

# Directive 2005/36/EC of the European Parliament and Council on the Recognition of Professional Qualifications

## TITLE II Free Provision of Services (Articles 5-9)

### Guidelines for Service Providers

Title II of the Directive concerns the free provision of services and it applies where the service provider intends to move to the territory of the host Member State (Ireland) to pursue, on a temporary and occasional basis<sup>1</sup>, the profession which:

- (i) they are legally established<sup>2</sup> to provide in their home member state or
- (ii) when the profession is not regulated in the Member State of establishment, the profession which the service provider can prove that he has pursued in that Member State for at least two years during the ten years preceding the provision of services.

The Title applies to service providers i.e. self- employed persons. It does not apply to employees or to any persons (self- employed or otherwise) working on a continuous and stable basis in the host member state. Such persons must have their qualifications recognised for the purposes of establishment under the Directive 2005/36.

#### Information and documentation to be provided in advance

When a service provider proposes to move from another Member State to Ireland in order to provide services, he must, **in advance**, inform the competent authority in Ireland in writing by submitting a declaration. A declaration may be submitted to the relevant competent authority by any means and should be accompanied by the following documents:

- a) proof of the nationality of the service provider;
- b) an attestation from the competent authority in the member state of establishment certifying that the holder is legally established in that Member State for the purpose of pursuing the activities concerned and that he is not prohibited from practising, even temporarily, at the moment of delivering the attestation
- c) evidence of professional qualifications;
- d) when the profession is not regulated in the Member State of establishment, any means of proof that the service provider has pursued the activity concerned for at least one year during the previous ten years;

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<sup>1</sup>The temporary and occasional nature of the provision of services shall be assessed case by case by each competent authority for the health and social care professions in Ireland, in particular in relation to its duration, its frequency, its regularity and its continuity. A rule of thumb is that only service provision equating to less than 80 working days in a 12 month period is likely to be considered as “temporary and occasional”.

<sup>2</sup>“legal establishment” refers to the pursuit of the profession in compliance with the rules relating to professional qualifications, including the related training conditions, and all the rules specific to the pursuit of the profession. Legal establishment precludes any prohibition, albeit temporary, from pursuing the profession. For holders of third country qualifications, the legal establishment which may give rise to the provision of services also entails professional experience of at least three years on the territory of a Member State which has recognised the qualifications in accordance with its national legislation, and certified by it (Article 3(3) of Directive 2005/36/EC refers).

and

- e) details of any insurance cover or other means of personal or collective protection with regard to professional liability.

You can start working in Ireland as soon as the declaration has been submitted to the relevant Competent Authority, unless a prior check of qualifications in case of potential risk to public health or safety is required. A prior check of qualifications is required for all health and social care professions (unless a member of a profession which enjoys automatic recognition i.e. doctors, nurses responsible for general care, dental practitioners, veterinary surgeons, midwives, pharmacists and architects). In the case of a prior check being applied, you should ideally be able to provide the service within one month of receipt by the Irish competent authority of the declaration and accompanying documents.

The declaration shall be renewed once a year if the service provider intends to provide temporary or occasional services during that year but qualifications are not checked again after the initial check.

### **Pre- assessment**

In the case of regulated professions having public health or safety implications, which do not benefit from automatic recognition under Title III Chapter III of the Directive, the competent authority of the host Member State may check the professional qualifications of the service provider prior to the first provision of services. The Irish competent authorities have decided to carry out this pre-assessment. The purpose of the check is to avoid serious damage to the health or safety of the service recipient due to a lack of professional qualification of the service provider and the check must not go beyond what is necessary for that purpose.

This is not a check of their qualification per se, but rather a check that they are legally established in a Member State and have, at the time of attestation, not been prevented from practising even on a temporary basis, on foot of legal or disciplinary procedures. However, if there is a substantial gap between the qualifications of the applicant and those required in Ireland, to the extent, that there is a risk of serious harm to public health or safety, a test may be applied. As with all decisions of a competent authority, actions taken must be seen to be non-discriminatory, justified on objective grounds, necessary for safeguarding public policy, public security or public health, and proportionate.

### **Time frame for decision**

Within a maximum of one month of receipt of the declaration and accompanying documents (if there are no problems with your file), the competent authority must communicate to the service provider either:

- (i) its intention not to check qualifications;
- (ii) the outcome of the check –and whether or not a test will be imposed;
- or
- (iii) a duly substantiated request for additional information where there are problems with a file. In such a case, a decision to allow you provide the service will be made 3 months after receiving the required documentation/information (within 4 months).

In the absence of a reaction of the competent authority within these deadlines, the service may be provided.

### **Compensatory Mechanism/Aptitude Test**

Where there is a substantial difference between the professional qualifications of the service provider and the training required in the host Member State, to the extent that that difference is such as to be harmful to public health or safety, the host Member State shall give the service provider the opportunity to show, in particular by means of a test, that he has acquired the knowledge or competence lacking.

If the authority decides to make you take a test, it will not make its final decision until after you have done the test, so the timeframes set out above will be extended. The authorities must provide the possibility of taking the test within the month following the decision to impose it.

### **Cost of the Declaration**

There is no cost to the service provider for submission and pre-assessment of the declaration but should a compensatory mechanism/test be required, the service provider will be charged the cost of the test.

### **Professional rules/disciplinary procedures**

Where a service provider moves, he shall be subject to professional rules of a professional, statutory or administrative nature which are directly linked to professional qualifications, such as the definition of the profession, the use of titles and serious professional malpractice which is directly and specifically linked to consumer protection and safety, as well as disciplinary provisions which are applicable in the host Member State to professionals who pursue the same profession in that Member State.

### **Insurance**

The service provider must provide the competent authority in the host Member State with details of insurance cover or other means of personal or collective protection with regard to professional liability. This must indicate that their activities in Ireland will be covered by appropriate insurance. The competent authority cannot require that the insurance is provided by a particular company or acquired in a particular Member State.

### **Title**

The service shall be provided under the professional title of the Member State of establishment, insofar as such a title exists in that Member State for the professional activity in question. That title shall be indicated in the official language or one of the official languages of the Member State of establishment in such a way as to avoid any confusion with the professional title of the host Member State. Where no such professional title exists in the Member State of establishment, the service provider shall indicate his formal qualification in the official language or one of the official languages of that Member State.

The service shall be provided under the professional title of the host Member State where qualifications have been verified by the pre-assessment process and for cases referred to in Title III Chapter III.

### **Information to be given to the recipients of the service**

The **service provider** should furnish the following information to the recipient of the service:

- a) if the service provider is registered, the register in which he is registered, his registration number, or equivalent means of identification contained in that register;

- b) if the activity is subject to authorisation in the Member State of establishment, the name and address of the competent supervisory authority;
- c) any professional association or similar body with which the service provider is registered;
- d) the professional title or, where no such title exists, the formal qualification of the service provider and the Member State in which it was awarded;
- e) if the service provider performs an activity which is subject to VAT, the VAT identification number referred to in Article 22(1) of the Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment<sup>3</sup>;
- f) details of any insurance cover or other means of personal or collective protection with regard to professional liability.

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<sup>3</sup> OJ L 145, 13.6.1977, p. 1. Directive as last amended by Directive 2004/66/EC (OJ L 168, 1.5.2004, p. 35).