

NMC response to the EU Commission's Green Paper on modernising the professional qualifications directive

Background

We are the nursing and midwifery regulator for England, Wales, Scotland, Northern Ireland and the Islands. We exist to safeguard the health and wellbeing of the public. We set standards of education, training, conduct and performance for nurses and midwives, and hold the register of those who have qualified and meet those standards. We provide guidance and advice for nurses and midwives and we have clear and transparent processes to investigate and deal with those whose fitness to practise is called into question.

The NMC welcomes the EU Commission's Green Paper on the qualifications directive. We have been heavily engaged in the consultation process, having led the network of EU competent authorities for nurses. We are also active members of the network of European midwifery regulators (NEMIR). We welcome the opportunity to provide the EU Commission with our views on proposed changes to the directive.

The NMC processes the applications of about 7,000 EU nurses and midwives every year under the provisions of Directive 2005/36/EC. The Directive has been a determining factor in increasing the freedom of movement in the EU and the NMC recognises the positive contribution of EU nurses and midwives to the provision of healthcare in the UK. However, we must use the opportunity of the Directive's revision to enhance patient safety while respecting the rights of migrating professionals.

Answers to the consultation

NB: This response should be read in parallel with the EU Commission's Green Paper available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0367:FIN:en:PDF>

Question 1: Do you have any comments on the respective roles of the competent authorities in the Member State of departure and the receiving Member State?

Regarding the potential introduction of a European professional card, in the case of the sectoral professions, there is a clearly identified competent authority at both ends, and therefore an authoritative issuer, and both competent authorities have access rights to the Internal Market Information System (IMI). There should not be a problem and the advantage is that the prospective migrant starts by addressing the competent authority

with which they are familiar. However, as the current system already works well, the costs and benefits of the card need to be clearly identified before it is introduced.

Moreover, complications could potentially arise when there are several competent authorities involved. As educational mobility increases, and the proposals under 3.3.3 of the Green Paper become the norm, there are more combinations to legislate for. For example, will the issuing competent authority be in the member state in which the education and training was provided, or in the 'home nation' of the prospective registrant who was permitted to undergo recognised education and training in a different member state? There is the possibility of dual registration and consequent doubt over who is responsible for issuing the card. This may only affect a minority of nurses and midwives in the future but the questions will arise.

The NMC would support the development of an IMI based infrastructure in which home competent authorities complete and upload potential migrants' files into a repository for the host competent authority to consult. Such system must include a tool which will inform competent authorities of which member state the applicant has worked in.

Question 2: Do you agree that a professional card could have the following effects, depending on the card holder's objectives?

a) The card holder moves on a temporary basis (temporary mobility):

- Option 1: the card would make any declaration which Member States can currently require under Article 7 of the Directive redundant.

- Option 2: the declaration regime is maintained but the card could be presented in place of any accompanying documents.

b) The card holder seeks automatic recognition of his qualifications: presentation of the card would accelerate the recognition procedure (receiving Member State should take a decision within two weeks instead of three months).

c) The card holder seeks recognition of his qualifications which are not subject to automatic recognition (the general system): presentation of the card would accelerate the recognition procedure (receiving Member State would have to take a decision within one month instead of four months).

In all cases, the effect would be dependent upon how well a European professional card could be built around fast communication technologies of the 21st century. In all three cases in the question, the answers will depend on the information system architecture and on the the degree of inherent security and reliability of the overall system, and on its interface with IMI.

It must be noted however that in cases where the cardholder moves on a temporary basis, the declaration system currently in place would not be redundant. Indeed, making the potential registration in a host country the responsibility of the home competent authority amounts to a delegation of regulatory powers. This could contravene the regulatory responsibilities of the host competent authorities and therefore we would

oppose doing away with the system of prior declaration. The declaration could, however, be done in an electronic manner, using the IMI system; this is why the NMC would support option 2, provided the card was backed up with up to date documentation on the IMI repository.

Regarding the cases where a card holder seeks automatic recognition, we are not aware of any evidence of problems in the recognition procedures. The NMC processes the application of approximately 7,000 nurses and midwives from the EU every year and we find the automatic recognition route to be satisfactory. We do however accept that the procedures could be modernised with the help of an electronic integrated information sharing system based on the IMI system.

Should IMI be expanded to facilitate the sharing of information on an applicant's qualification and registration status, the application process could certainly be accelerated. However, it is important to note that in the interest of patient safety and process management it would be unreasonable to constrain the host competent authority to make a decision within two weeks for automatic recognition or one month for general system applications. It would be more helpful if the Commission published guidelines on time constraints for the home competent authorities since, in our experience, it is where most delays in the recognition procedures originate from.

Question 3: Do you agree that there would be important advantages to inserting the principle of partial access and specific criteria for its application into the Directive? (Please provide specific reasons for any derogation from the principle.)

No. We understand how some special cases like that of civil engineers have given rise to European Court of Justice (ECJ) referrals. However, we strongly believe that "partial access" should not be included into the Directive. Doing so would undermine the whole meaning of the directive, making minimum training requirements and compensation measures redundant. If a migrant cannot compensate the shortfalls in their training through an adaptation or an aptitude test, this indicates that they are not fit to practise in the host country.

Furthermore, this would open the question "how many parts are there to a profession?". The NMC believes that competent authorities in member states are the best placed to decide on the standards and the scope of practice of a given profession. The NMC relies on self-regulation and partial access would necessitate strong policing of individual nurses, midwives and their employers. This would create confusion and suspicion from employers and patients, resulting in potential apprehension to employ an EU nurse or midwife. Ultimately this process would increase barriers to nurses' and midwives' free movement and could potentially compromise patient safety.

The ECJ, in the *Collegios de ingenieros* case, ruled that partial access must be granted if two conditions are met; that the differences in activities are so large that they cannot be compensated, and that there are no valid public interest reasons to prohibit such partial access. In the cases of health professions the public interest reason is evident and hence such professions should not be subject to the jurisprudence. Nurses and midwives work seven days a week and in intense environments like accidents and

emergencies. The variety of tasks they are required to undertake necessitate a complete, rather than partial, knowledge of the professions.

Question 6: Would you support an obligation for Member States to ensure that information on the competent authorities and the required documents for the recognition of professional qualifications is available through a central on line access point in each Member State? Would you support an obligation to enable online completion of recognition procedures for all professionals? (Please give specific arguments for or against this approach).

With the current stage of development of E-Government and E-Commerce, it must be possible for all of the necessary information to be available through the National Contact Point (NCP) or via the Point of Single Contact (PSC), and for these two to be linked electronically. The NCP should provide links to all Competent Authorities.

However, it should be made clear that the competent authority must keep the ownership of the recognition process. We may need to request additional information to satisfy itself of a migrant's identity and fitness to practise.

While we would welcome the introduction of more modern, electronic means of submitting information to support applications, we would not favour an obligation to do so. This would require significant investment in IT systems from competent authorities, some of which have only recently updated their systems. We believe that a positive way forward is the development of the IMI system as an electronic support to the recognition of professional qualifications of migrating professionals. However, at this stage, it is not yet clear how the IMI system will be developed further.

We therefore oppose any obligation on competent authorities to enable online completion of recognition procedures.

Question 7: Do you agree that the requirement of two years' professional experience in the case of a professional coming from a non-regulating Member State should be lifted in case of consumers crossing borders and not choosing a local professional in the host Member State? Should the host Member State still be entitled to require a prior declaration in this case? (Please give specific arguments for or against this approach.)

The NMC understands that this question applies to consumers and not patients or mothers using the services of a midwife. It is very important that this distinction is made if this amendment is made to the directive.

The NMC regulates nursing and midwifery in the UK. All nurses and midwives who provide care in the UK must be registered with the NMC. It is illegal to provide care as a nurse or a midwife in the UK without being registered with the NMC. We therefore oppose any scenario in which such care could be provided in the UK by someone who is not registered with the NMC.

Question 9: Would you support the deletion of the classification outlined in Article 11 (including Annex II)? (Please give specific arguments for or against this approach).

The NMC would strongly oppose the idea that no level should be used when comparing qualifications. There needs to be a way of relating the general intellectual level of the professional work to a commonly accepted framework. Accepting one level below that which is the standard in the host country, as per article 11 classifications, compensated by other forms of further learning or testing, provides a sensible degree of flexibility appreciated by regulators and professionals alike. This current system works well for competent authorities of sectoral professions and should not be abolished. Doing so would lead to an increase in general system decisions whereas the system was designed to deal with the exceptional cases where an applicant cannot benefit from automatic recognition.

To have no prescribed level risks introducing too much uncertainty and scope for idiosyncrasy, and will not reduce – but may well increase – the number of disproportionate and arbitrary variations in compensation measures. Also, the Commission’s scenario rests on the assumption that competent authorities in the host member state would be in a position to obtain very detailed transcripts of training on which to make their decisions. In practice, however, we observe that applicants under the general system often find it difficult to provide us with sufficiently detailed transcripts.

Instead we believe that more focus should be directed towards harmonizing the sectoral professions across the EU in order to increase automatic recognition. This would better fulfil the aims of the directive which are the recognition of formal professional qualifications. With the years, applications falling under the general system for sectoral professions are deemed to become very rare. Indeed, from 2011, the latest accession countries have been graduating nurses and midwives who fully benefit from automatic recognition rights. There is therefore no need to open up the general system as it will become increasingly less relevant for sectoral professions.

Question 10: If Article 11 of the Directive is deleted, should the four steps outlined above be implemented in a modernised Directive? If you do not support the implementation of all four steps, would any of them be acceptable to you? (Please give specific arguments for or against all or each of the steps.)

We do not recommend that Article 11 be deleted.

Question 11: Would you support extending the benefits of the Directive to graduates from academic training who wish to complete a period of remunerated supervised practical experience in the profession abroad? (Please give specific arguments for or against this approach.)

The NMC cannot foresee a situation where this would apply to nurses or midwives. However we believe that this provision would be outside the scope of the directive. Indeed, directive 2005/36/EC deals with the recognition of full professional qualifications and not student exchanges. The NMC only recognises fully qualified nurses and midwives. We believe that the temporary migration of partially qualified professionals

seeking practical experience in another EU country should be dealt with in a different directive.

Question 12: Which of the two options for the introduction of an alert mechanism for health professionals within the IMI system do you prefer?

Option 1: Extending the alert mechanism as foreseen under the Services Directive to all professionals, including health professionals? The initiating Member State would decide to which other Member States the alert should be addressed.)

Option 2: Introducing the wider and more rigorous alert obligation for Member States to immediately alert all other Member States if a health professional is no longer allowed to practise due to a disciplinary sanction? The initiating Member State would be obliged to address each alert to all other Member States.)

The NMC supports the introduction of option 2. We would strongly welcome the introduction of a proactive alert mechanism for health professions. Patient protection would benefit from competent authorities being able to proactively share information; it would give us the means to prevent the very small yet damaging number of professionals who use the limitations of the directive to commit harm with impunity.

In all cases, there must have been proper investigation and adjudication, and a subsequent right of appeal. The review of Directive 89/46 on Data Protection should aim to minimise discrepancies between member states on this ground. It would be for competent authorities to decide on how to manage the information they receive from other member states.

It is important to note that this system must be an exchange of information and not a system of automatic transfer of sanction because a punishable act in one member state may not necessarily be so in another. Competent authorities receiving an alert must use due process and evaluate the merits of each case individually.

However, most competent authorities can hand out different types of sanctions. For instance in the UK, the NMC has in its powers to restrict the practice of a nurse or midwife, or suspend them for a limited amount of time. These types of sanctions should also be shared with other competent authorities. We would therefore ask that the alert be triggered for all sanctions which affect a professional's registration, not only where they have been banned from practising.

Question 13: Which of the two options do you prefer?

Option 1: Clarifying the existing rules in the Code of Conduct;

Option 2: Amending the Directive itself with regard to health professionals having direct contact with patients and benefiting from automatic recognition.

The NMC supports option 2. The current language regime as foreseen in Article 53 is not helpful for competent authorities. The ambiguous guidance obtained from the European Commission and national authorities suggest that competent authorities can language check on an ad-hoc basis when they have reasonable doubts. But this

logically implies that they must evaluate all applicants' knowledge of the national language in order to identify those about which they have doubts. Even so, there is no clarity on whether registration can be dependant on the applicant demonstrating that they possess sufficient knowledge of the national language.

We believe that this lack of clarity puts patients at risk and is unfair to applicants because under the current system competent authorities may not be the best placed to individually evaluate their knowledge of language. The NMC requires all non-EU applicants to pass a language test organised by a reputable third party like the British Council or IELTS. This is the only way that is both rigorous and impartial. We would therefore welcome the possibility to systematically language check all EU applicants. The changes should be made in the Directive itself so as to provide clarity and less room for misinterpretation which has been a problem with the various pieces of guidance and codes of conduct published in recent years.

However, it is very important that the ability for employers to check that their prospective employee has the necessary levels of English should not be taken away. We understand that it would be burdensome for EU nurses and midwives to be subjected to two similar tests. This is why we would recommend that competent authorities satisfy themselves that the applicant has sufficient general knowledge of the national language through one test at the point of registration, and the prospective employer assesses their competency in the specialist language relevant to the position they are applying for. This could be done as part of the induction and professional development process. This division would satisfy the competent authority that the applicant has the necessary language skills to communicate safely within the national health system, but would also be proportionate as the technical language skills tested would be directly related to the professional role sought by the applicant. The testing by the competent authority should be for every applicant, not just those benefiting from automatic recognition. Also, since registration as a nurse or a midwife in the UK give direct access to patients, we would consider that the test would apply to anyone seeking registration with the NMC.

Question 14: Would you support a three-phase approach to modernisation of the minimum training requirements under the Directive consisting of the following phases:

- the first phase to review the foundations, notably the minimum training periods, and preparing the institutional framework for further adaptations, as part of the modernisation of the Directive in 2011-2012;**
- the second phase (2013-2014) to build on the reviewed foundations, including, where necessary, the revision of training subjects and initial work on adding competences using the new institutional framework; and**
- the third phase (post-2014) to address the issue of ECTS credits using the new institutional framework?**

The NMC supports the three stage approach to modernising the minimum training requirements. The timetable proposed is adequate and will ensure that all stakeholders have the opportunity to input in the revision. Given the political drive for a revised Directive during 2012, and the concurrent changes to the functioning of the European

Union (ending of comitology), a phasing of the changes required to bring the automatic recognition system up to date is necessary.

The key phase will be the second, during which the training requirements will need to be revised in both essence and presentation, and particularly to specify required competences as well as knowledge and understanding. We call on the Commission to give competent authorities guarantees that they will be heavily involved in the definition of the new standards.

On the third phase, the Commission will be advised by its Study on Educational Developments. However, we believe that if the second phase is developed satisfactorily for all sectoral professions, there may not be a need to address the issue of ECTS credits in this directive. The NMC will continue to observe developments on this issue and will welcome any consultation when the time comes for these discussions. In the meantime, we believe that the success of the recognition regime lies with a thorough revision of the minimum training standards in the second phase.

Question 15: Once professionals seek establishment in a Member State other than that in which they acquired their qualifications, they should demonstrate to the host Member State that they have the right to exercise their profession in the home Member State. This principle applies in the case of temporary mobility. Should it be extended to cases where a professional wishes to establish himself? (Please give specific arguments for or against this approach.) Is there a need for the Directive to address the question of continuing professional development more extensively?

It is clearly an anomaly that the requirements for establishment are different, and less rigorous, than those required for the temporary provision of service. This should be rectified. Moreover, for consistency across the Directive, the issuing authority proposed under the 'professional cards' proposal (Section 2.1) is the host competent authority. The whole process depends on the member state of departure being able to certify that the potential migrant is a fit and proper person to practise in their home country. A competent authority should not be prepared or allowed to 'export' a person it would not allow to practise in its own jurisdiction.

Continuing professional development (CPD) is a fundamental requirement of all professionals, but it is not simply a matter of requiring formal study, attendance at courses, for example. It is as much about maintaining currency in the selected area of practice, and reflecting on and reviewing that practice with peers. In some respects, it is even more important than simply confirming an approved qualification from many years ago. Moreover, this CPD will not just be about the 'technical' matters of practice, but the current expectations of ethics and patient care. Certainly, if a receiving competent authority requires a level of validated CPD from its own professionals, it should expect the same from those coming from elsewhere.

We believe that if an applicant cannot prove the currency of their practice, and that they have kept their practice up to date, then they should not benefit from automatic recognition. For instance, under the current system, the NMC has had to register a nurse who had not practised for 20 years but benefitted from automatic recognition

rights. This is clearly unacceptable and this regime should be changed. Host competent authorities should be in a position to require these applicants to undergo a return to practice programme. This is what the NMC requires from its registrants whom, for any reason, have not been able to fulfil our conditions for continued registration.

Question 16: Would you support clarifying the minimum training requirements for doctors, nurses and midwives to state that the conditions relating to the minimum years of training and the minimum hours of training apply cumulatively? (Please give specific arguments for or against this approach.)

The NMC supports the clarification of the minimum training requirements. The question of applying both criteria cumulatively has been the source of many misinterpretations with great consequences on training and potential recognition in other member states. We would therefore welcome any clarification. The requirement must be clearly stated. Neither total of years nor a total of hours can really be anything more than an approximation for what was meant have been learned, experienced, and achieved during that time. But they are necessary to set some kind of norm and to prevent part-time years being equated with full-time years. However, they should not be so rigid as to prevent reasonable variations when they can be justified like the accreditation of prior learning.

Question 17: Do you agree that Member States should make notifications as soon as a new program of education and training is approved? Would you support an obligation for Member States to submit a report to the Commission on the compliance of each programme of education and training leading to the acquisition of a title notified to the Commission with the Directive? Should Member States designate a national compliance function for this purpose? (Please give specific arguments for or against this approach.)

Yes, mutual confidence in other member states' systems is vital. This is best achieved by transparent, cooperative arrangements. The directive is unclear as to the procedure to follow when a member state devises a new qualification which benefits from automatic recognition. Article 21.7 provides that member states shall notify the European Commission and other member states of future evidence of formal qualifications. Experience has shown that the procedures are unsatisfactory.

We believe that when a member state adopts a new qualification which benefits from automatic recognition, it should consult other member states and inform the Commission at least one academic year before its implementation. This would give other competent authorities and the Commission the opportunity to satisfy themselves that the programme meets the minimum training requirements. It would also assure students that, upon completion, the programme they are entering will give them access to the profession in other member states.

We do not suggest that new qualifications should be accredited by all other member states; this would be too burdensome. However, in the name of mutual confidence, it would be beneficial that other competent authorities be presented with complete and transparent information about the qualifications which they will be asked to recognise

automatically in the future. This could be organised as an informal peer assessment group.

Question 20: Which of the options outlined above do you prefer?

Option 1: Maintaining the requirement of ten years of general school education

Option 2: Increasing the requirement of ten years to twelve years of general school education

The NMC supports option 2. Increasingly nurses and midwives in the UK, Europe and across the world are required to be equipped with the competencies required for contemporary healthcare and professional practice with a career structure that promotes flexibility, mobility and competency transfer throughout the healthcare system. To do this nurses and midwives have to be competent at seeking out, critically evaluating and using evidence to support and continually improve practice, safeguard the interests of those they care for and use resources effectively. This requires the development of skills in critical decision making in order for them to be autonomous in practice as well as having the ability to work in a team and in partnership.

The skills and knowledge that facilitate this level of practice are associated with at least first degree level. This standard was formally acknowledged at the WHO Ministerial Conference on Nursing and Midwifery in Europe, held in Munich in 2000. The subsequent WHO European strategy for nursing and midwifery education included the following statement:

“Admission to nursing and midwifery education must follow successful completion of secondary school education, with qualifications equivalent to those required by the individual Member States for university entrance. Alternatively, entry may be based on formal accreditation of prior learning and/or relevant experience, provided this is a normal route of entry to the university concerned and is acceptable.”

The NMC would recommend changing the admission requirement to *“having completed 12 years of general education and/or be at graduate entry level”*. We believe that this statement reflects the necessity to strengthen nursing and midwifery as agreed by Health Ministers in Munich in 2000 but also provides flexibility for prospective students who have less than twelve years of general education but can demonstrate that they have the standards required to enter a graduate programme.

Question 24: Do you consider it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the Directive, for example by reducing the three years rule in Article 3 (3)? Would you welcome such adjustment also for third country nationals, including those falling under the European Neighbourhood Policy, who benefit from an equal treatment clause under relevant European legislation? (Please give specific arguments for or against this approach.)

The NMC would find it necessary to make adjustments to the treatment of EU citizens holding third country qualifications under the directive in order to make it consistent with

the “acquired rights” afforded to some applicants under the directive. The current provision which gives recognition rights to EU citizens trained in a third country who have worked for three years in the EU are less stringent than those required of “acquired rights” applicants who need to have practised three years in the five years preceding the application for recognition. We would therefore ask the Commission to amend article 3.3 to take the recency of the professional experience into consideration.

Lowering the three years professional experience requirement could have negative effects. It could lead to a scenario where applicants have their qualification recognised in a lenient member state and then immediately present themselves to another member state to obtain automatic recognition while bypassing their more stringent recognition processes.

Whereas according to article 2.2 of the Directive, member states should not accept third country qualifications from EU citizens if the level of qualification does not meet the minimum training requirements, we have evidence that this is not always respected. The NMC recently received an application for recognition from an EU nurse trained in the USA, who had three years professional experience in another member state. When reviewing their initial training we realised that it was a two years degree; one year shorter than the minimum stated in the directive. The member state which had initially recognised this qualification did not even require this applicant to undergo an adaptation. This demonstrates that the current system is far from being sufficiently robust and therefore its safeguards should not be lowered at this time.

Regarding the recognition of third country nationals with third country qualification we would oppose granting them new rights under the Directive for the reasons explained above.