



Department
for Business
Innovation & Skills

**TRANSPPOSITION OF THE REVISED
MUTUAL RECOGNITION OF
PROFESSIONAL QUALIFICATIONS
DIRECTIVE 2005/36/EC**

CONSULTATION RESPONSE FORM

14 AUGUST 2014

Annex V: Consultation on the transposition of the revised Mutual Recognition of Professional Qualifications Directive (2005/36/EC) response form

Name: **Darren Shell, Policy and Legislation Manager**
Organisation (if applicable): **Nursing and Midwifery Council**
Address: **23 Portland Place, London W1B 1PZ**

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

The closing date for this consultation is 06/11/2014

Please return completed forms to:

Francesca Horn
Single Market Team
Department for Business, Innovation & Skills
3rd Floor, Orchard 1
1 Victoria Street
London SW1H 0ET

Telephone: 0207 215 3334

E-mail: MRPQconsultation@bis.gsi.gov.uk

We would like respondents to tick a box from a list of options that best describes them as a respondent. This allows views to be presented by group type.

	Business representative organisation/trade body
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	Small business (10 to 49 staff)
<input checked="" type="checkbox"/>	Competent Authority
	Trade union or staff association
	Other (please describe)

General:

Question 1: Do you agree with our proposal to revoke and replace the current 2007 Regulations rather than amend them?

Comments:

We agree that it makes sense to have one clear set of Regulations based on the updated Directive. The NMC's current internal recognition of qualifications policy is informed by the 2007 Regulations. In order to update this policy to take into account the requirements of the new Directive it would be very helpful to reference a single set of up to date Regulations and accompanying guidance for competent authorities.

European Professional Card (article 4a – 4d)

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As mentioned previously, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the EPC. With this in mind, we have the following questions:

Question 2: Do you have any suggestions for professions that should be included in the EPC?

Comments:

We do not yet have a formal position on the EPC as we have been awaiting further information about how it will operate in practice. However, along with other regulators, we continue to have reservations about the application of the EPC to the health and care professions, being unconvinced about the balance of benefits to applicants versus risks to public safety.

We note that nurses responsible for general care (adult nurses in the UK) are proposed as being part of the first wave of professions and we recognise that European nursing unions have pressed for the inclusion of nursing in the EPC.

Although we recognise that free movement of professionals within Europe is an important element in securing the provision of good healthcare services in the UK and elsewhere, our main objective as a health professional regulator is public protection. Our preference is for any EPC system introduced to recognise the particular public protection issues and obligations associated with healthcare professions and make provision for these requirements. We are keen to ensure that the proposed system does not compromise public safety and we are therefore cautious about the current 'one size fits all professions' approach. We have raised a number of concerns with BIS, the Department of Health (DH) and the European Commission about how the EPC system will operate in practice. These concerns are particularly acute in relation to general system migrants and those seeking temporary and occasional registration.

We also think that it is very important that the first professions to use the EPC are viewed as a pilot and that any learning from the first phase is incorporated in order to make it a success. It is vitally important that the EPC improves the recognition procedure and does not hinder it or compromise patient safety.

Our concerns about the EPC would be the same whether any nurses are in the first wave or any later wave and we would need all the issues we have raised to be resolved in any event as the implementing act would also apply to any later phase. The main additional challenge presented by being in the first wave would therefore be an operational one and as we have previously stated this challenge would be mitigated by the EPC only being available for automatic recognition cases in the first phase.

Question 3: Within the scope of article 4a.7 of the Directive relating to the power to adopt an implementing act, can you suggest any issues that we should be conscious of with regards to the EPC?

Comments:

We handle a significant number of EU applications each year and apply proportionate checks to ensure public protection. We do not think that our current processes impede free movement at all with regard to recognition of qualifications and to this extent we do not view the current regime as a problem that has to be solved. However we recognise the policy objectives of the EPC and, provided appropriate safeguards are included in the process to ensure public protection, we will work towards effective implementation of it.

We have already provided feedback on a number of aspects of the EPC. It is essential that the system to operate the EPC provides effective safeguards to protect the public whilst at the same time aiding mobility of professionals. It is also important that the EPC, as just one part of the our process, does not impede the current efficient wider registration system.

The main issues we have raised about the EPC centre on the following:

- (1) It is essential that competent authorities in all member states have robust document-handling and anti-fraud mechanisms in place to ensure that the identity of migrants can be verified and that they hold the correct qualifications. The European Commission should place a clear obligation on member states to ensure that this occurs.**
- (2) Competent authorities must be able to request certified copies and official translations of key recognition documents in order to assure themselves of the authenticity and comparability of a migrant's qualification.**
- (3) The recognition and registration process is a resource intensive process and we have a team of officers and experts in place to manage these applications. It is essential that we can recoup the costs of this process so that they are not passed on to UK registrants. We believe it is a vitally important principle that migrants pay for their application before we begin our assessment of it.**
- (4) We have strong reservations about whether the proposed EPC system is appropriate for those seeking temporary and occasional registration in the UK. As a matter of principle, as the UK regulator, we should be in a position to be able to authorise the practice in the UK of all EU trained migrants using the EPC. This includes temporary and occasional migrants who benefit from automatic recognition of their qualifications. Although we recognise that the Directive gives such individuals specific rights we are very clear that it should be the UK regulator that authorises an individual to practise. Additionally should fitness to practise concerns arise there should be mechanisms in place to prevent individuals from practising when appropriate.**

We hope that all of these issues will be clarified and become clearer with the development of the Commission's implementing act.

Question 4: Do Competent Authorities expect the EPC to deliver any cost savings from the transfer of responsibility for checking qualifications to home Member States? Please provide any detail possible on the expected cost implications of the EPC for your authority.

Comments:

We have studied the draft impact analysis that accompanies this consultation which estimates a considerable cost saving to the NMC with the introduction of the EPC. Although the final details of the system are not convinced that the introduction of the EPC will result in a cost saving for us. We consider that this is the case for the following reasons:

- (1) We will be required to establish two separate workflow systems which will be required to operate side by side, one for users of the traditional route and one for users of the EPC. These two separate processes will operate to different timescales. Furthermore within these two processes, different components will further operate to different timescales – for automatic recognition, general system, or temporary and occasional provision of service. This will require a significant reconfiguration of our current workflow process. Both the development and operation of this reconfiguration will result in a cost impact.**
- (2) The EPC system is primarily concerned with the recognition of the migrant’s qualification. This is only one part of our registration process which also includes good health and good character requirements (including absence of convictions and so on), assurance in relation to professional indemnity insurance and from 2015 or 2016, controls in relation to English language competence. All of these checks will still take place for each migrant as part of the wider application for registration. Taking into account the significant volumes that the NMC deals with we are not convinced that the EPC will bring cost savings to this process.**
- (3) The wording of the new Directive appears to restrict the ability of host competent authorities to require advance payment of a recognition fee. For the reasons outlined above, this is a matter of concern. Unless a workable solution is found to enable us to enforce the advance payment of an appropriate fee for the work involved in the assessment of a recognition application there may be a significant cost impact which would fall on the UK registrants whose fees fund our work. This is particularly an issue in general system cases where the costs of assessment are highest.**
- (4) Finally, the introduction of the EPC will result in significant changes to our process to verify outgoing UK registrants who wish to have their qualifications assessed in other member states. A key feature of the EPC system is that the migrant’s “home” competent authority has a much bigger role to play in the process. Currently this is a relatively uncomplicated process, both for automatic recognition and general system cases, as we simply issue a “verification” directly from our registration system. The EPC will require us to authenticate documents uploaded by the migrants themselves, including for general system cases transcripts of training, certificates, and information relating to CPD. For a general system case should the host competent authority require further information on a migrant’s education it will inform us through the IMI system and then it will fall to us to request this information from a UK higher education institution, and not from the applicant as happens now. This is a**

fundamental change to our current process in this area and we anticipate a significant cost to develop and operate the new requirements.

Overall, on the basis of the current proposals, we anticipate that the impact of the EPC will be a net cost to us rather than net saving, although we are unable to provide detailed cost estimates until the details of the EPC system have been finalised. Furthermore, as the Commission has not provided any evidence as to the number or proportion of migrants who it anticipates may wish to use the EPC, we will have to undertake IT and system changes detailed above without any clarity about the extent of its use.

Partial Access (Article 4f):

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Question 5: Bearing in mind the requirements for partial access set out in the Directive (article 4f.1), which professions do you consider eligible for partial access and why?

Comments:

We do not consider that nursing and midwifery should fall under the provisions of partial access for the following reasons:

- (1) Article 4f(1)(b) of the Directive states that a migrant may seek partial access where shortfalls in their training are so large that they cannot be compensated for through a compensation measure where that would require them undertaking a full training. In the UK training as a nurse or a midwife is three years in length. The maximum adaptation period permissible under Article 14(1) is three years. Therefore we consider that if a migrant requires a compensation measure in excess of this it means that they are not a qualified nurse or midwife at all. Therefore they should not be entitled to seek partial access to our register which is defined in statute as a register for qualified nurses and midwives.**
- (2) Article 4f(1)(c) states that partial access may apply where the professional activity can objectively be separated from other activities undertaken within the profession. We do not consider that individual activities of a nurse or midwife can objectively be separated from each other.**
- (3) The nature and meaning of registration as a nurse or midwife with the NMC is well understood by the public and employers. Registrants have a specific registration with the NMC as, for example, an adult, mental health, children's or learning disabilities nurse, or as a midwife, having been specifically prepared through their education and training to be competent in relation to the whole of their registration. Introducing a variance to this, whereby individuals would in effect be given partial or conditional registration for one part of the register has the potential to cause confusion to the public and to employers, and would change the meaning of registration as currently understood.**
- (4) There is a risk that applying the partial access provisions to EU migrants in relation to nursing and midwifery may have unintended consequences in the UK. This is because in the UK a number of healthcare workers (including senior health care assistants, phlebotomists and so on) are able to carry out some duties that were and**

are carried out by nurses and midwives. An example would be dressing wounds, taking blood, and monitoring patients. A EU trained migrant who sought partial access and became registered but who was only able to carry out a specific number of tasks that were comparable to those carried out by unregulated healthcare workers in the UK, would be in an advantageous position when compared to these UK workers. In other words they would be entitled to professional registration whereas the UK worker would not. This may have implications in relation to discrimination against UK workers, as well as the status of the unregulated health care workforce in the UK.

- (5) Most importantly, we do not agree that the wording of the Directive requires the inclusion of these individuals on any UK healthcare professional register if the activity they wish to perform is not regulated in the UK, as they would be free to carry out the activity in any event.

It would be very helpful to be given examples of any professional activities which have been identified by the EU Commission as being eligible for partial access in the UK which would specifically require registration with the NMC.

Question 6: Do you think that we should require applicants who wish to access a profession on a partial basis to do so using the title for that profession in English rather than the professional title of their own state? Is the answer different in relation to different professions?

Comments:

We do not consider that partial access should apply to the nursing and midwifery professions. We are only able to register qualified nurses and midwives and only our registrants can use the UK protected titles for registered nurses and midwives. It would be confusing for patients, the public and employers if anyone else was allowed to use these titles. If an individual wishes to carry out an unregulated professional activity in the UK then we consider that they should use their own professional title to avoid any confusion.

Question 7: Are Competent Authorities able to provide any estimate of the cost of addressing an individual partial access case as well as any costs associated with changes (such as IT systems) to their registers to accommodate partial access?

Comments:

We are only empowered to hold a register of qualified nurses and midwives. For the reasons set out above we do not consider that other individuals should be entitled to seek partial access to our register.

Temporary service of provisions (articles 7, 8):

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Question 8: Do the new requirements for temporary provision require clarification?

Comments:

The clarification of the list of documents that can be asked for on first provision of services in Article 7(2) is helpful, as is the requirement for competent authorities to cooperate with each other in Article 8.

We do have a concern about automatic recognition temporary and occasional migrants using the EPC under Article 4c. We would welcome clarification of the role of the host competent authority in these cases. As we outlined in our response to Question 3 it is essential that the host competent authority is able to scrutinise the IMI file in such cases and apply controls on the practice of such migrants if public protection concerns warrant this.

Question 9: In relation to the option to require a language declaration in relation to professions with safety implication, which professions do you think fall within this description?

Comments:

We believe that all professions with health or patient safety implications including nursing and midwifery should be subject to language controls. We consider that temporary and occasional migrants should be subject to the same language requirements that will apply to establishment cases.

We recognise that the Directive provides for temporary and occasional migrants to provide a self-declaration. However we believe that it is very important that such migrants are truthful, recognise the limits of their language competence where these exist, and take remedial action to address any limits where appropriate. They should also make service users aware that they have not been subject to the language control requirements of the establishment regime.

Question 10: Do any Competent Authorities anticipate additional costs incurred from the temporary service provision amendments?

Comments:

As we are not permitted to make a charge for migrants using the temporary and occasional provision of services regime, increased movement through this route could reduce the fees that we receive for assessing applications from EU migrants. We are concerned that there may be increase in such migration as these migrants are exempt from the requirements to pay a fee, hold an indemnity arrangement and meet our language competence and revalidation requirements. Therefore should there be a large increase in the numbers using this route an increasing proportion of the burden of funding the EU registration process will fall on UK registrants. We do not believe that this is a fair outcome.

Conditions for recognition (article 13):

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Question 11: Are the conditions for recognition sufficiently clear?

Comments:

The amended provisions of Article 13 are clear although they will have implications for our current processes. In the UK, training as a nurse or midwife is set at the level of qualification outlined in Article 11(d). This means that by virtue of the current Article 13(1)(b) we only consider qualifications under the Directive where these go down to those described in Article 11(c) (being qualifications gained at post-secondary level of at least one year in length).

The result of the removal of Article 13(1)(b) in the new Directive is that the scope of the general system has been widened and we will be required to consider applications from migrants holding qualifications equivalent to Articles 11(a) and 11(b). This means that potentially large numbers of holders of secondary school level qualifications from newer member states will become eligible for consideration under the provisions of the Directive. Although we currently do receive applications such as this, these are not eligible for recognition via the Directive and are instead given a basic assessment in accordance with rights conferred by the Treaty. Assessment of increased numbers of such applications may therefore have cost implications.

Compensation measures (article 14):

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Question 12: Although the applicant has the right to choose, Members States' can stipulate, by way of derogation, an adaptation period or aptitude test. Do you think there is a case, in relation to a profession, for expanding the category of cases where we may stipulate either an aptitude period or adaptation test as set out in Article 14.3? If so, please provide reasons for this.

Comments:

We are considering whether we would like to request derogations in relation to applicants with qualifications covered by Articles 11(a) and 11(b) of the Directive. We will be liaising directly with BIS in relation to this.

Question 13: Does applying a compensation measure raise the administrative costs of processing an application?

Comments:

We have found that the most efficient recognition cases to process are automatic recognition cases. The imposition of compensation measures does add cost to the processing of applications for the following reasons:

(1) Applications requiring compensation measures are often very complex with a detailed examination of a migrant's education and training history often required

before coming to a final decision. This requires significant amounts of resource, often including specialist education input.

(2) We are required to maintain a public facing database of providers of compensation measures.

(3) We are required to process, record and verify the completion material for each applicant from the education institution that has provided the compensation measure.

Recognition of professional traineeship (article 55a)

Page 19

Question 14: What limits to the duration of professional traineeships should be set, if any, in relation to a relevant profession?

Comments:

Professional traineeships do not apply to the nursing and midwifery professions.

Question 15: Are there any current guidelines on organisation and recognition of professional traineeships?

Comments:

Professional traineeships do not apply to the nursing and midwifery professions.

Automatic recognition on the basis of common training principles (articles 49a and 49b):

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These principles are subject to delegated acts adopted by the Commission. Therefore we are interested in your views in general terms only at this stage.

Question 16: Is the provision for setting up common training principles/frameworks of interest to your profession?

Comments:

We understand that a number of professional groups have expressed an interest in recognition on the basis of common training principles. However, we are cautious about this new provision.

It is essential that when the Commission produces delegated acts in this area that they liaise closely with the competent authorities who hold the professional registers and manage the recognition process. If for example a number of professional groups within several member states wish to establish common standards for a nursing or midwifery qualification leading ultimately to new automatic recognition rights, then it would be vitally important that the competent authorities be involved in discussions. New cross-member state recognition regimes could have major implications, both where the new qualification reflects an existing part of our register and where it does not.

We also have concerns about how common training frameworks and tests would be quality assured. It would be essential that there are robust mechanisms in place at national and EU level to ensure that quality of learning is maintained.

Question 17: Do you consider your profession to be outside the scope of a CTF or CTT and why?

Comments:

Please see our response for Question 16.

Question 17: Do Competent Authorities expect common frameworks and tests to reduce administrative costs in processing PQD applications?

Comments:

Please see our response for Question 16.

Access to information (articles 50.3, 57, 57a):

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Question 18: Are your procedures already available online?

Yes No Not sure

Comments:

Migrants can currently request an application pack online. We are currently developing our online capability but are currently unable to provide a date for when this will be available.

Question 19: Do you accept electronic payments?

Yes No Not sure

Comments:

Question 20: Is your Competent Authority already linked in to the PSC?

Yes No Not sure

Comments:

We do have links with the PSC for example through sharing migration statistics and providing recognition information for the PSC website however we do not have day-to-day contact. We understand that for both the NMC and the other regulators the majority of applicants come directly to us via our own websites, rather than going through a UK based third party.

Question 21: Are Competent Authorities able to provide any information about the expected costs and time taken to make available information through the Points of Single Contact?

Comments:

We do not envisage any change to the current process. The UK PSC currently has information for migrants about registration with the NMC on its website. This information provides key information and directs nurses and midwives to the NMC. The new provisions do not appear to require any change to this.

Question 22: Do any Competent Authorities expect substantive costs to arise from providing electronic application processes? Could you please specify expected costs?

Comments:

The cost that we envisage as a result of the introduction of online processes is one that will apply the NMC and not to applicants themselves. The cost will relate to the system development and user testing of the new system although we are currently unable to specify this.

Question 23: Do Competent Authorities who have switched to online application systems have any information on the impact this may have had on number of applications?

Comments:

We are not currently able to answer this question.

Exchange of Information (article 56)

Page 21

Question 24: Are you aware of IMI?

Yes No Not sure

Comments:

Question 25: Are you registered with IMI?

Yes No Not sure

Comments:

Question 26: If you are already registered on IMI:

- i. do you find the system easy to use?
- ii. do you find the information exchanged useful?

a. Yes No Not sure

b. Yes No Not sure

Comments:

Overall our experience of using the IMI system has been positive. We have been using the system for about 5 years and have found the ability to communicate directly with other competent authorities to be very useful. This direct contact has helped resolve a number of problematic recognition cases.

We would however like to point out that the system does have its drawbacks and significant development of it is likely to be required in order to support the new requirements of the EPC and the alert mechanism. Examples of this include the formulaic nature of some of the set questions in the system resulting in repeated “to and fro” between the NMC and other regulators. This sometimes results in both competent authorities going “offline” in order to resolve the problem.

Additionally although most member states provide timely responses, this is not always the case and so it would be helpful if the Commission reminded member states of their duty to cooperate and provide timely responses.

Question 26: Do you consider you should be designated as a coordinator? Please provide reasons.

Comments:

We have no comment to make in relation to this question.

Question 27: Are affected Competent Authorities able to provide more information on how many additional staff may need to use IMI for the alert mechanism and the potential on-going costs of using the system?

Comments:

We do anticipate that additional members of staff will be required to use IMI for the new provisions of the Directive such as the EPC and the alert mechanism. Currently approximately 7 members of staff regularly use the system. The EPC and the alert mechanism will greatly increase the “traffic” through the system, with the alert mechanism function being used across both our Registration and Fitness to Practise directorates. We anticipate therefore that the number of NMC officers using the system will double and may increase further.

Alert Mechanism (article 56a):

Page 22

As with the EPC, the specifics of implementation are difficult to address at this stage as we are awaiting the adoption of an implementing act for the Alert Mechanism. With this in mind, we have the following questions:

Question 28: Within the scope of the implementing act (article 56a.8), can you suggest any issues that we should be conscious of with regards to the Alert Mechanism including:

- Eligible authorities or coordinators
- Procedures on treatment of alerts
- Security of processing alerts?

Comments:

Along with other regulators, we have consistently called for greater exchange of Fitness to Practise information between member states. We believe that the introduction of the alert mechanism is a positive step that will bring greater protection to the public. In order for it to function effectively there must be greater cooperation and transparency between member states.

We are currently analysing the impact of the alert mechanism on our processes. We handle a large number of Fitness to Practise cases, and our panels impose a high number of sanctions each year. We are therefore likely to issue a large number of alerts. We have raised a number of questions with BIS and the Commission about how the system will operate and we look forward to receiving clarification in due course. We believe there are a number of issues that need to be clarified when the Commission

publishes its implementing act in order for us to plan our workflow properly. These include:

Closure and deletion of alerts

We would like clarification from the Commission about whether alerts will be closed or deleted automatically, or whether competent authorities will be required to manually update and amend alerts themselves. Clarification of this is required bearing in mind the large numbers of sanctions that the NMC issues.

Content of alerts

We understand from recent documents supplied by the Commission that alerts will not contain any rationale for the sanction applied. We believe that this is likely to lead to regulators increasingly contacting each other for further information outside the IMI system.

Related to this point we also believe that the Commission should undertake a mapping exercise of the different types of sanctions across member states and the reasons that may lead to these. This is because with the large number of legal and disciplinary jurisdictions, issues that may lead to a sanction (and thus an alert) in one member state may not do so in another.

Right of appeal

Recent documents shared by the Commission indicate that the individual who was the subject of an alert would have a right of appeal against the sending of the alert in addition to the general appeal rights against the sanction itself. This requires clarification, bearing in mind the legal requirement of the Directive to send each alert within three days of a decision. In order to protect the public it is essential to warn other member states as soon as possible. In our view, should a nurse or midwife be successful in the appeal against the panel decision, then the NMC would issue a second alert clarifying or withdrawing the earlier alert.

A general point to make is that ongoing engagement by the Commission with competent authorities will be very important to ensure that the policy objectives of the alert mechanism are met.

Transparency initiative (article 59):

Page 23

Question 29: Do you have any views on the most effective exercise of the transparency process?

Comments:

We believe that regulation of the nursing and midwifery professions is justified and necessary to protect the public. In the way that we regulate and in how we recognise qualifications our approach is both robust and proportionate. Nevertheless we are happy to cooperate and provide any information that is necessary for this piece of work.

Question 30: Do you know of any Chartered Bodies that should be either removed or added from Annex I? Please give reasons for your answer.

Comments:

We are not able to answer this question.

Question 31: Do you know of any regulated professions that should either be removed or added from Schedule I? (<http://www.legislation.gov.uk/uksi/2007/2781/schedule/1/made>) Please give reasons for your answer

Comments:

We are not able to answer this question.

Question 32: Has your Competent Authority updated the information on the database (A request to complete the 'Proportionality' tab was sent on 18 July 2014)?

Comments: **Yes**

Do you have any other comments that might aid the consultation process as a whole?

Please use this space for any general comments that you may have, comments on the layout of this consultation would also be welcomed.

We welcome the cooperation and information sharing that we have received from UK government officials. This is especially important given that we believe that competent authorities in other member states may not have had the benefit of such cooperation. Going forward, it is essential that the Commission engages with competent authorities so that the new provisions of the Directive can be implemented correctly whilst maintaining public and patient safety.

Thank you for your views on this consultation.

Thank you for taking the time to let us have your views. We do not intend to acknowledge receipt of individual responses unless you tick the box below.

Please acknowledge this reply

At BIS we carry out our research on many different topics and consultations. As your views are valuable to us, would it be okay if we were to contact you again from time to time either for research or to send through consultation documents?

Yes

No

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Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

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