

<b>Title of report</b>	Assessment of non-UK qualifications for function-based parts of the register
<b>Public/Confidential</b>	Public
<b>Summary/purpose of report</b>	The report sets out the actions undertaken by the SSSC to review our approach to the assessment of non-UK qualifications presented for registration for function-based parts of the register, the future options available and our proposed new approach.
<b>Recommendations</b>	The Council is asked to approve Option 1 and the recommendation that we no longer assess non-UK qualifications for function-based register parts.
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<b>Responsible Officer</b>	Laura Lamb, Acting Director, Development and Innovation (Learning and Development)
<b>Link to Strategic Plan</b>	The information in this report links to:  Outcome 1: People who use services are protected by ensuring the regulated workforce is fit to practise.  Outcome 2: The SSSC supports and enhances the development of the registered workforce to deliver high standards of practice and drive improvement.
<b>Link to Risk Register</b>	Risk 1: We fail to ensure that our system of regulation meets the needs of people who use services and workers.  Risk 2: We fail to ensure that our workforce development function supports the workforce and employers to achieve the right standards and qualifications to gain and maintain registration.
<b>Impact assessments</b>	1. An Equalities Impact Assessment was developed.

	<p>2. A Data Protection Impact Assessment was not required.</p> <p>3. A Sustainability Impact Assessment was not required.</p>
<b>Documents attached</b>	Appendix 1: Assessment of non-UK qualifications and outcomes
<b>Background papers</b>	<a href="#">Council Report 08/2021</a>

## EXECUTIVE SUMMARY

1. Prior to the Brexit transition period ending on 31 December 2020, our policy for assessing non-UK qualifications presented for registration for function-based parts of the register was to only assess qualifications if the applicant held European Economic Area (EEA) mutual recognition rights and, from 1 January 2021, no applicants could hold these rights.
2. In February 2021 Council endorsed Executive Management Team's (EMT) decision to adopt an interim approach to continue to assess these qualifications if an applicant would have met the EEA mutual recognition rights criteria as they were on 31 December 2020 pending a review of our approach to the assessment of non-UK qualifications.
3. The report to Council in February 2021 set out the legal obligations before and after the end of December 2020. The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019/593 are in force. These 2019 Regulations remove our legal obligation to assess and recognise qualifications that fell within the scope of the general systems rules (the 2015 Regulations).
4. To inform the review and the proposed new approach we:
  - considered the number of assessments which have taken place over the last three years and the outcome of these assessments
  - analysed the resource and cost implications for the applicant and for the SSSC
  - sought legal advice on our legal obligations to inform options available
  - consulted with key stakeholders including employers, employer representative bodies, Scottish Government, the UK Department for Business, Energy and Industrial Strategy (BEIS) and the other UK regulators
  - undertook an analysis of the potential impact of the options available
  - completed an Equalities Impact Assessment.
5. A summary of the analysis of each option is contained within the report.
6. It is recommended that the SSSC no longer assesses non-UK qualifications presented for registration on any function-based part of our register.

## INFORMATION

### Differences in our approaches to assessing UK and non-UK qualifications for function-based parts of the register

7. At present, we treat applicants differently depending on where in the world they gained their practice qualification and the part of the register they are applying to. Our future policy for non-UK applicants should ideally reduce some of these differences.
8. The differences are summarised below.

UK Qualifications (Scotland)	<ul style="list-style-type: none"> <li>• We accept a range of current and legacy awards.</li> <li>• We only accept qualifications we have assessed and accepted before.</li> <li>• We do not assess any new qualifications with the exception of national benchmark awards.</li> </ul>
UK Qualifications (England)	<ul style="list-style-type: none"> <li>• We accept a range of legacy awards.</li> <li>• We partially accept any current adult care awards approved by Skills for Care along with a compensatory measure of the four mandatory SVQ units.</li> <li>• We do not accept current early years awards (with some exceptions such as specific Montessori awards).</li> <li>• We do not assess any new awards.</li> </ul>
UK Qualifications (Wales and Northern Ireland)	<ul style="list-style-type: none"> <li>• We accept a range of legacy awards.</li> <li>• We do not assess any new awards.</li> </ul>
Non-UK qualifications (EEA mutual recognition rights)** <b>interim approach</b>	<ul style="list-style-type: none"> <li>• We do not accept any legacy awards.</li> <li>• We can assess qualifications, and include post qualifying learning in our assessment, regardless of the part of the register.</li> </ul>
Non-UK qualifications (rest of the world)	<ul style="list-style-type: none"> <li>• We do not accept any awards.</li> <li>• We will not assess any qualifications.</li> </ul>

9. Since 2012, following consolidation of our lists of qualifications (i.e. we only accept qualifications we have assessed and accepted before) we no longer assess new UK awards with the exception of benchmark awards in Scotland. We have never assessed qualifications presented for registration on function-based register parts from the rest of the world other than those who met the EEA mutual recognition rights. The current interim position to assess qualifications from EEA applicants is the only assessments we will currently assess for registration for the function-based register parts out with Scotland.

**Consideration of future options for assessment of non-UK qualifications:**

10. There are three approaches to the assessment of non-UK qualifications for functions-based register parts available to the SSSC.
11. Option 1: Do not assess any non-UK qualifications; require applicants to achieve benchmark qualification.

<b>Rationale</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• Very few applicants present qualifications for assessment and of those who do, very few are accepted as meeting the required standard.</li> <li>• The cost to assess a qualification is comparable to the cost to gain a qualification.</li> <li>• Potential to recognise previous learning – Recognition of Prior Learning (RPL) by training providers is often an easier, quicker, and less costly process for registrants.</li> <li>• Benefits for career and professional development; they will achieve a Scottish qualification which supports the standards that other registrants work to. The use of RPL may mean an easier process to gaining a benchmark qualification than completing our lengthy qualification assessment process.</li> <li>• Avoids potential challenge of discrimination against applicants without a European qualification.</li> <li>• Aligns closely with our approach to assessing UK qualifications following consolidation of our lists of qualifications (i.e. we only accept qualifications we have assessed and accepted before).</li> <li>• No other UK regulator assesses non-UK qualifications for function-based register parts.</li> </ul>	<ul style="list-style-type: none"> <li>• Could be perceived as creating a barrier to people from Europe working in social services in Scotland.</li> <li>• Could be perceived as not in-keeping with the intention of <a href="#">The European Qualifications (Health and Social Care Professions) (Amendment etc.) (EU Exit) Regulations 2019/593</a> According to the <a href="#">explanatory memorandum</a> the intention is that EEA workers who can currently get their qualifications assessed will still have a route available (paragraphs 2.6 and 2.10). We have, however, been assessing the qualifications of EEA social service workers as a matter of policy.</li> </ul>
<b>Commentary</b>	
<p>This option would only impact the small number of applicants who would otherwise decide to have their qualification assessed in the future (see appendix 1 for numbers of past applications and outcomes).</p> <p>Assessment of a qualification costs the individual £320, as well as their registration fee. Very few assessed qualifications meet the standard we require. A compensatory measure will then cost the price of a benchmark qualification or an aptitude test which is £790.</p>	

A full qualification assessment can take up to six months to complete. Each assessment requires a significant time commitment from both the applicant and the SSSC. In order to undertake an assessment the individual is required to submit a significant volume of information to support the assessment. Each qualification assessment is completed by two internal Learning and Development Advisers, which on average takes two to three weeks to complete. The outcome is often that they are required to complete a compensatory measure, which is a benchmark qualification.

We encourage applicants to achieve a recognised benchmark qualification. This is often a far shorter process than having their qualification assessed by us, and then still be required to complete part, or all of a recognised benchmark qualification. A training provider can also provide RPL with their qualification.

In order to mitigate the risk of it being perceived that we are creating an additional barrier to working in social services in Scotland, we would make clear that applicants do not need to hold a qualification in order to begin employment.

This option brings us in line with other UK regulators and is in line with our approach to the assessment of qualifications from the rest of the UK and the rest of the world.

12. Option 2: Assess only those non-UK qualifications that come from EEA states (this is most similar to our current policy)

Rationale	Risks
<ul style="list-style-type: none"> <li>• Enables us to continue assessing some non-UK qualifications using our current approach as far as possible.</li> <li>• Supports recruitment from EU member states.</li> </ul>	<ul style="list-style-type: none"> <li>• Potentially leaves us open to challenge of discrimination against applicants without a European qualification.</li> <li>• We would be using our discretion to assess European qualifications but not exercising a similar discretion to assess qualifications from the rest of the world.</li> <li>• Risk of legal challenge that approach is unlawful.</li> </ul>
<b>Commentary</b>	
<p>This option would discriminate against applicants from outside Europe. We previously carried out such assessments because our policy was in line with the European Directive, but we now have no such justification for a difference in approach. Since we have been challenged on this point on a small number of occasions by applicants, it is reasonable to expect such a challenge in the future.</p> <p>It also does not bring us in line with other UK regulators.</p> <p>It continues to use a large amount of resource for a small number of assessments. Each assessment can take up to six months to complete, and involves two internal Learning and Development Advisers for quality assurance and assessment, often resulting in a compensatory measure of a benchmark qualification still being the outcome (see appendix 1).</p>	

13. Option 3: Assess qualifications from anywhere in the world

<b>Rationale</b>	<b>Risks</b>
<ul style="list-style-type: none"> <li>• Sends a message that we are encouraging suitably qualified applicants to work in Scotland in social services from around the world.</li> <li>• Reduced risk of legal challenge.</li> </ul>	<ul style="list-style-type: none"> <li>• Would be a substantial departure from our current approach.</li> <li>• Likely increase in assessments will be resource intensive for the SSSC with potential implications for staffing.</li> <li>• Could raise unrealistic expectations about chances of success of application.</li> <li>• Experience has shown that, for most applicants, better option is to do the main qualification, as so few are accepted when assessed without a compensatory measure of part, or all of a benchmark qualification.</li> <li>• We would be taking a different approach than the other UK regulators.</li> <li>• Over the past year, a small number of individuals with qualifications from outside Europe have made representations to us and Scottish Government to ask why they cannot have their qualification assessed.</li> </ul>
<b>Commentary</b>	
<p>This option would discriminate against applicants from the UK as following our consultation with the sector, a definitive list of consolidated practice qualifications which the SSSC accepts for registration was introduced. This list came into force on 1 April 2012. This list applies to UK based qualifications.</p> <p>Our experience has shown that achieving a main national award is the preferred option. This substantial departure from our current policy would disadvantage applicants without EEA mutual recognition rights who we refused before 31 December 2020.</p> <p>This would increase the amount of resource needed from both Registration and Learning and Development.</p> <p>This would move us further away from other UK regulator approaches to non-UK qualification assessments.</p>	

**CONSULTATION**

14. We have consulted with the UK Department for Business, Energy and Industrial Strategy (BEIS) and Scottish Government in order to achieve clarity on our legal obligations from 1 January 2021. We involved the other UK regulators as part of the review to understand what approach they were taking and any possible impact for the movement of the

workforce. We consulted with employers, relevant national representative organisations and Scottish Government to obtain feedback regarding our proposed recommendation. This included Scottish Care, Coalition of Care Providers Scotland (CCPS), Society of Personnel and Development Scotland (SPDS), Scottish Government Early Years Directorate and the Association of Directors of Education in Scotland (ADES).

15. The key feedback from stakeholders was that
  - any change in policy should not mean a barrier or deter people from EEA countries working within Scotland
  - only a small number of individuals are likely to be impacted by any change
  - the SSSC should ensure that individuals and employers are aware and reminded that individuals can register with the SSSC with a condition to gain a relevant qualification
  - no other UK regulator assesses non-UK qualifications for function-based register parts.

## **RISKS**

16. The relevant legal risks and options should be considered against the risk appetite set by the Council. The section relating to Regulatory and Legal Compliance states "We aim to reduce our risk of failing to meet our legal and financial obligations to a managed position of being "as low as reasonably practicable". We maintain an averse risk appetite towards regulatory and legal compliance. Risk taking is generally limited to those events where there is little chance of any significant repercussion for the SSSC should there be a compliance failure."
17. All options have a low likelihood of legal challenge. Option 1, however presents a level of risk closest to that set out in our risk appetite statement while enabling the SSSC to adopt a proportionate approach.
18. The Professional Qualifications Bill is currently before Parliament to make provision relating to entitlement to practise certain professions, occupations and trades, and for connected purposes. It is intended regulators will have the autonomy to pursue recognition arrangements with counterparts in other countries in the interests of their professions. Given the numbers involved (see appendix 1) and the fact that we individually assessed EU qualifications previously, creation of such arrangements would involve a disproportionate amount of resource considering the numbers of qualifications presented. The Bill, if passed, may create future legal obligations to assess non-UK qualifications for function-based register parts. We will continue to monitor progress of the Bill and, if passed, any Regulations made under the resulting legislation. If necessary, we will amend our process should we become subject to any legal obligations.



## **IMPLICATIONS**

### **Resourcing**

19. Option 1 will reduce the staffing resource currently required to undertake the assessment of qualifications, Option 2 will see limited or no change to the resource required and Option 3 has the potential to significantly increase the demand for assessments and may have staffing implications for the SSSC.

### **Compliance**

20. There is currently no legislation obliging the SSSC to assess non-UK qualifications for function-based parts of the register. Any risk of legal challenge would be by way of judicial review of the SSSC's decision to change its policy.
21. Any option presents a risk of such a challenge however it is noteworthy that we have not received a legal challenge up until this point.
22. From a legal perspective, the safest course of action would be to assess all qualifications, regardless of origin. This option presents the least likelihood of legal challenge.
23. Legally the highest risk is assessing only those non-UK qualifications that come from EEA states. This increases the possibility of a challenge being made. This option would discriminate against applicants from outside Europe. Since we have been challenged on this point on a small number of occasions by applicants, it is reasonable to expect such a challenge in the future.
24. Option 1 represents a departure from existing policy that increases the likelihood of legal challenge. The SSSC is, however, entitled to change its policy subject to any new policy being lawful. To arrive at a lawful decision, it is necessary to consider factors such as the legitimate expectations of applicants, whether appropriate consultation with those likely to be affected has been carried out, whether the decision making is procedurally fair and whether the decision itself is proportionate.

## **IMPACT ASSESSMENTS**

### **Equalities**

25. An EIA has been completed. The recommended policy change will only impact a small number of individuals who might have asked to have their qualifications assessed. It does not raise barriers for people wanting to work in a function-based role on the SSSC register with a non-UK

qualification as they can register and gain a relevant benchmark qualification whilst working. They can also use Recognition of Prior Learning with a training provider to gain such a qualification. The recommended approach removes the inequality of only EU assessments being accepted for function-based parts of the register.

## **CONCLUSION**

26. Taking into account the rationale and risks detailed above Council is asked to approve Option 1, that the SSSC will no longer assess non-UK qualifications for function-based register parts.