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Claire Baker
Economy and Fair Work Committee
The Scottish Parliament
Edinburgh
EH99 1SP

30 October 2023

Dear Claire

Regulations under the Professional Qualifications Act 2022 to implement the Recognition of Professional Qualifications provisions in the EEA EFTA Free Trade Agreement

EU EXIT LEGISLATION – PROTOCOL WITH SCOTTISH PARLIAMENT

I am writing in regard to The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023, which are being made by the Secretary of State for Business & Trade under the Professional Qualification Act 2022 (PQ Act) to implement the Recognition of Professional Qualifications (RPQ) provisions of the EEA EFTA Free Trade Agreement (FTA).

Normally, SI protocol 2 would not apply in this case as, disappointingly, Scottish Ministers consent for the regulations has not been sought despite affecting devolved areas of competence. However, in the spirit of the protocol, I thought it would be useful to provide the Committee with an overview of the powers being used by UK Ministers, and the Scottish Ministers' views on the UK Government approach.

The regulations the Secretary of State is making under the PQ Act will implement the specific terms of the FTA. It will require authorities, such as professional regulators, to assess and recognise professional qualifications obtained in Norway, Iceland and Liechtenstein in line with the requirements of the FTA. In doing so, this will both revoke an interim system for recognition and implement the RPQ chapter of the FTA. It will do so in both reserved and devolved policy areas.

You will remember that the PQ Act was passed in breach of the Sewel convention: both the Scottish Parliament and the Welsh Senedd withheld legislative consent for the Act. This was primarily due to the inclusion of concurrent powers allowing UK Ministers to act in devolved areas without seeking the consent of Devolved Ministers.

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This Statutory Instrument (SI) is the first exercise of those powers under the PQ Act. Despite our requests for the UK-wide SI only to be made with the consent of Scottish Ministers, UK Ministers did not seek my consent. This is despite the SI placing requirements on professional regulators in devolved areas. I am sure you will agree this sets a worrying precedent for future uses of such powers. I would note that had my consent been sought, it is likely in this case that I would have been positively disposed to grant it, given the common policy goals. This makes this situation all the more disappointing.

As part of the PQ Act, The UK Government was required to consult Scottish Ministers. [The report on this consultation has been published](#) and contains a summary of the comments that Scottish Ministers provided. I am content that the report reflects the Scottish Government's comments.

As per the spirit of the Protocol, I attach further background to the regulations.

As provided for by the Scotland Act 1998, compliance with aspects of international agreements that fall within devolved competence is properly for the Scottish Parliament and Scottish Government. My view is that it is vital that the Scottish Parliament retains oversight of this devolved policy area and therefore I am writing to you to ensure the committee is appropriately sighted on the actions of the UK Government. If you have any questions about the approach or the regulations, please contact the Secretary of State for Business and Trade.

I am also copying this letter to Stuart McMillan, Convenor of the Delegated Powers and Law Reform Committee and Clare Adamson, Convenor of the Constitution, Europe, External Affairs and Culture Committee.

Yours sincerely



RICHARD LOCHHEAD

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NOTIFICATION TO THE SCOTTISH PARLIAMENT

Name of the SI(s) (if known) or a title describing the policy area:

Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023

Is the notification Type 1 or Type 2 :

Neither. I have notified the committee so it is aware of that the UK Government is using powers to make regulations in devolved areas without the consent of Scottish Ministers.

A brief overview of the SI:

The draft instrument was laid before The Houses of Parliament on 17 October 2023 and is [available on the UK Government website](#).

The PQ Act revoked the EU-derived interim system for RPQ. The interim system will be revoked in a way that protects the UK's existing international commitments and international obligations.

In July 2021, the UK signed the Free Trade Agreement with Norway, Iceland and Liechtenstein. These countries are members of both the European Economic Area (EEA) and the European Free Trade Association (EFTA) so are collectively referred to as the 'EEA EFTA states'. The EEA EFTA FTA provides for an RPQ system and will ensure that UK professionals seeking to practise a regulated profession in one of the EEA EFTA states can access a clear process to have their professional qualifications recognised, and vice versa.

The FTA places an obligation on the UK and EEA EFTA states to put in place necessary measures and require its 'relevant authorities' to operate an RPQ system. The UK is required to use best endeavours to "adopt, where applicable and maintain the necessary measures" that require regulators to deliver the RPQ system by 1 December 2023.

The UK Government's approach is to revoke the interim system and implement the RPQ chapter of the FTA at the same time and on a UK-wide basis. It states that this will ensure that regulators are only required to make one set of changes.

When the UK was an EU member, RPQ was an area of competence of the EU. The Scottish Government assessment is that these regulations are relevant to maintaining alignment with the EU because this allows for the mutual recognition of professional qualifications across the EEA.

A summary of affected devolved professions is available in appendix 1. You will note in our response to the UK Government consultation that the Scottish Government did not seek technical amendments to the UK Governments proposed legislation. However, it noted a requirement for a technical SSI to go through the Scottish Parliament to make small amendments to devolved legislation. The Animal Welfare and Food Safety (International Professional Qualification Recognition Agreement

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Implementation) (Miscellaneous Amendment) (Scotland) Regulations 2023 is due to be laid in the Scottish Parliament on 2 November 2023 and comes into force on 1 December 2023. This SSI will amend legislation relating to individuals who may carry out animal slaughter or act as a food examiner in Scotland for the purpose of, and in connection with, implementing provisions relating to the recognition of professional qualifications between the EFTA states and the United Kingdom.

Details of the provisions that Scottish Ministers are being asked to consent to:

Scottish Ministers were not asked to consent to the use of these powers in devolved areas.

Does the SI relate to a common framework or other scheme?

No.

Summary of stakeholder engagement/consultation

A summary of the consultation undertaken by the Scottish Government is in appendix 2. Note this was in addition to the consultation undertaken by the UK Government.

A note of other impact assessments, (if available)

N/A

Summary of reasons for Scottish Ministers' proposing to consent to UK Ministers legislation

Scottish Ministers were not asked to consent to the use of these powers in devolved areas.

Intended laying date (if known) of instruments likely to arise

The instrument was laid on 17 October 2023

If the Scottish Parliament does not have 28 days to scrutinise Scottish Minister's proposal to consent, why not?

Scottish Ministers were not asked to consent to the use of these powers in devolved areas.

Information about any time dependency associated with the proposal:

The SI will be in force on 1 December 2023.

Are there any broader governance issues in relation to this proposal, and how will these be regulated and monitored post-withdrawal?

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Yes. The PQ Act was passed in breach of the Sewel convention. On the recommendation of their respective Ministers, both the Scottish Parliament and the Welsh Senedd withheld legislative consent for the Act.

This SI is the first exercise of powers under the PQ Act. Despite Scottish Ministers requests for the UK-wide statutory instrument only to be made with the consent of Scottish Ministers, UK Ministers did not seek their consent.

Any significant financial implications?

In our consultation it was identified that the process may be burdensome for regulators who will get very few applicants from the EEA / EFTA, but most already implement the processes involved. Beyond this we do not consider there to be any financial implications.

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SI NOTIFICATION: SUMMARY

Title of Instrument
The Recognition of Professional Qualifications and Implementation of International Recognition Agreements (Amendment) Regulations 2023
Proposed laying date at Westminster
17 October 2023
Date by which Committee has been asked to respond
To our knowledge, the committee has not been asked by the UK Government to respond.
Power(s) under which SI is to be made
<p>The UK Secretary of State is:</p> <ul style="list-style-type: none">• making regulations under section 5(2) of the PQ Act to amend UK and devolved legislation consequential to the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015¹ which contain the general EU system of recognition of overseas qualifications;• making regulations under section 3 of the PQ Act to implement Chapter 12 of the FTA <p>In addition The Secretary of State is required, under section 17 of the PQ Act, to consult Welsh Government Ministers, Ministers in the Scottish Government and a Northern Ireland department before making regulations under sections 3 or 5(2) where the regulations make provision which could be made by the devolved administrations themselves. The consultation report was published on 13 October 2023.</p>
Categorisation under SI Protocol
We do not consider this to meet with the type 1 or type 2 notifications, however have written to the committee so it is aware that the UK Government is using powers to make regulations in devolved areas without the consent of Scottish Ministers.
Purpose
<p>The EEA EFTA FTA provides for an RPQ system and will ensure that UK professionals seeking to practise a regulated profession in one of the EEA EFTA states can access a clear process to have their professional qualifications recognised, and vice versa.</p> <p>The FTA places an obligation on the UK and EEA EFTA states to put in place necessary measures and require its '<i>relevant authorities</i>' to operate an RPQ system. The UK is required to use best endeavours to "<i>adopt, where applicable and maintain the necessary measures</i>" that require regulators to deliver the RPQ system by 1 December 2023.</p>
Other information
Not applicable
SG Policy contact:
Robert McGregor, Trade Policy Division, Robert.mcgregor@gov.scot

¹ S.I. 2015/2059.

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Appendix 1: List of devolved professions:

The Scottish Government carried out an assessment to identify which devolved professions are within scope of the PQ Act and therefore these regulations. To identify whether a devolved profession is within the scope of the FTA Chapter the following questions were considered:

1. Is entry to the profession governed by a “measure” (such as an Act of Parliament, an Act of the Scottish Parliament or an SSI) and can it be identified?
2. Does the measure apply only to individuals (as opposed to bodies or businesses)?
3. Does the measure require the person to hold a specific professional qualification before the profession can be practiced?

The following table summarises the professions in scope of the PQ Act and therefore these regulations.

Professions in scope of PQ Act	Regulators	Entry 1	Entry 2	Entry 3
<ul style="list-style-type: none"> • Care Inspectorate Authorised Officer • Manager in Adult Day Care Services • Social Work Student • Social Worker • Worker in a Care at Home Service • Worker in a Residential School Care Accommodation • Worker in a Care Home Services for Adults • Worker in Day Care of Children Services • Worker in Residential Chile Care Services 	Scottish Social Services Council	Yes. Regulation of Care(Scotland) Act 2001 and subsequent SSIs	Yes. The individual must register to work in the sectors listed. However employers will be committing an offence if they employ a worker who fails to register.	Yes in respect of social workers. For all other groups they can register and work but will be given a timescale in which to achieve the required qualification.

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<ul style="list-style-type: none"> • Conveyancing Practitioner • Executry Practitioner • Notary Public • Solicitor 	Law Society of Scotland	Section 33 of the Legal Services (Scotland) Act 2010 sets out that the independent regulatory committee of the Law Society of Scotland is responsible for regulatory functions; including setting standards of qualification, education and training, and admission of persons to the profession. Section 5 of the Solicitors (Scotland) Act 1980 sets out that the approval of the Lord President of the Court of Session is required in setting such standards. Part 2 of the Solicitors (Scotland) Act 1980 sets out provisions in respect of 'Right to Practise as a Solicitor'.	Part 3 of the Solicitors (Scotland) Act 1980 sets out provisions in respect of the professional practice of solicitors. Chapter 2 of the Legal Services (Scotland) Act 2010 sets out the provisions in respect of licensed legal services providers (alternative business structures).	Section 31 of the 1980 Act, provides that it is an offence for an unqualified person to hold themselves out as a solicitor. Section 65 of the 1980 Act defines an "unqualified person" as "a person who is not qualified under section 4 to act as a solicitor".
<ul style="list-style-type: none"> • Insolvency Practitioner • Probate Practitioner • Statutory Audit 	ICAS	Yes ICAS was established by Royal Charter in 1854, which was amended by a Supplementary Charter in 1951. The Charters are high-level constitutional documents that narrate the origin, objectives and powers of ICAS. The Charters are in turn supported by ICAS Rules, which are agreed by the Privy Council. By agreement with the six chartered accountancy bodies, the Financial Reporting Council (FRC) has a non-statutory role for oversight of the regulation by the professional accountancy bodies of their members beyond those that are statutory auditors. This covers Insolvency Practitioners and Statutory Audit However Probate Practitioners are regulated by the Law Society and can be accountants or lawyers so not regulated by ICAS for probate work.	yes	yes
<ul style="list-style-type: none"> • School Teacher • College Lecturer 	General Teaching Council for Scotland	yes	yes	yes

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<ul style="list-style-type: none"> • Advocate 	Faculty of Advocates	<p>Sections 120 to 122 of the Legal Services (Scotland) Act 2010 set out that the Court of Session is responsible for prescribing the criteria and procedure for admission to (and removal from) office and for regulating the professional practice, conduct and discipline of advocates. Those responsibilities are exercisable on the Court's behalf by the Lord President or the Faculty of Advocates in accordance with such provisions as the Court may make.</p> <p>Under the current regime, responsibility for the regulation of advocates is delegated by the Court to the Faculty of Advocates by the Act of Sederunt (Regulation of Advocates) 2011.</p>	Section 122 of the 2010 Act sets out that advocates are prohibited from forming legal relationships with other advocates, or other persons, for the purpose of jointly offering professional services to the public.	The Act of Sederunt (Regulation of Advocates) 2011. Sets out that a person is to be admitted to the office of advocate if the person meets criteria prescribed in rules made by the Faculty of Advocates.
<ul style="list-style-type: none"> • F-Gas Handler for Air-Conditioning Systems in Motor Vehicles • F-Gas Handler for Electrical Switchgear • F-Gas Handler for F-Gas Based Solvents • F-Gas Handler for Stationary Fire Protection Systems and Equipment • F-Gas Handler for Stationary Refrigeration, Air-Conditioning and Heat Pump Equipment and Refrigerated Trucks and Trailers • Ozone-Depleting Substances Handler 	SEPA	The professions detailed here fall within the scope of DEFRA as the competent regulator. SEPA acts in the capacity of enforcing authority with regard to these professions.		

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<ul style="list-style-type: none"> • Agricultural Analyst • Farmer of Chicken for Meat Production • Food Analyst • Food Examiner • Public Analyst (under the Food Safety Act and the Food Safety (Sampling and Qualifications) Regulations) • Slaughterer 	Food Standards Scotland	Agricultural Analyst: Yes ² Food Analyst: Yes ³ Food Examiner: Yes ⁴	Agri. Analyst: Yes Food Analyst: Yes Food Examiner: Yes Public Analyst: Yes Slaughterer: Yes Public Analyst: Yes ⁵ Slaughterer: Yes ⁶	Agri. Analyst: Yes ⁷ Food Analyst: Yes ⁸ Food Examiner: Yes ⁹ Public Analyst: Yes ¹⁰ Slaughterer: Yes ¹¹
<ul style="list-style-type: none"> • Operating Department Practitioner (HCPC) • Practitioner Psychologist (HCPC) • Dental nurse (GDC) • Dental technician (GDC) • Clinical dental technician (GDC) • Orthodontic Therapist (GDC) • Pharmacy Technician (GPhC) 	<ul style="list-style-type: none"> • Health and Care Professions Council • General Dental Council • General Pharmaceutical Council 	<ul style="list-style-type: none"> • Yes – Health Professions Order 2001 • Yes – Health Professions Order 2001 • Yes - Dentists Act 1984 • Yes – Dentists Act 1984 • Yes - Dentists Act 1984 • Yes – Dentists Act 1984 • Yes – Pharmacy Order 2010 	Yes	Yes – the respective regulator for each of these professions sets the criteria – education, training and experience - for registration.

² The Feed (Transfer of Functions) (Miscellaneous Amendments) (Scotland) Regulations 2020 and The Agriculture Act 1970.

³ The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 and The Food Safety Act 1990.

⁴ The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 and The Food Safety Act 1990.

⁵ The Food Safety (Sampling and Qualifications) (Scotland) Regulations 2013 and The Food Safety Act 1990

⁶ The Welfare of Animals at the Time of Killing (Scotland) Regulations 2012 (as amended), Part 2 Certificates of Competence (CoC)

⁷ The person must be a Chartered Chemist or possess a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry; and be a Fellow or Member of the Royal Society of Chemistry, and the person's practical experience of the examination of feed must be attested by an analyst appointed under section 67(3) of The Agriculture Act 1970.

⁸ Must possess a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry.

⁹ Must possess a qualification listed below and has carried out examination of food over a period or periods amounting in aggregate to at least 3 years in one or more of the Laboratory of the Government Chemist and/or a laboratory owned by a government department or a laboratory under the equivalent control of the government in the European Union.

1. A first degree (with honours) in microbiology (irrespective of the title of the degree).

2. A degree of master of science, provided that—

(a) the degree was awarded following an examination rather than a thesis; and (b) at least one paper in the degree was in microbiology.

3. Fellowship of the Institute of Biomedical Sciences if that fellowship has been gained after passing the higher specialist diploma examination in medical microbiology set by that Institute.

4. The degree in mastership in chemical analysis awarded by the Royal Society of Chemistry.

5. Fellowship or membership of the Institute of Food Science and Technology.

6. The graduateship of the Society of Biology gained after passing the examinations in the Society's theory paper in microbiology

¹⁰ Must possess a Mastership in Chemical Analysis awarded by the Royal Society of Chemistry.

¹¹ A Qualification Certificate for the activities and species must be gained in order to be granted a Certificate of Competence (CoC).

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Appendix 2: Regulator consultation and stakeholder engagement

The Scottish Government engaged with devolved regulators to understand how they will meet the requirements for RPQ under the FTA. Note, the regulations also provide regulators a legal basis upon which to meet these requirements.

Our engagement with regulators and professional bodies was in addition to the consultation carried out by the UK Government. The engagement with devolved regulators covered the following requirements of the FTA, which helped form the Scottish Government's response to the UK Government Consultation.

	FTA Text
Conditions for Recognition	the relevant authority shall recognise the professional qualifications of a professional who applies for recognition in the host jurisdiction and possesses comparable professional qualifications for the same profession in the home jurisdiction
Refusal of Recognition	there exists a substantial difference between the professional's professional qualifications and the essential knowledge or skills required to practise the profession and the professional fails or refuses to take an aptitude test or adaptation period
	the regulated profession in the host jurisdiction comprises one or more professional activities that cover substantially different matters from those covered by the professional's professional qualifications and the professional fails or refuses to take an aptitude test or adaptation period
	where requiring the professional to take an aptitude test or to complete the adaptation period under Article 12.6 would amount to requiring the professional to acquire the professional qualifications required to practise the regulated profession in the host jurisdiction
	where access to and pursuit of a regulated profession by a natural person whose professional qualifications were obtained in the host jurisdiction is subject to conditions other than the possession of specific professional qualifications and the professional fails to meet those conditions.
Compensatory Measures	To the extent possible and at the professional's request, relevant authorities shall provide their reasons for requiring that professional to undertake compensatory measures in writing.
	where a relevant authority requires the professional to take an aptitude test, that relevant authority schedules aptitude tests with reasonable frequency and at least once a year, where applicable.

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Procedure for Applications	acknowledge receipt of the professional's application within one month of receipt and inform the professional of any missing document
	issue a decision no later than four months after the date on which the complete application was submitted
	A relevant authority shall accept copies of documents that are authenticated in accordance with the Party's domestic law, in place of original documents, unless the relevant authority requires original documents to protect the integrity of the recognition process.
Licensing and other provisions	relevant authority shall make available to professionals information about the professional qualifications required to practise the regulated profession
	relevant authority shall make available to professionals information that explains any other conditions that apply to the practice of the regulated profession including
	relevant authority shall make available to professionals information about: relevant laws to be applied regarding, for example, disciplinary action, financial responsibility or liability; the principles of discipline and enforcement of professional standards; process and procedures for the ongoing verification of competence; procedures relating to, revocation of the registration
	relevant authority shall make available to professionals information about: documentation required of professionals and the form in which it should be presented; acceptance of documents and certificates issued in relation to professional qualifications and other conditions that apply
Appeals	Each party shall allow appeals for: a relevant authority's decision to refuse a professional access to and pursuit of the regulated profession
	Each party shall allow appeals for: a relevant authority's failure to make a decision about a professional's access to and pursuit of the regulated profession.
Fees	Fees must be: reasonable and proportionate to the cost of the professional's application
	Fees must be: transparent, including in relation to fee structures, and made public in advance
	Fees must be: payable by electronic means through the relevant authority's own website.

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