

## **NMC response to the transposition of revised Mutual Recognition of Professional Qualifications (MRPQ) Directive 2005/36/EC – A consultation on the health specific amendments to the Directive**

- 1 The Nursing and Midwifery Council (NMC) is the professional regulator for nurses and midwives in the UK. We exist to protect the public. We do this by holding and controlling access to the register of qualified nurses and midwives and setting standards of education, training, conduct and performance for nurses and midwives. If an allegation is made that a registered nurse or midwife is not fit to practise, we also have a duty to investigate that allegation and, where necessary, take action to protect the public.
- 2 We welcome the opportunity to respond to this consultation by the Department of Health (the Department) on their sector specific transposition of the revised EU Directive 2005/36/EC on the recognition of professional qualifications (the Directive).
- 3 We are supportive of the principles of freedom of movement set out in the Directive and recognise the benefits that EU trained nurses and midwives bring to the UK healthcare system. However we would like to stress that our primary aim as the regulator of nurses and midwives in the UK is public protection and the safety of patients. With this in mind we would urge the Government to continually review the impact and operation of the Directive in the UK, and ensure that public safety considerations are paramount in any future revisions.
- 4 A further overall comment that we would like to make is that the introduction of the amended Directive at the same time as introducing revalidation for nurses and midwives has been challenging for us and has placed a significant impact on our policy, IT and other resources.

### **Delay to implementation**

- 5 We understand that the delay to the implementation of the Directive is outside of the Departments control. However this has been unhelpful and has caused significant confusion about which provisions we will be required to implement from 18 January 2016 and which will come later. As a result we have incurred considerable costs in seeking external legal Counsel in order to understand the consequences of this.
- 6 As a result of the delay to the implementation of the Department's Regulations there are two remaining issues which we would like to raise, these are:
  - 6.1 New appeal rights relating to the European Professional Card (EPC) and the alert mechanism, placed in Articles 37(1)(ad) and 37(1)(ae) of the Nursing and Midwifery Order (the Order) will not be in place in time. This will mean that for an interim period appeals will go to the County Court (as

per BIS Regulation 68(5)), and not to the NMC. We are concerned about the financial impact of this, as it would be a significantly more costly process than the usual process of appeals being considered by us in the first instance.

6.2 Without the proposed amendment to Rule 5(2) of the Nursing and Midwifery Council (Education, Registration and Registration Appeals) Rules 2004, it is unclear whether we will be able to consider a EPC as evidence of a qualification for admission to the Register.

7 These issues have already been raised separately with the Department and we look forward to their resolution.

### **European Professional Card**

8 The NMC has been involved in detailed discussions with the Department over the last two years and the majority of our concerns with the EPC have been resolved. We note that the current view of the Department is that the legislation set out in the draft Regulations represents the limit of what may legally be permitted as powers for competent authorities in assessing a EPC under the vires of the Directive. However we would like to raise one outstanding issue which we feel remains a public protection risk.

### **Temporary and occasional service provision**

9 Applicants' applying for a EPC to practice on a temporary and occasional basis who benefit from automatic recognition will have their EPC issued by their home member state. Essentially, this means that the applicants home competent authority will authorise them to practise in the UK and not the NMC. As a matter of principle we believe that, as the UK competent authority, we should be in a position to be able to authorise the practise in the UK of all EU trained migrants. Although we recognise that the Directive gives such individuals specific rights, we are very clear that it should be the UK competent authority that authorises an individual to practise and feel that this route to registration holds a significant risk to public protection.

10 We note the recent comments by the European Commission that receiving competent authorities will be able to raise concerns about material inaccuracies in relation to EPCs issued by other Member States. We do believe that this goes some way towards addressing our concerns. Nevertheless, we remain concerned that the EPC temporary and occasional automatic recognition route remains a potential risk to public protection.

11 We have been clear that the temporary and occasional application route must only be used by those who will be genuinely undertaking temporary and occasional service provision, and not those who are seeking full time jobs in the UK. We would like to seek clarification on whether the Department or the European Commission will be undertaking their own monitoring of the numbers applying for an EPC on a temporary and occasional basis.

## **Alert mechanism**

- 12 We welcome the Department's approach to implementing the alert mechanism and, due to the differing nature of the nine healthcare regulators' legislation, its approach of allowing regulators to exercise some discretion on when to send alerts.
- 13 In collaboration with the other healthcare regulators, we have produced a set of guiding principles that form the basis of the decisions for when we will be sending an alert. These principles, which we have shared with the Department and European nursing competent authorities, support the intent of the Directive on sending an alert when the ability of a nurse or midwife to practise is restricted or prohibited, even temporarily.

## **Minimum standards for nursing and midwifery education**

- 14 We agree with the Department's position that the entry requirements into training for nurses responsible for general care (adult nurse) should be 12 years of general education. We also agree with the Department's support for degree level nursing and reiteration that there is no intention to move away from this.
- 15 We would however like to point out that the consultation document fails to mention one of the key changes to midwifery education. Article 41(1) of the amended Directive makes a new provision for the entry requirements to direct entry midwifery programmes, introducing a minimum number of hours for a programme to consist of. It does the same for the shorter 18 month programme. We would like to raise the issue of this shortened training programme of 18 months, which must consist of a minimum of 3000 hours.
- 16 Standard 10 of the NMC's *Standards for pre-registration midwifery education* states that 'the length of the pre-registration midwifery programme of education shall not be less than 18 months (equivalent to 78 weeks full time) or an equivalent pro-rata part-time period'. The Standard states that the 78 weeks includes any annual leave as part of the programme. We believe that it may be challenging for providers to include a full 3000 hours in an 18 month programme, without increasing the number of teaching hours per week. This may result in providers being required to increase the length of their shortened programmes, which is likely to increase the running costs and potentially reduce their attractiveness to commissioners.

## **Healthcare specific guidance**

- 17 The Department has provided guidance for previous iterations of the Directive and we would welcome a new guidance document on how the amended Directive should be applied within the context of the healthcare professions.
- 18 We have found the Department's guidance to be useful, especially when dealing with challenges, and we would welcome updated general guidance on the following issues:
  - 18.1 Consideration of automatic recognition cases;

- 18.2 Consideration of acquired rights cases; and
- 18.3 Applications for registering on a temporary and occasional basis;
- 19 In addition, we would welcome detailed guidance on the following areas:
  - 19.1 EPC – Outlining that regulators have a role to play after the issuance of an EPC, that applicants must contact competent authorities if they wish to practice and that once practicing they are subject to the Code and our fitness to practice arrangements.
  - 19.2 Temporary and occasional service provision – Specific guidance on how to handle temporary and occasional applications for professions with health and safety concerns would be welcomed. Specifically, as we are unable to undertake our usual regulatory checks for these applicants (eg request evidence of language, proof of PII and health and character references), we would like the Department to clarify what controls we as the competent authority are allowed to place on this group once they have been accepted onto the register.
  - 19.3 Partial access – Guidance on how we should handle applications for partial access to the register.

### **Monetary impacts**

- 20 The monetary impacts of the introduction of the EPC and alert mechanism are still unknown. We are unsure of the volume of applications that we will receive for the EPC and the length of time that it will take for our operational teams to assess these applications. However, we believe that handling applications for the EPC is likely to increase our administrative costs, especially in relation to outgoing cases.
- 21 Our concerns over the monetary impact of the alert mechanism are primarily with handling incoming alerts. For all alerts that we receive, for reasons of public protection, we will be checking that the individual is not on our register or currently applying for registration. We are unsure on the volume of alerts that we will be receiving, however we expect the number to be high and this is likely to increase the administrative burden placed upon us.
- 22 When handling new applications for the recognition of qualification and registration we will be confirming via IMI that the individual concerned does not have any active alerts against their name. While we fully approve of these additional regulatory checks that we are able to undertake, this is likely to increase the length of time it takes to handle applications and thus increase the administrative costs incurred.