

Subsidiary Legislation made under s.81(1).

**QUALIFICATIONS (PROPORTIONALITY TEST)  
REGULATIONS 2020**

**Revoked by LN.2021/228 as from 1.1.2021**

**LN.2020/551**

*Commencement*                      **24.12.2020**

---

**ARRANGEMENT OF REGULATIONS.**

Regulation

1. Title.
2. Commencement.
3. Interpretation and scope.
4. *Ex ante* assessment of new measures and monitoring.
5. Justification on grounds of general interest objectives.
6. Proportionality.
7. (1) The Minister shall ensure compliance with the principle of the.....
8. Information.

**2009-42**

## **Qualifications (Right to Practise)**

**Revoked**  
**2020/551**

### **Qualifications (Proportionality Test) Regulations 2020**

---

*In exercise of the powers conferred on it by section 81(1) of the Qualifications (Right to Practise) Act 2009 and all other enabling powers and to transpose into the laws of Gibraltar Directive (EU) 2018/958 of the European Parliament and of the Council of 28 June 2018 on a proportionality test before the adoption of new regulation of professions, the Government has made these Regulations-*

#### **Title.**

1. These Regulations may be cited as the Qualifications (Proportionality Test) Regulations 2020.

#### **Commencement.**

2. These Regulations come into operation on the date of publication.

#### **Interpretation and scope.**

- 3.(1) Unless otherwise stated, the definitions in the Act shall apply in these Regulations-

“Act” means the Qualifications (Right to Practise) Act 2009 as may be amended from time to time;

“protected professional title” means a form of regulating a profession where the use of the title in a professional activity or group of professional activities is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of a specific professional qualification, and where the improper use of that title is subject to sanctions;

“reserved activities” means a form of regulating a profession where the access to a professional activity or group of professional activities is reserved, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to members of a regulated profession holding a specific professional qualification, including where the activity is shared with other regulated professions.

- (2) These Regulations shall apply to legislative, regulatory or administrative provisions that restrict 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 Act.

- (3) Where specific requirements concerning the regulation of a given profession are established in separate European Union legislation which does not leave the Minister a choice as to the exact way in which they are to be transposed, the corresponding provisions of these Regulations shall not apply.

***Ex ante* assessment of new measures and monitoring.**

4.(1) The Minister shall undertake an assessment of proportionality in accordance with the rules laid down in Regulations 6 and 7 before new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions under the Act are introduced.

(2) The extent of the assessment referred to in sub regulation (1) must be proportionate to the nature, the content and the impact of the provision.

(3) Any provision referred to in sub regulation (1) must be accompanied by an explanation which is sufficiently detailed to make it possible to appraise compliance with the principle of proportionality.

(4) The reasons for considering that a provision referred to in sub regulation (1) is justified and proportionate must be substantiated by qualitative and, if relevant, quantitative elements.

(5) The Minister shall ensure that the assessment referred to in sub regulation (1) is carried out in an objective and independent manner.

(6) The Minister shall monitor the compliance of new or amended legislative, regulatory or administrative provisions that restrict access to, or the pursuit of, regulated professions, under the Act, with the principle of proportionality.

**Justification on grounds of general interest objectives.**

5.(1) The Minister shall ensure, that legislative, regulatory or administrative provisions that restrict access to, or the pursuit of, regulated professions under the Act that are introduced and any amendments that are made to existing provisions are justified by general interest objectives.

(2) The Minister shall consider whether the provisions referred to sub regulation (1) and section 84(2)(b) of the Act are objectively justified based on-

- (a) public policy;
- (b) public security or public health, or
- (c) by overriding reasons of general interest.

(3) For the purposes of this Regulation, grounds of a purely economic nature or purely administrative reasons shall not constitute overriding reasons in the general interest, justifying a restriction on access to, or the pursuit of, regulated professions under the Act.

**Proportionality.**

6.(1) When assessing proportionality in Regulation 4(1) the Minister shall consider-

- (a) the nature of the risks related to the general interest objectives pursued such as risks to service recipients, including consumers, to professionals or to third parties;
- (b) the sufficiency of existing rules of a specific or more general nature, such as those contained in product safety law or consumer protection law, for the attainment of the objective pursued;
- (c) the suitability of the provision as regards its appropriateness;
- (d) the identification of risks in a similar way as in comparable activities;
- (e) 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;
- (f) the possibility of using less restrictive means to achieve general interest objectives;
- (g) the effect of new or amended provisions, when combined with other provisions restricting access to, or the pursuit of, the profession, and in particular how the new or amended provisions, combined with other requirements contribute to and whether they are necessary for the achievement of the general interest objective.

(2) For the purposes of paragraph (f) in sub regulation (1), where the provisions are justified-

- (a) by consumer protection only; and
- (b) where the risks identified are limited to the relationship between the professional and the consumer, and therefore do not negatively affect third parties,

the Minister shall assess whether the objective can be attained by means that are less restrictive than reserving activities.

(3) For the purposes of paragraph (g) in sub regulation (1), the Minister shall assess the effect of the new or amended provision when combined with one or more of the following requirements-

- (a) reserved activities, protected professional title or any other form of regulation within the definition of 'regulated profession' in the Act;
- (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, where those requirements imply the possession of a specific professional qualification;
- (e) quantitative restrictions and 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) requirements restricting the exercise of a regulated profession jointly or in partnership, as well as incompatibility rules;
- (h) requirements concerning insurance cover or other means of personal or collective protection in respect of professional liability;
- (i) language knowledge requirements, to the extent necessary to practise the profession;
- (j) fixed minimum and/or maximum tariff requirements;
- (k) requirements on advertising.

(4) The Minister shall also consider the following elements but only when they are relevant to the nature and the content of the provision being introduced or amended:

- (a) the connection between the scope of activities covered by a 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 such as 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 certain professions can or cannot be shared with other professions;
- (e) the degree of autonomy in exercising a regulated profession;
- (f) the impact of organisational and supervision arrangements on the attainment of the objective pursued where the activities relating to a regulated profession are pursued under the control and responsibility of a duly qualified professional;
- (g) any scientific and technological developments which may effectively reduce or increase the asymmetry of information between professionals and consumers.

7.(1) The Minister shall ensure compliance with the principle of the proportionality of specific requirements related to temporary or occasional provision of services, as provided for under Part III of the Act, including-

- (a) automatic temporary registration with, or pro forma membership of, a professional organisation or body, referred to in section 17 of the Act;
- (b) a declaration to be made in advance pursuant to section 18(1) of the Act, documents required pursuant to section 18(2) of the Act or any other equivalent requirement;
- (c) the payment of a fee, or any charges, required for administrative procedures related to the access to, or the pursuit of, regulated professions which the service provider incurs.

(2) This Regulation shall not apply to measures designed to ensure compliance with applicable employment terms and conditions applied in accordance with European Union law.

(3) The Minister shall take account of the objective of ensuring a high level of human health protection where the provisions concern the regulation of healthcare professions and have patient safety implications.

**Information.**

8. The Minister may, where relevant-

- (a) make information available to citizens, service recipients and other relevant stakeholders, including those who are not members of the profession concerned, before new, or amending existing, legislative, regulatory or administrative provisions restricting access to, or the pursuit of, regulated professions is introduced;
- (b) carry out public consultations for the purposes of subregulation (1).