



STATUTORY INSTRUMENTS.

S.I. No. 413 of 2022

EUROPEAN UNION (REGULATED PROFESSIONS PROPORTIONALITY
ASSESSMENT) REGULATIONS 2022

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I, SIMON HARRIS, Minister for Further and Higher Education, Research, Innovation and Science, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Regulated Professions Proportionality Assessment) Regulations 2022.

Interpretation

2. (1) In these Regulations—

“Professional Qualifications Directive” has the meaning assigned to the term “Directive” by Regulation 3(1) of the Professional Qualifications Regulations;

“Professional Qualifications Regulations” means the European Union (Recognition of Professional Qualifications) Regulations 2017 (S.I. No. 8 of 2017);

“proportionality assessment” means an assessment of the proportionality of a professional regulatory provision, carried out in accordance with Regulation 4;

“professional regulatory provision” means a new, or an amendment to an existing, legislative, regulatory or administrative provision restricting access to a regulated profession or its pursuit, or one of its modes of pursuit, including the use of professional titles and the professional activities allowed under such title, falling within the scope of the Professional Qualifications Directive;

“Proportionality Test Directive” means Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018¹;

“regulated profession” means a professional activity or group of professional activities in the State, access to which, the pursuit of which, or one of the modes of pursuit (including the use of professional titles) of which is subject,

¹ OJ No. L 173, 9.7.2018, p. 25.

directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications, including—

- (a) a profession or professional activity in the State listed in column 1 in Schedule 1 to the Professional Qualifications Regulations, and
- (b) an activity in the State listed in Annex IV to the Professional Qualifications Directive, access to, or the pursuit of, which is contingent upon possession of general, commercial or professional knowledge and aptitudes;

“relevant Minister” means the Minister of the Government with responsibility for the regulated profession concerned.

(2) A word or expression which is used in these Regulations and which is also used in the Proportionality Test Directive, the Professional Qualifications Directive or the Professional Qualifications Regulations has, unless the context otherwise requires or paragraph (1) provides otherwise, the same meaning in these Regulations as it has in such Directives or Regulations.

Scope

3. These Regulations do not apply where specific requirements are established in a separate European Union act which does not leave the State a choice as to the exact way in which they are to be transposed, in which case the corresponding provisions of these Regulations do not apply.

Requirement to carry out proportionality assessment

4. (1) Subject to paragraph (3), the relevant Minister shall carry out a proportionality assessment in respect of a professional regulatory provision in relation to the regulated profession for which he or she is responsible before such provision is enacted, made or adopted.

(2) Where a body or authority other than the relevant Minister proposes to make or adopt a professional regulatory provision, the body or authority shall notify the relevant Minister of such a proposal and shall cooperate in the completion of a proportionality assessment in accordance with these Regulations before the regulatory provision is made or adopted.

(3) The relevant Minister may delegate his or her task under paragraph (1) to a regulatory body or authority for the regulated profession concerned and, where such delegation takes place—

- (a) the body or authority shall carry out the proportionality assessment within the time period stipulated by the relevant Minister,
- (b) the relevant Minister shall oversee the carrying out of the proportionality assessment by the body or authority to ensure that it complies with the provisions of these Regulations, and

(c) the body or authority shall report the results of the proportionality assessment to the relevant Minister.

(4) The relevant Minister, body or authority carrying out a proportionality assessment pursuant to this Regulation shall ensure that—

- (a) the professional regulatory provision complies with the requirements set out in Regulations 5 to 7,
- (b) the extent of the assessment is proportionate to the nature, content and impact of the professional regulatory provision,
- (c) the reasons for considering that the professional regulatory provision is justified and proportionate are substantiated by qualitative and, wherever possible and relevant, quantitative elements, and
- (d) the assessment is carried out in an objective and independent manner.

(5) A professional regulatory provision the subject of a proportionality assessment under these Regulations shall be accompanied by an explanation which is sufficiently detailed to make it possible to appraise compliance with the principle of proportionality.

Non-discrimination

5. A professional regulatory provision shall not directly or indirectly discriminate on the basis of nationality or residence.

Justification on grounds of public interest objectives

6. (1) A professional regulatory provision shall be justified by public interest objectives.

(2) In considering whether a professional regulatory provision is justified by public interest objectives, the relevant Minister, body or authority carrying out the proportionality assessment shall consider in particular whether the provision is objectively justified—

- (a) on the basis of public policy, public security or public health, or
- (b) by overriding reasons in the public interest, such as—
 - (i) preserving the financial equilibrium of the social security system,
 - (ii) the protection of consumers, of recipients of services and of workers,
 - (iii) the safeguarding of the proper administration of justice,
 - (iv) ensuring the fairness of trade transactions,
 - (v) the combatting of fraud and the prevention of tax evasion and avoidance, and the safeguarding of the effectiveness of fiscal supervision,

- (vi) transport safety,
- (vii) the protection of the environment and the urban environment,
- (viii) the health of animals,
- (ix) intellectual property,
- (x) the safeguarding and conservation of the national historic and artistic heritage,
- (xi) social policy objectives, and
- (xii) cultural policy objectives.

(3) Grounds of a purely economic nature or purely administrative reasons shall not constitute overriding reasons in the public interest, justifying a restriction on access to, or the pursuit of, a regulated profession.

Proportionality

7. (1) A professional regulatory provision shall be suitable for securing the attainment of the objective pursued and shall not go beyond what is necessary to attain that objective.

(2) The relevant Minister, body or authority carrying out a proportionality assessment shall consider the following:

- (a) the nature of the risks related to the public interest objectives pursued, in particular the risks to service recipients, including consumers, to professionals or to third parties;
- (b) whether existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, are insufficient for the attainment of the objective pursued;
- (c) the suitability of the provision as regards its appropriateness to attain the objective pursued and whether it genuinely reflects that objective in a consistent and systematic manner and thus addresses the risks identified in a similar way as in comparable activities;
- (d) the impact on the free movement of persons and services within the European Union, on consumer choice and on the quality of the service provided;
- (e) the possibility of using less restrictive means to achieve the public interest objective and, where—
 - (i) the provisions are justified by consumer protection only,
 - (ii) the risks identified are limited to the relationship between the professional and the consumer, and
 - (iii) the risks therefore do not negatively affect third parties, whether the objective can be attained by means that are less restrictive than reserving activities; and

(f) the effect of the professional regulatory provision, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the professional regulatory provision, combined with other requirements, contributes to, and whether it is necessary for, the achievement of the same public interest objective.

(3) The relevant Minister, body or authority carrying out a proportionality assessment shall consider the following, where relevant to the nature and content of the provision being introduced or amended:

- (a) the connection between the scope of activities covered by the regulated profession or reserved to it and the professional qualification required;
- (b) the connection between the complexity of the tasks concerned and the need for those carrying them out to possess specific professional qualifications, in particular as regards the level, the nature and the duration of the training or experience required;
- (c) the possibility of obtaining the professional qualification by alternative routes;
- (d) whether, and why, the activities reserved to the regulated profession can or cannot be shared with other professions;
- (e) the degree of autonomy in exercising the regulated profession and the impact of organisational and supervision arrangements on the attainment of the objective pursued, in particular where the activities relating to the regulated profession are pursued under the control and responsibility of a duly qualified professional; and
- (f) the scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

(4) For the purpose of paragraph (2)(f), the relevant Minister, body or authority carrying out a proportionality assessment shall assess the effect of the new or amended provision when combined with one or more requirements, bearing in mind the fact that such effects might be positive as well as negative, and in particular the following:

- (a) reserved activities, protected professional title or any other form of regulation within the meaning of point (a) of Article 3(1) of the Professional Qualifications Directive;
- (b) obligations to undergo continuous professional development;
- (c) rules relating to the organisation of the profession, professional ethics and supervision;
- (d) compulsory membership of a professional organisation or body, registration or authorisation schemes, in particular where those requirements imply the possession of a specific professional qualification;

- (e) quantitative restrictions, in particular requirements limiting the number of authorisations to practise, or fixing a minimum or a maximum number of employees, managers or representatives holding specific professional qualifications;
- (f) specific legal form requirements or requirements which relate to the shareholding or management of a company, to the extent those requirements are directly linked to the exercise of the regulated profession;
- (g) territorial restrictions, including where the profession is regulated in parts of the State's territory in a manner that is different to the way in which it is regulated in other parts;
- (h) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (i) requirements concerning insurance cover or other means of personal or collective protection with regard to professional liability;
- (j) language knowledge requirements, to the extent necessary to practise the profession;
- (k) fixed minimum or maximum tariff requirements; and
- (l) requirements on advertising.

(5) Subject to paragraph (6), the relevant Minister, body or authority carrying out a proportionality assessment shall ensure the compliance with the principle of the proportionality of specific requirements related to temporary or occasional provision of services, provided under Part 4 of the Professional Qualifications Regulations, including—

- (a) automatic temporary registration with, or pro forma membership of, a professional organisation or body, referred to in Regulation 12(2) of the Professional Qualifications Regulations,
- (b) a declaration to be made in advance pursuant to Regulation 13(1) of the Professional Qualifications Regulations, documents required pursuant to paragraph (3) of that Article or any other equivalent requirement, and
- (c) the payment of a fee, or any charges, required for the administrative procedures, related to the access to, or the pursuit of, the regulated profession which the service provider incurs.

(6) Paragraph (5) shall not apply to measures designed to ensure compliance with applicable employment terms and conditions applied in accordance with European Union law.

(7) Where a professional regulatory provision concerns the regulation of healthcare professions and has patient safety implications, the relevant Minister, body or authority shall, when carrying out the proportionality assessment, take account of the objective of ensuring a high level of human health protection.

Information and involvement of stakeholders

8. (1) Subject to paragraph (2), before a professional regulatory provision is enacted, made or adopted, the relevant Minister shall—

- (a) by appropriate means, make information about the proposed professional regulatory provision available to the public, service recipients and other relevant stakeholders, including those who are not members of the regulated profession concerned, and
- (b) appropriately involve all parties concerned and give them an opportunity to make their views known, including, where appropriate, by public consultation.

(2) The relevant Minister may delegate his or her tasks under paragraph (1) to the body or authority proposing to make or adopt the professional regulatory provision, or the body or authority which carried out the proportionality assessment in relation to the provision concerned, and where such delegation takes place—

- (a) the body or authority shall carry out the tasks in compliance with paragraph (1) within the time period stipulated by the relevant Minister,
- (b) the relevant Minister shall oversee the actions of the body or authority to ensure that it carries out the tasks in compliance with paragraph (1), and
- (c) the body or authority shall issue a report on the carrying out of the tasks to the relevant Minister.

Reporting of completed proportionality assessments and exchange of information

9. (1) Where a proportionality assessment is completed by the relevant Minister or a body or authority delegated the task by the relevant Minister pursuant to Regulation 4(3), the relevant Minister shall send to the Minister for Further and Higher Education, Research, Innovation and Science, no later than 4 months after the enactment, making or adoption of the professional regulatory provision—

- (a) a copy of the professional regulatory provision, and
- (b) the reasons for considering that the provision is justified and proportionate.

(2) The Minister for Further and Higher Education, Research, Innovation and Science shall communicate the information referred to in paragraph (1) to the European Commission pursuant to Article 59(5) of the Professional Qualifications Directive within 6 months of the enactment, making or adoption of the professional regulatory provision, and the relevant Minister shall co-operate, assist and provide further information in that regard, upon request.

(3) The relevant Minister shall, where appropriate, facilitate the exchange of information with other states, pursuant to Article 10(1) of the Proportionality Test Directive.

Monitoring of professional regulatory provisions

10. After a professional regulatory provision is enacted, made or adopted, the relevant Minister, or, upon request of the relevant Minister, a regulatory body or authority for the regulated profession concerned, shall monitor the compliance of the provision with the principle of proportionality, having due regard to any developments that have occurred since it was enacted, made or adopted, and shall carry out a first review of such compliance not later than 3 years after the enactment, making or adoption of the provision.

GIVEN under my Official Seal,
15 August, 2022.

SIMON HARRIS,
Minister for Further and Higher Education, Research,
Innovation and Science.



EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations give effect to Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before adoption of new regulation of professions.

These Regulations may be cited as the European Union (Regulated Professions Proportionality Assessment) Regulations 2022.

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