Royal College of Nursing

POLICY AND INTERNATIONAL DEPARTMENT

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Green Paper on Modernising the Professional Qualifications Directive (Directive 2005/36/EC)

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Background

The European Commission is currently consulting on changes to the 2005 European directive on mutual recognition of qualifications, also called directive 36[1], which includes arrangements for recognition of nursing, midwifery and other health professional qualifications across Europe and common minimum standards for nurse education.

This briefing follows an earlier RCN briefing paper in January 2011 outlining the history, content and key issues in relation the revision of the directive and an RCN response in March 2011 to the Commission's initial consultation, based on a questionnaire to RCN members. A summary of the RCN's key messages to the European Commission so far is given below.

a) The Commission should continue its important role in ensuring implementation of the directive by member states and competent authorities and access to information on processes for recognition.
b) Greater clarity and **guidance on the role of regulators and employers** in terms of ensuring language competency and understanding of cultural and organisational differences for nurses and other health professionals who seek to work in other EU member states.
c) **Piloting of European curricula** rather than legislative changes at this stage.
d) Further work on what the **costs, benefits and risks of a European Professional Card** would be as these are currently unclear.
e) **Retention of the hours/years** requirements for the length of nurse education outlined in the directive as legally enforceable requirements.
f) **Retention of the theory/practice split** in the hours.
g) Guidance on **interpreting these hours** requirements to take into account **modern teaching and learning methods**, including self-directed study.
h) Increase in the requirements from ten to **12 years of general education** in order to enter nurse education.
i) Some updating of the annex relating to the **content of education for nurses** in general care to align with modern requirements of the profession.
j) Exploration of a **limited number of competencies to add to the annex** to move towards learning outcomes and not just inputs.
k) Reference in the directive to **continuing professional development** for nurses, and the need for member states to have systems in place to ensure nurses update their skills.
l) Greater **confidential exchange of information between regulators on fitness to practise and disciplinary cases**, if the necessary groundwork is done to allow for common understanding of definitions and migrants have clear systems of appeal.

The Commission has now put forward a number of options in a Green Paper before it proposes specific legislative amendments by the end of 2011. The Commission's deadline for responses is 21 September.

The EU is keen to modernise the rules for professional mobility in time for the 20th anniversary of the single European market in 2012 and sees removing "restrictive" regulation not only as a way of combating discrimination but also as a key element in improving Europe's competitiveness.

The revised legislation is unlikely to be finally adopted by the EU until 2013, and would then be implemented in member states by 2015/16.

Green Paper – Modernising the Professional Qualifications Directive

This RCN briefing pulls out the key issues in the Green Paper and the options not previously addressed.

There is a particular focus in the Green Paper on health professionals, as they come under a more detailed automatic recognition system within the legislation underpinned by minimum standards, rather than the "general" system which covers professions which have not harmonised their training. Qualifications of "nurses in general care" (in UK adult nursing), midwives, doctors, pharmacists, dentists, veterinary surgeons and architects are covered by the harmonised automatic recognition system. Any other professional qualifications are covered by the general system, including UK children's, mental health and learning disability nursing.

The Green Paper builds on the initial responses to the European Commission in March of which at least half came from professional organisations, with a very high response from the UK. Forty percent of the responses came from the health sector.

1) New Approaches to Mobility

1.1 European Professional Card

The European Commission wants professionals to have access to a voluntary professional card, backed up by much swifter communication and cooperation between regulatory bodies across Europe through the online Internal Market Information System (IMI). They have now fleshed out their ideas on this.

The country where the qualification was acquired would issue the professional card to the individual and store any relevant documents, meaning the regulator in the country where the professional was seeking to move would no longer need to verify all the documentation again. It is hoped the process of recognition could be shortened from three months to two weeks.

The Commission thinks the card would be particularly useful for migrants wanting to register and work temporarily in another member state and could replace the current prior

declaration they need to provide to the regulator. The Commission sees the card also being useful for consumers and employers to verify that a professional is competent.

A number of pilots are being established, including with medical and nursing regulators, to see whether a card could be used for a range of professions.

The UK's Nursing and Midwifery Council and General Medical Council are sceptical about the added value of a professional card and there are still many unanswered questions about how to guard against fraud, the costs and how these will be covered and how any information on the cards could be kept up to date to ensure migrants are still eligible to practise, unless regulators all have "live registers", which they currently do not. The RCN expressed similar concerns in its initial response.

The UK health regulators would like to see greater use of the IMI electronic system instead for timely exchange of information and documentation directly between regulators.

1.2 Partial access to a Profession.

The concept of "partial access" to a profession stems from a European Court of Justice (ECJ) ruling relating to engineers and the Commission proposes inserting reference to it in the legislation, along with criteria.

The ECJ ruling was clear that partial access should only be used where the activity the professional with more limited training wants to undertake can be separated from the rest of the activities carried out by the profession. The ruling also confirmed that exceptions from granting "partial access" to a profession could be made for reasons of general interest.

The RCN and other nursing organisations have argued that partial access and recognition and registration of health professionals who are then only able to carry out specific aspects or tasks related to the nursing role is not practicable and could compromise patient safety. Any insertion in the directive would need to exclude health professions.

1.3 Common platforms for qualifications not recognised in all countries

The current EU legislation has a provision for "common platforms" to be agreed between a smaller number of EU countries than all twenty-seven member states of the European Union, which have similar qualifications and are prepared to waive adaptation periods or other compensation measures because the training is so similar. This system could be applied, for example, to nursing qualifications not covered by the automatic recognition system for nurses in general care. To date it has never been used by any profession so the European Commission is looking to change the arrangements to facilitate greater and swifter recognition between individual countries.

They are proposing that the minimum number of countries to form a common platform should be reduced from two thirds of all member states, to one third of all member states (ie. nine countries). They are also proposing that the common platforms would agree some level of common standards so that they could also have an automatic recognition system. To avoid what the Commission would see as "barriers to free movement", any standards would need to be "proportionate" and meet an "internal market" test.

The platforms would be put forward by professional associations but would also have to be backed by the member states before the Commission endorsed these platforms. The proposals are unclear about the level of harmonisation; eg. the minimum education standards that a platform would require, but do not want to impose unnecessary barriers to migrants from other countries who are not part of that platform. It is unclear whether there are health professional groups in Europe who could benefit from such a system as there seems to have been little interest to date and the Green Paper does not provide any evidence.

2) Building on Achievements

2.1 Access to Information

The Green Paper proposes that each country has a central on-line access point for professionals giving all the information and contacts needed to apply for recognition including online application process. This could either be done by building on the system that is already forseen within the directive based on National Contact Points which would need to expand their information and provide online applications or to use a system called "single points of contact" that has been developed under separate EU legislation called the "services directive". The aim of this legislation was to open up the service industry across Europe to providers in other countries. Health was excluded from this legislation because of the specific issues relating to provision of cross-border health care. Patients' rights to cross-border care have subsequently been dealt with in a separate directive recently agreed in Brussels.

2.2 Temporary Mobility

The directive contains arrangements for professionals working temporarily in another member state. Regulators can require a prior declaration with relevant documents from professionals and there is a provision in the directive to allow a prior check of qualifications where public health or consumer safety may be at risk.

The Commission is seeking to water down the arrangements for professions not regulated in all member states.

It will be important to ensure that the provisions relating to patient safety are not weakened.

2.3 Opening up the General System

Whilst the majority of nurses are covered by the automatic recognition, mental health, learning disabilities and children's nursing are covered under the general system, where qualifications are assessed individually and there is no harmonised education across Europe.

Directive 36 outlines five levels of qualification for assessing qualifications from different countries which are comparable in some way or at very different levels – in which case the mutual recognition regime does not apply. These levels (certificates, diplomas of differing duration, some required to be at higher education/university level) are not the same as a separate non-legislative agreement in Europe called the European

Qualifications Framework, which has eight levels and instead of measuring inputs, like the directive, measures outcomes. This potentially creates confusion.

The Commission is awaiting the outcome of a study looking at the two systems but in the meantime is asking whether the levels in the directive should be scrapped entirely and member states should make the assessment based on differences and similarities in the training rather than level. This means that qualifications could not be refused recognition purely because there was a big gap in the level of qualification, with potentially greater opportunities for recognition for some migrants. The Commission states that it would also give the individual regulators greater discretion.

The levels do, however, provide some kind of benchmark and it is questionable whether it is realistic for a regulator to identify a realistic adaptation period for a migrant if the differences are so great. The RCN has not yet seen the results of the study or any indication of the number of health professionals impacted by the discrepancy in levels.

If the levels are scrapped the Commission would also like to see greater onus put on competent authorities to justify any compensation measures they require (eg. adaptation periods, aptitude test) rather than solely because a migrant does not have two years' or more experience in the profession. This would be a change to the current directive and would not allow regulators to exclude professionals with qualifications not regulated in another member state purely because they did not have two years' experience of actually practising the profession. Since nursing is a regulated profession across Europe this does not apply, but could become more relevant as different types of health practitioner roles are developed.

2.4 Exploiting the Potential of the Internal Market Information system (IMI)

The IMI secure electronic system of exchange between competent authorities in different member states was established under the services directive for those professional services covered by the directive. Health was not included but the system is being used by some health regulators. The Commission is proposing that it be made mandatory for competent authorities.

The IMI system also has an alert mechanism for regulators to inform each other about services that may be a threat to health and safety. The Commission is suggesting that either this be applied to health professionals, under specific criteria, but limited to alerting a member state that a migrant might be applying to register with, if there have been fitness to practise issues (option 1), or that there should be a requirement for regulators to send alerts to all member states once a health professional no longer has the right to practise in the country where they have been registered (option 2).

The RCN has supported the introduction of an alert mechanism as long as the relevant safeguards are in place (clear understanding and explanation of different approaches to fitness to practise, and relevant appeal processes and data protection)

2.5 Language Requirements

The Green Paper acknowledges that there has been significant public debate in a few member states, (this includes the UK) about health professionals and language competency. The current directive is clear that professionals must have the necessary

language abilities to practise their profession but this does not mean that member states can systematically language test all applicants at the point of recognition. Although the regulators can require evidence of language competency from individuals if they have cause for concern, the prime responsibility lies with the employers.

The Commission is proposing two options to strengthen the current arrangements in recognition of the specific risks relating to professionals who come into direct contact with patients. One is to strengthen the wording in the Code of Conduct which advises competent authorities on the application of the directive (option 1). The other is to insert an amendment directly into the directive which would allow a one-off test of language skills before a health professional first comes into direct contact with a patient (option 2). One of the challenges with this approach will be the interpretation. The Commission is clear that "one-off" does only mean once, so either the employer or the regulator would test, with discretion left to member states. This means that if the regulator tested at point of registration the employer would not be able to test if a health professional was applying for a specific role. The other would be the interpretation of "direct contact with the patient", whether this would exclude any health professional roles and the significance for communication with other members of the health care team.

3) Modernising Automatic Recognition

3.1 Three-stage Approach

The Commission confirms that the system of harmonised standards and automatic recognition for a limited number of "sectoral" professions, which has been in place since the 1970s, has largely been a success. But it also acknowledges that some of the training requirements need to be modernised.

Rather than a full-scale review at this point the Commission is proposing to tackle different aspects of the common standards separately in three phases, identifying those aspects that require legislative changes in the main text of the directive first and proposing that later changes are dealt with through a process that would not involve the other EU institutions and give significant discretion to the Commission (delegated acts).

This means that the first phase of changes would include:

- Clarifying minimum education and training periods (eg 4,600 hours and three years for nursing, minimum 12 years' basic education to access nurse education)
- Measures that "underpin the quality of services provided by professionals", which presumably include language competency.
- Legislative changes to speed up any future detailed changes to content of education

The Commission would propose the changes by the end of 2011 and would hope to get agreement from the European Parliament and the Council of Ministers by the end of 2012.

The second phase would use the swifter process to:

- Update the education subjects listed in the annex of the directive (including content of nurse education)

- Develop sets of competences or outcome measures for the sectoral professions, as appropriate, in particular with input from the regulators.

This phase would begin in 2013 and be completed in 2014.

A third phase would look at the potential of moving away from the set training hours specified in the directive relating to health professionals to the use of the European Credit Transfer and Accumulation System (ECTS) which awards credits to learning programmes based on parameters such as student workload, learning outcomes and contact hours. The Commission is currently funding a study to look at this and would not expect any work to begin until 2014, if there was sufficient engagement from universities and professional organisations.

From an EU perspective this approach would deal with the common areas of the directive which require less detailed work first, leaving the more developmental work to be done later and with less legislative scrutiny. The danger is that the political momentum for updating the content and outcomes of nurse education could be lost. There are also concerns that the three stages impact on each other so are difficult to tackle separately (eg. competencies and ECTS). The RCN would welcome views on this.

A possible option would be to anchor the need for cooperation between the Commission, competent authorities and professional bodies on these issues in the current legislative changes to work towards a greater outcome focus for nurse education.

3.2 Increasing Confidence in Mutual Recognition

In relation to **continuing professional development**, the Green Paper asks whether those seeking recognition of their qualification under the automatic recognition system in future should have to demonstrate not only that they have the relevant qualification but that they continue to have the right to exercise their profession in their home member state. This would mean for example, that if the home member state required recent continuing professional development a competent authority in another EU member state could also require this of the migrant. It is the system already used for professionals seeking to practise temporarily in another member state.

It would also make it easier to prevent health professionals no longer authorised to practise in one member state, for other reasons, from registering in another.

As this provision would not allow regulators such as the NMC to make a requirement of all EU migrants to demonstrate continuing professional development, unless it was already a requirement in their home member state, the Commission also asks in the Green Paper whether more extensive provisions are needed in the revised directive. Members responded overwhelmingly in the RCN questionnaire that they thought CPD should be mandatory across the EU.

The Green Paper proposes clarifying in the directive that for all sectoral health professions the minimum length of training should be expressed as **4,600 hours and three years**, and not 4,600 hours or three years as is the case for some health professions. In relation to nurses and midwives the Green Paper proposes and extension of the **minimum general education from 10 years to 12 years** to be eligible to commence nursing education programmes. This would acknowledge the changing role of

the professions in tackling more complex health needs. These are two issues which the RCN supported in its initial consultation response.

The Commission is keen to ensure that it is **notified in good time about new diplomas** for health professionals which meet the automatic recognition requirements, so that graduates can take advantage of free movement. They also want a clearer process of accrediting new diplomas to ensure they do meet the minimum standards in the directive. They are proposing that there should be a named body (which may already exist) to ensure and report on national compliance when diplomas are notified to the Commission. This should happen at the point when the qualifications are accredited, not at the point when students graduate.

3.3 Third Country Qualifications

EU citizens who have acquired their qualification in a country outside the EU can use the directive for recognition of their qualifications if they move to a second EU country as long as they have already had the qualification recognised in a first EU member state and have at least three years' professional experience in that member state. However for qualifications covered under the automatic recognition system, including nurses in general care, the directive states that EU countries should not recognise qualifications unless they meet the minimum training requirements.

The Commission is seeking feedback on whether the three years' experience rule should be reduced and any other changes made, and whether this should also apply to non-EU citizens who are covered by equal treatment clauses in relation to recognition of professional qualifications.

4) Next Steps – Your Views

The RCN issued a detailed online questionnaire at the beginning of 2011 as part of the first round of European Commission consultations with interested stakeholders. The RCN's comments were submitted to the Commission in March 2011.

The June Green Paper now contains more concrete options from the European Commission and the RCN would welcome your views on the detailed questions highlighted in this briefing relating to the Green Paper.

We have highlighted the most significant questions in a short online survey and we are asking everyone to complete that survey. If this is an area in which you have a particular interest, there are some further in-depth questions which you will be invited to contribute to after completing the short survey.

Responses are welcomed by Monday 14 August 2011