



15 March 2011

Response to the Commission's public consultation on the professional qualifications Directive

1. The Alliance of UK Health Regulators on Europe (AURE) brings together 10 of the health and social care regulators in the United Kingdom to work collaboratively on European issues affecting patient and client safety. Our purpose is to protect and promote patient safety through effective regulation and ensuring proper standards in the practice of health and social care.
2. In response to the public consultation on the professional qualifications Directive, AURE has produced the following statement. This is in complement to individual responses from AURE members.
3. Our response focuses on the key questions of relevance to AURE and is informed by the fact that the UK has, for many years, been a net importer of healthcare professionals, both from Europe and internationally. We have considerable practical experience of the regulatory implications of high levels of professional mobility. The UK undoubtedly benefits from this high level of mobility, receiving many dedicated professionals who contribute positively to health and social care in this country. Mobility however raises a number of challenges that the Commission's consultation presents an opportunity to address.

Simplification

4. Most European healthcare professionals are highly competent individuals who make an important contribution to the health and well-being of European citizens. However, safe and high quality healthcare depends on appropriate regulation, which in turn relies on regulators and patients having assurances that the health professionals registered in their jurisdiction, or seeking registration from another EEA member state, including those providing services on a temporary or occasional basis, are fit and safe to practise.
5. We understand the Commission's aim to ensure that the current Directive is appropriately implemented and its intention to simplify the



recognition system to facilitate mobility. However we would urge the Commission to consider the risk to patients that could arise of moving professionals that are not fit and safe to practise. In this context it essential that any suggestion to simplify the system is considered in the context of regulation that is accountable, transparent, proportionate, consistent and targeted¹ to the need to protect the public.

Regulation of the healthcare professionals

6. We do not believe that a harmonised European model for the regulation of healthcare professionals would be either desirable or beneficial. At present there is a wide diversity of regulators and competent authorities comprising a range of structures, approaches and emphases. Some are government bodies, some are self-regulatory, and others are professional associations with a regulatory function as part of a wider role. This diversity reflects the structures, conventions and history of regulation in each member state.

7. However, AURE members believe that public and patient protection should be at the heart of all regulatory approaches and feel that the Commission has a role to play in encouraging clarity of regulatory structures to facilitate the free movement of regulated professionals. Initiatives like IMI, the informal networks of competent authorities, the Council of Healthcare Regulatory Excellence International Observatory, and Healthcare Professionals Crossing Borders, are essential to improve our understanding of how healthcare regulation is defined and organised in other countries and we hope that the Commission will continue to encourage these activities.

Contact Points

8. The consultation seems to suggest that the activities of the *Contact Points* under the recognition Directive should be brought into line with the *Single Points of Contact* established by the Services Directive. We agree that the *Contact Points* offer a valuable service to professionals wishing to move. However we do not agree that *Contact Points* should become responsible for

¹ This is in line with the five principles of good regulation developed by the Better Regulation Executive (Department of Business, Innovation and Skills). See: <http://www.bis.gov.uk/policies/better-regulation/better-regulation-executive>



the administrative procedures for recognition. We believe that in the UK context, where there is generally one national competent authority responsible for the regulation of a profession, this would create an additional tier of bureaucracy and have the potential to complicate the process by creating additional costs, administrative delays and/or misunderstandings for migrants. We believe that competent authorities are best placed to implement the Directive and have the necessary expertise to deal with individual health professionals.

Code of Conduct

9. Most AURE members do not support the inclusion of the Code of Conduct in a revised recognition Directive. While we recognise the need for guidance in this area to ensure professionals are not required to comply with unreasonable demands, it is essential that healthcare professional regulators are able to exercise discretion about the form in which documents are to be submitted as part of the registration process. Over the past few years several AURE members have experienced cases of fake documents and identity fraud², which have required the development of responsive and robust registration procedures to ensure patient safety is not compromised. We believe that our practices are essential to prevent fraudulent applications and do not impose unnecessary barriers to free movement upon those EEA healthcare professionals that are appropriately qualified and safe to practise. We therefore urge the Commission to ensure a degree of flexibility in this area and to involve competent authorities in future revisions of the guidance to ensure that it remains flexible, relevant and up to date.

Compensation measures

10. AURE members do not agree that compensation measures represent a deterrent to mobility. The ability of competent authorities to exercise discretion in the development of adaptation periods and aptitude tests is essential to ensure that migrating healthcare professionals do not pose a risk to patient safety. The primary consideration in these cases should be the right of patients and the public to receive safe and high quality care. AURE members

² For further information, please see the experience reports submitted to the European Commission in September 2010 at:

http://ec.europa.eu/internal_market/qualifications/policy_developments/evaluation_en.htm



consider it essential that competent authorities have available the option to recommend adaptation periods of up to a maximum of three years, if required. We believe that this threshold should be maintained to allow flexibility and to enable healthcare professionals to achieve the skills, knowledge and competencies necessary for safe and high quality practice in the UK.

11. We agree with the Commission's assessment that the application and development of compensation measures has presented competent authorities with some challenges. However we do not believe that the development of a legally binding code of conduct would bring additional benefits. In our view it could unnecessarily constrain our ability to devise compensation measures suitable for the specific circumstances of the professional not meeting the standard of training required in the UK. Instead we would like to encourage greater sharing of good practice through the existing networks of competent authorities or through an online forum developed for this purpose.

Partial access

12. We agree with the European Court of Justice judgment that healthcare professionals should be exempt from the principle of 'partial access'. We believe that allowing a healthcare professional that is not fully qualified to practise in a limited capacity could pose a serious threat to patient safety and is not in the public interest. The principle also assumes that professional experience can always compensate for the lack of education and raises important questions about the integrity of healthcare professional education and training programmes in the UK. It may also undermine the mutual recognition system and the minimum training requirements in the Directive by allowing professional access on a case-by-case basis.

Student and graduate mobility

13. We understand the European Commission's desire to facilitate the mobility of graduates across Europe. It would be essential that only those that are at a comparable level of their training can gain access to education and training in another member state. We believe that training providers and regulators will need to be in a position to establish that the training received outside of the UK has been delivered to the standard required at home.



Professional cards

14. AURE members remain cautious about the introduction of a European card for professionals. We welcome the Commission's decision to set up a steering group to consider the development of a card. We call on the group and the Commission to carefully consider carrying out a cost benefit analysis to clearly establish the purpose, added value, and costs of any proposed card scheme before it is adopted.

15. We believe that the Commission should also focus on alternative schemes, such as the Internal Market Information System (IMI), which already provides a much valued, efficient and cost effective tool for the secure exchange of information between competent authorities. We would urge the Commission to build on its successes, continue to support its development and use across the European Union, and extend the system to other competent authorities/regulated professions.

16. We also believe that competent authorities and regulators across the European Union should be encouraged to make web-based searchable lists of registration and disciplinary information freely available to the public, as they are in the UK. These would support the information that competent authorities exchange on a bilateral basis and enable patients to make informed choices about the practitioners they consult or may choose to consult.

Temporary and occasional

17. We believe that patients have the right to be protected by the regulatory system regardless of whether the healthcare professional treating them is in the country permanently or temporarily. It is therefore essential that pro-forma registration and the prior authorisation schemes (Article 7.4) are maintained for healthcare professionals to ensure that practitioners practise in accordance with the professional standards of the host member states and that competent authorities can take fitness to practise action where required to protect patient safety. We view this as essential for maintaining public confidence in the system.



Alert mechanism

18. AURE has for some time been calling on the European Commission to consider a legal duty for regulators to exchange fitness to practise information to ensure patient safety is not compromised. If information is not shared efficiently and effectively a professional could be erased or suspended in one jurisdiction while continuing to practise in another – such a situation is a serious risk to patient safety and undermines the public's confidence in the recognition system.

19. We welcome the proposal to include an IMI alert mechanism in the revised Directive similar to the one that already exists under the Services Directive and call on the Commission to ensure coherence between the priorities for a revised data protection Directive and the review of Directive 2005/36/EC, in the interest of patient and public safety. It would also be helpful were the Commission to consider whether the alert mechanism could be used to support the exchange of intelligence about individuals that try to register with fake diplomas or false identities.

20. We would also encourage the Commission to draft guidance to assist healthcare professional regulators in exchanging information about practitioners that have had action taken against their registration in compliance with their rights and obligations under Articles 7 and 13 of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data. We understand that sharing information about professionals subject to investigations is a sensitive area and would invite the Commission to consider whether the work undertaken by HPCB through its [MoU on case-by-case and proactive information sharing](#) could form the basis of further dialogue on how best to define the alert mechanism.

Language

21. In the UK, the implementation of the Directive prevents AURE members from requiring healthcare professionals qualified within the EEA to provide assurance of their language knowledge before registration.

22. AURE has consistently pointed out the risk to patient safety that inadequate communications skills, including language competency, presents.



AURE

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AURE briefing

We believe that it is vital that competent authorities are assured of the language competence of individuals that will practise in their jurisdiction to ensure that they can communicate effectively with their patients, fellow professionals and within the wider healthcare system. The experience reports submitted last year provide evidence that there is a shared concern across Europe that the current language provisions (Article 53) are not sufficient to ensure public protection.

23. AURE believes that Article 53 should be clarified to allow healthcare professional regulators to assess the language competence of health professionals at the point of registration to ensure that they have the necessary language skills to practise the profession safely.

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