CPC and the relevant Competent Authority-

- (a) must ensure that the right is conferred on persons covered by this Act concerned to use academic titles conferred on the applicants' EEA State, and possibly an abbreviated form thereof, in the language of the applicants' EEA State; and
- (b) may require that title to be followed by the name and address of the establishment or examining board which awarded it.

(2) Where an academic title of the applicants' EEA State is liable to be confused in Gibraltar with a title which, in Gibraltar, requires supplementary training not acquired by the beneficiary, the CPC and the relevant Competent Authority may require the beneficiary to use the academic title of the applicants' EEA State in an appropriate form, to be laid down by the relevant Competent Authority.

72. *Deleted*

PART VI

ADMINISTRATIVE COOPERATION

Competent authorities.

73.(1) *Deleted*

(2) Subject to subsection (3) the CPC may exchange information with the competent authorities of EEA States and the United Kingdom regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under this Act, and the data protection legislation

(within the meaning of section 2(1) of the Data Protection Act 2004) applies to information exchanged pursuant to the subsection.

(3) Without prejudice to section 78 and in such circumstances, as noted in subsection (2), the CPC may examine the veracity of the circumstances and must decide on the nature and scope of the investigations which need to be carried out and must inform the competent authority of the applicants' EEA State of the conclusions which it draws from the information available to it.

(4) *Deleted*

(5) The CPC is the coordinator for the activities within Gibraltar of all provisions relating to this Act and is responsible for—

- (a) promoting uniform application of this Act in Gibraltar;
- (b) liaising with the relevant Competent Authorities;
- (c) collecting all the information which is relevant for application of this Act;
- (d) *Deleted*
- (e) exchanging information and best practice for the purpose of optimising continuous professional development;

(6) For the purpose of complying with subsection (5), the CPC may require the production of information from any Competent Authority, person or other professional representative body, authority or board in Gibraltar and of the assistance centre referred to in section 77.

(7) It must be the statutory duty of a Competent Authority, person or other professional body in Gibraltar to provide information like requests to do so, unless the provision of that information would be contrary to any other enactment or court order.

74. *Deleted*

Central online access to information.

75.(1) The CPC must make the following information available online—

- (a) a list of all regulated professions in Gibraltar including contact details of the relevant Competent Authority and the assistance centre referred to in section 77;
- (b) *Deleted*
- (c) *Deleted*

- (d) a list of regulated education and training, and training with a special structure, referred to in section 24(c)(ii);
 - (e) the requirements and procedures referred to in sections 66, 67 and 69 for the professions regulated in Gibraltar, including all related fees to be paid by citizens and documents to be submitted by citizens to the CPC;
 - (f) details on how to appeal.
- (2) The CPC must ensure that the information referred to in subsection (1) is provided in a clear and comprehensive way for users that is easily accessible remotely, by electronic means and is kept updated.
- (3) The CPC must ensure that any request for information they receive is replied to as soon as possible.

Procedures by electronic means.

76.(1) Without prejudice to subsection (2) the CPC must ensure that all requirements, procedures and formalities relating to matters covered by this Act may be easily completed, remotely and by electronic means.

(2) Subsection (1) must not prevent the CPC from requesting certified copies at a later stage in the event of justified doubts and where strictly necessary.

(3) *Deleted*

(4) The procedural time limits set out in section 67 must commence at the point when an application or any missing document has been submitted by an applicant to the CPC.

(5) Any request for certified copies referred to in subsection (2) must not be considered as a request for missing documents.

Assistance centre.

77.(1) For the purposes of this Act the CPC will also act as the assistance centre with the remit of providing citizens with assistance concerning the recognition of professional qualifications provided for in this Act.

(2) *Deleted*

(3) The Minister may appoint a subsequent body to act as assistance centre instead of or in conjunction with the CPC.

Information request powers.

78.(1) Subject to this section, the CPC may by notice in writing require a Competent Authority, person or other representative professional body to provide any relevant information with regards to an individual who is practicing a regulated profession in Gibraltar, including for the purpose of finding out if any disciplinary actions, criminal sanctions or other serious, specific circumstances are likely to have consequences as per section 73.

(2) For the purposes of a notice to be issued under subsection (1) the person whose status the CPC is enquiring into must be named.

(3) A person on whom a notice under this section is delivered to must—

(a) respond within 2 weeks with—

(i) the relevant information;

(ii) an explanation noting that the information is not in their possession;

(b) strive to assist the CPC as far as possible.

Appeal process.

79.(1) There is hereby established an appeals body to be known as the Professional Qualifications Appeal Tribunal.

(2) The Professional Qualifications Appeal Tribunal shall hear and determine any appeal made under this Act.

(3) The Professional Qualifications Appeal Tribunal shall comprise of such persons and the Minister shall appoint one of those persons to be the chairperson.

(4) The Professional Qualification Appeal Tribunal shall have the power to confirm, vary, quash or substitute a decision.

(5) The Professional Qualifications Appeal Tribunal shall establish its own procedures.

(6) Any decision arrived at by the tribunal as a result of deliberations on any matter before it, must be subject to a single further appeal on a point of law to a judge of the Supreme Court.

(7) A person who has lodged an appeal under section 45 of the Medical Health Act may not lodge a further appeal under this section.

PART VII

FINAL PROVISIONS

80. *Deleted*

Regulations.

81.(1) The Minister may, by regulations, prescribe anything requiring to be prescribed and generally do anything requiring to be done pursuant to the provisions of this Act.

(2) Without prejudice to the generality of subsection (1) the Minister may, by regulations,—

- (a) provide for applications for authorisations, registration, approvals, permits, fees, forms and offences as he may deem appropriate in order to make better provision for the execution of this Act;
- (b) make such provision as he deems appropriate in cases where a condition subject to which an authorisation, registration, approval or permit is granted has been breached, including penalties, withdrawal or suspension thereof or other sanctions.

Guidelines.

82. The Minister may prepare guidelines comprising such directions as appear to be proper for the guidance of persons responsible for executing the provisions of this Act.

Offences.

83.(1) A person who without reasonable excuse contravenes sections 14(6), 14(7), 17(3), 18(1), 18(2), 19(1), 19(2), 22, 68(1), 68(2), 69(1), 71(2), 72, 78(2) or 78(3), whether by deliberate act or omission, commits an offence.

(2) A person who is found guilty of subsection (1) shall be liable on summary conviction to a fine not exceeding twice level 5 on the standard scale, to imprisonment for a term of up to 12 months, or both.

84. *Deleted*

SCHEDULE 1**List of professional associations or organisations fulfilling the conditions of Article 3(2)**IRELAND²

1. The Institute of Chartered Accountants in Ireland³
2. The Institute of Certified Public Accountants in Ireland²
3. The Association of Certified Accountants²
4. Institution of Engineers of Ireland
5. Irish Planning Institute

UNITED KINGDOM

1. Institute of Chartered Accountants in England and Wales
2. Institute of Chartered Accountants of Scotland
3. Institute of Chartered Accountants in Ireland
4. Chartered Association of Certified Accountants
5. Chartered Institute of Loss Adjusters
6. Chartered Institute of Management Accountants
7. Institute of Chartered Secretaries and Administrators
8. Chartered Insurance Institute
9. Institute of Actuaries
10. Faculty of Actuaries
11. Chartered Institute of Bankers
12. Institute of Bankers in Scotland
13. Royal Institution of Chartered Surveyors
14. Royal Town Planning Institute
15. Chartered Society of Physiotherapy
16. Royal Society of Chemistry
17. British Psychological Society
18. Library Association
19. Institute of Chartered Foresters
20. Chartered Institute of Building
21. Engineering Council
22. Institute of Energy
23. Institution of Structural Engineers
24. Institution of Civil Engineers

² Irish nationals are also members of the following associations or organisations in the United Kingdom:
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants of Scotland
Institute of Actuaries
Faculty of Actuaries
The Chartered Institute of Management Accountants
Institute of Chartered Secretaries and Administrators
Royal Town Planning Institute
Royal Institution of Chartered Surveyors
Chartered Institute of Building.

³ Only for the activity of auditing accounts.

25. Institution of Mining Engineers
26. Institution of Mining and Metallurgy
27. Institution of Electrical Engineers
28. Institution of Gas Engineers
29. Institution of Mechanical Engineers
30. Institution of Chemical Engineers
31. Institution of Production Engineers
32. Institution of Marine Engineers
33. Royal Institution of Naval Architects
34. Royal Aeronautical Society
35. Institute of Metals
36. Chartered Institution of Building Services Engineers
37. Institute of Measurement and Control
38. British Computer Society