

Delegated Powers and Regulatory Reform Committee

Professional Qualifications Bill

Memorandum by BEIS

Introduction

1. This Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee. The Memorandum identifies the provisions of the Bill which confer powers to make delegated legislation. It explains in each case why the power has been taken and the nature of, and reason for, the procedure selected.
2. Each measure in the Bill is addressed individually. The material for the Memorandum was prepared by the Department for Business, Energy and Industrial Strategy (BEIS).

Overview of the Bill

3. The Bill will:
 - a) **Revoke the European Union (Recognition of Professional Qualifications) Regulations 2015 (the "2015 Regulations") (clause 5)**. The Bill will also provide a power to revoke or amend other retained EU law relating to the recognition of professional qualifications.
 - b) **Introduce a new framework for recognition of professional qualifications obtained outside the UK (clause 1(1))**. The Bill will enable regulations to be made (for professions where there is demand for services) so that professionals with overseas qualifications will have a means to get their professional qualifications recognised in the UK under a framework that provides consistent recognition outcomes.
 - c) **Enable Government to implement recognition of professional qualifications provisions in international agreements (clause 3(1))**. This power will enable the Government to implement so much of any international agreement as relates to the recognition of professional qualifications.
 - d) **Enable regulators to enter into recognition agreements with their counterparts overseas (clause 4)**. This power would allow regulations to be made which give regulators the ability, where they do not already have it, to enter into recognition agreements with other regulators abroad, outside of any government-negotiated international agreement.
 - e) **Maintain a designated "Assistance Centre" with which regulators must cooperate, to provide advice and guidance to the public (clause 7)**. This will require the Secretary of State to designate a body which will provide information to individuals and to which regulators must provide up to date information, regarding the recognition of professional qualifications. This body must also provide relevant information to the Government when requested.
 - f) **Create a new duty requiring UK regulators to, where requested, provide specified information to overseas regulators (clause 10(2))**. This will facilitate UK professionals practising their professions abroad by ensuring UK regulators provide overseas regulators with the information necessary for the purposes of determining an individual's entitlement to practise the profession in that country.

- g) **Create a new duty on UK regulators to publish specified information on their websites (clause 8).** This is intended to provide improvements in transparency where it could benefit the professions and the consumers of professional services.
- h) **Create a new duty for UK regulators to, where requested, provide specified information to counterpart regulators in other parts of the UK (clause 9).** This will facilitate UK professionals seeking to be recognised in other parts of the UK.
- i) **Facilitate the administrative handling of applications for registration relating to the information to be publicly available on the Register of architects, and the delegation of functions by the Registrar (clause 11).**

General Approach

- 4. The regulation of professions in the UK has evolved slowly over time. There has never been a consistent, overarching approach to legislating in this area. This results in a wide variety of approaches with a number of anomalies and inconsistencies between the legislation governing different professions. With some exceptions, the substantive changes to the law envisaged by this Bill will be made through delegated powers rather than the Bill itself. The principal reason for this is that the subject matter of the Bill interacts with many different legislative schemes specific to different professions and regulators. The Government's intention is to give regulators additional duties (to treat holders of overseas qualifications as if they have UK qualifications if they meet certain criteria, or as a consequence of international agreements), to remove existing duties (by revoking retained EU law) and to provide additional powers (to enter into recognition agreements themselves).
- 5. In each case, the changes appropriate to a particular profession will need to be woven into the existing legislative scheme for that profession as a generic approach covering all affected professions is not practicable. The Bill therefore sets the framework under which profession-specific provisions can be made in regulations. The exceptions to this are the revocation of the cross-cutting 2015 Regulations, provisions related to the assistance centre and the new but relatively straightforward duties on UK regulators to publish information and provide information to overseas regulators and other UK regulators.
- 6. In addition, in respect of certain policies there is a need for flexibility to make changes over time. This applies to the power provided for individuals to be treated as having UK qualifications (which is subject to a demand condition), the power to implement international agreements (the content and timing of which will depend on trade negotiations), and the power to revoke retained EU recognition law (which will only be done for a particular profession when the conditions are right). This flexibility cannot be provided solely through provisions in the Bill itself and therefore delegated powers are necessary.

Territorial Coverage

- 7. A UK-wide approach is pursued for this Bill.

Devolution

- 8. The regulation of professions and therefore the recognition of overseas professionals is a mixture of reserved and devolved competence, dependent on the profession.

9. With the exception of the power to make commencement regulations and powers specific to the profession of architect, all of the powers in this Bill have been conferred on the devolved administrations to allow them to exercise those powers in areas of devolved competence. They have been conferred as concurrent powers meaning that they can be used either by the Secretary of State or the Lord Chancellor, or the relevant devolved authority in devolved areas. This approach has been taken because of the way professions are regulated across the UK – only a small number are reserved, but even where the regulation of a profession is devolved, there may be UK-wide legislation. We therefore need to have concurrent powers to give the flexibility to ensure that the most efficient and appropriate approach to implementation can be taken in every situation. The Government will not normally make regulations under these powers in devolved areas without the agreement of the relevant devolved authority.

Provisions which confer delegated powers

10. The Bill contains 9 delegated powers, 6 of which are Henry VIII powers.
11. The provisions in the Bill which confer these powers are identified below. The purpose of the delegated powers taken, and an explanation as to why the matter is to be left to delegated legislation and why BEIS has chosen a particular procedure, are then set out in relation to each relevant clause.
12. All Henry VIII powers in the Bill are subject to clause 15, subsection (1), which requires the affirmative resolution procedure where a power is used to make regulations “amending, repealing or revoking” primary legislation or retained direct principal EU legislation. Under clause 15, subsection (2) where regulations make other modifications not falling within subsection (1) (for example non-textual modifications) to primary legislation or retained direct principal EU legislation, the negative resolution procedure will apply. This is to avoid the occupation of Parliamentary time with the scrutiny of the minor and technical provisions that would not amount to the amendment, repeal or revocation of primary or retained direct principal EU legislation.

Clause 1(1): Power to provide for individuals to be treated as having UK qualifications

Power conferred on: The “appropriate national authority” – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a Henry VIII power.

Parliamentary procedure: Affirmative resolution procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative resolution procedure.

Context and purpose

13. The purpose of this power is to establish a means by which professional qualifications obtained outside the UK may be recognised within the UK (or a part of it). The objective is to make sure that where it is in the UK’s interests to have professionals qualified overseas working or providing services in the UK or any part of it, those professionals have a means to have their professional qualifications recognised in the UK, or the relevant part of the UK, so as to enable them to practise that profession.
14. This framework will replace the current approach which is, in practice, two-tiered - with arrangements in retained EU law giving preferential treatment to qualifications from the European Economic Area (“EEA”) and Switzerland, and with qualifications from other countries lacking a consistent framework for entry into the UK market.

15. This power is applicable to a profession the practice of which is restricted by law to individuals who hold certain qualifications or experience.
16. Where the power is used in relation to a profession, the specified regulator will be obligated to consider applications for recognition from individuals with qualifications/experience from every country in the world and provide a decision in line with the conditions set out in clause j001 and any further requirements in the relevant regulations. The power may only be exercised where the condition in clause 2 is met. This condition is that "*the appropriate national authority is satisfied that it is necessary to make the regulations for the purpose of enabling the demand for the services of the profession in the United Kingdom, or in the part of it to which the regulations relate, to be met without unreasonable delays or charges*".
17. The core of the system is set out in clause 1 and allows for an individual who holds overseas qualifications or experience to be treated as if they hold the specified UK (or devolved nation) qualification or experience, if one of two conditions specified in the Bill is met. The specified regulator for the profession is responsible for deciding whether the overseas qualification or experience held by an individual meets those conditions.
18. Regulations may make provision for and in connection with the making of an application including (as set out in clause 1 (5)): provision for fees, provision imposing a duty on the specified regulator to have regard to guidance, and provision as to appeals.
19. Under clause 13, this power includes the ability to amend, revoke, repeal or modify legislation and to make supplementary, incidental, consequential, transitional, transitory or saving provisions.

Justification for delegation

20. First, the availability of this new route to recognition of overseas qualifications is to be demanded. As set out above, use of the power is restricted by the requirement that in order to make regulations the appropriate national authority must be satisfied that the condition in clause 2 has been met – that regulations are necessary for enabling the demand for the services of the profession to be met without unreasonable delays or charges. Demand will naturally change over time and so it is not possible to achieve the policy through provisions on the face of the Bill that apply to a fixed set of professions.
21. Second, the professions that are in scope of this power have pre-existing legislative frameworks governing how each is regulated. It is not feasible to provide, on the face of the Bill, for an approach that would interface with each of these various frameworks and their different approaches to the recognition of professional qualifications, or to address them individually.
22. As a result, while the ability to allow for an overseas qualification to be treated as though it were the specified UK qualification is set out on the face of the Bill along with the conditions that must be met, it is necessary to provide for this to be implemented in a manner tailored to each profession by the appropriate national authority through regulations.
23. As there is a need to amend the existing legislative framework of the profession, this power necessarily includes the ability to amend, repeal, revoke and modify primary legislation and retained direct principal EU legislation. An example of a profession with a legislative framework that would need to be amended is dentists. The applicable primary legislation is the Dentists Act 1984, with further amendments to secondary legislation also being necessary in relation to the General Dental Council (Overseas Registration Examination Regulations) Order of Council 2015 (SI 2015/735) and the General Dental Council (Registration Appeals) Rules Order of Council 2006 (SI 2006/1668).
24. For this reason, it is also necessary to have the power to make supplementary, incidental, consequential, transitional, transitory or saving provision.

Justification for the level of parliamentary scrutiny

25. BEIS is of the view that where regulations are made under this power that amend, revoke or repeal primary legislation or retained direct principal EU legislation, it is appropriate that the affirmative procedure is required in order to ensure that adequate opportunity is afforded for debate and approval of the changes that are proposed.
26. In other circumstances, BEIS is of the view that the negative procedure is appropriate. The power is heavily constrained by the conditions that must be met in order for an individual to be treated as having UK qualifications or experience (set out in clause 1, subsections (2) and (3)) and by the demand condition (set out in clause 2 subsection (2)). An indication of the sort of provisions that may be made about applications is set out in clause 1, subsection (5) of the Bill and will be subject to Parliamentary approval.

Clause 3(1): Implementation of international recognition agreements

Power conferred on: The "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a Henry VIII power.

Parliamentary procedure: Affirmative resolution procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative resolution procedure.

Context and purpose

27. This power is intended to enable the implementation through regulations of components of any international agreement formed between the UK Government and the governments of other states, so far as the agreement relates to the recognition of overseas qualifications or overseas experience for the purposes of determining whether individuals are entitled to practise a profession.
28. The power could be used to implement a standalone agreement that solely addresses the recognition of professional qualifications, or to implement the professional qualifications aspects of a wider agreement such as a free trade agreement. Regulations may confer functions on a person (such as a regulator) including a discretion but not including a power to make subordinate legislation; make provision for the sharing of information; and make provision for the charging of fees.
29. The power includes the ability to amend, revoke, repeal and modify legislation and to make supplementary, incidental, consequential, transitional, transitory or saving provisions.

Justification for delegation

30. The power is necessary to ensure commitments made by the UK under international agreements can be met. Since the power will be available in relation to international agreements concluded in the future, and the terms of those agreements are not known, it is not possible to deliver the necessary changes on the face of the Bill.
31. In addition, the professions in scope of the Bill all have pre-existing legislative frameworks governing how each is regulated. It is not possible to provide an overarching approach to the

implementation of international agreements that covers the varying legislative backgrounds of the professions on the face of the Bill.

32. Rather, a flexible approach is necessary so that, as and when a new international agreement is negotiated and before it comes into force, it can be successfully implemented into the existing framework provided for each profession by its governing legislation. This necessarily includes the ability to amend, revoke, repeal and modify primary legislation or retained direct principal EU legislation. Again, the example of dentists as set out in paragraph 22, above is applicable here.
33. The powers in the Trade Bill are not sufficient for these purposes. Although clause 2 of that Bill contains a power (subject to expiry) to implement international trade agreements, including by amending primary legislation that is retained EU law, much of the legislation that makes up UK regulators' frameworks is not retained EU law. The exercise of that power is also limited to the implementation of "trade continuity agreements" i.e. where a trade agreement was in place between the EU and the same third country (or countries) immediately before Exit day.
34. For the same reasons, the power to amend, revoke, repeal and modify legislation or to make supplementary, incidental, consequential, transitional, transitory or saving provisions is necessary to implement the terms of international agreements into professions' existing legislative frameworks.

Justification for the level of parliamentary scrutiny

35. The provisions of the international agreements that this power is intended to implement will usually be subject to Parliamentary scrutiny under section 20 of the Constitutional Reform and Governance Act 2010 (with the exception of cases where, pursuant to the terms of an international agreement as approved by Parliament, its terms are amended by the parties' representatives after it is ratified and parliamentary scrutiny may not be required).
36. BEIS is of the view that where regulations are made under this power that amend, revoke or repeal primary legislation or retained direct principal EU legislation, it is appropriate that the affirmative procedure is required in order to ensure that adequate opportunity is afforded for debate and approval of the changes that are proposed.
37. In other circumstances, BEIS is of the view that the negative procedure is appropriate.

Clause 4: Authorisation to enter into regulator recognition agreements

Power conferred on: The "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a Henry VIII power.

Parliamentary procedure: Affirmative resolution procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative resolution procedure.

Context and purpose:

38. This is a power to make regulations which will give UK regulators the ability to enter into regulator recognition agreements (RRA) outside of a government-negotiated international agreement framework.

39. Some regulators already use general powers to enter into RRAs. However, where they do not have these powers, such as with the Intellectual Property Regulation Board, these regulations are intended to operate as an entire, one-off solution to enable the relevant regulator to enter into RRAs. The power is intended to be needed only once in relation to each profession – providing the ability to enter into any RRAs involving that profession (as opposed to the facilitation of RRAs on a piecemeal, country-by-country basis). This will enable UK regulators to establish new recognition relationships with new international partners, as well as adjusting their existing relationships with EU regulators in response to the impact of Brexit.
40. This power can only be used for the very specific purpose of authorising a UK regulator to enter into agreements with overseas regulators relating to the recognition of qualifications and experience for the purpose of determining eligibility to practise a profession. This power is intended to complement regulators' existing powers and cannot be used to change regulators' abilities to recognise overseas qualifications or to determine who can practise in the UK (or, where applicable, a part of it). Regulators will only be able to implement RRAs through their existing powers to recognise and assess overseas qualifications and overseas applicants.

Justification for delegation

41. This is a narrow power and the Government believes that the delegation is necessary to maintain flexibility to ensure that any future instances of regulators being identified as being unable to enter into RRAs can be remedied. In light of the inconsistencies across the current RRA landscape, BEIS considers there is intrinsic merit in having a power, rather than seeking to address the specific problems of which we are currently aware in a piecemeal fashion on the face of the Bill, which potentially risks leaving as yet unidentified problems with no prepared solution.
42. This power will be available to give a new ability to regulators which are already established in legislation. Since much of this legislation is primary legislation, this needs to be a Henry VIII power.

Justification for the level of parliamentary scrutiny

43. Regulations made under the section are subject to the affirmative resolution procedure where they contain provision amending, revoking or repealing primary legislation or retained direct principal EU legislation. BEIS is of the view that it is appropriate that Parliament should debate and approve any changes made to such legislation. Otherwise, regulations under this section are subject to the negative resolution procedure.

Clause 5: Revocation of general EU system of recognition of overseas qualifications

Power conferred on: "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a Henry VIII power.

Parliamentary procedure: Affirmative resolution procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative resolution procedure.

Context and purpose

44. The revocation of the 2015 Regulations will require some consequential amendments to be made to other legislation, including primary legislation. In particular, there will need to be corrections to cross-references or imported definitions.

45. This clause will allow those consequential amendments to be made. Transitional and savings provisions are also permissible as per clause 13.

Justification for delegation

46. The consequential amendments relating to the revocation of the 2015 Regulations will be ancillary to that revocation. This will require a level of detail that is more appropriate to set out in secondary legislation, particularly where the consequential amendments will relate to modifying other secondary legislation. There are likely to be a large number of amendments across a wide range of enactments and so, to ensure that no amendments are missed, it seems prudent to take a power rather than to attempt to capture all of the amendments in the Bill.

Justification for the level of parliamentary scrutiny

47. Regulations made under these sections are subject to the affirmative resolution procedure where they amend, revoke or repeal primary legislation or retained direct principal EU legislation. BEIS is of the view that it is appropriate that Parliament should debate and approve any changes made to such legislation. Where regulations do not make such amendments, BEIS is of the opinion that the negative resolution procedure provides sufficient scrutiny.

Clause 6(1): Revocation of other retained EU recognition law

Power conferred on: "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a Henry VIII power.

Parliamentary procedure: Affirmative resolution procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative resolution procedure.

Context and purpose

48. As well as the 2015 Regulations, a variety of legislation implemented EU law on qualification recognition for specific sectors, such as healthcare and transport. In many cases, this legislation was amended to deal with deficiencies at the end of the Transition Period but continues to provide preferential recognition routes for those with EEA and Swiss professional qualifications. Some of this legislation is primary legislation, including the Medical Act 1983, the Dentists Act 1984, the Opticians Act 1989, the Osteopaths Act 1993, the Chiropractors Act 1994, Part 3 of the Regulation of Care (Scotland) Act 2001, and Part 4 of the Regulation and Inspection of Social Care (Wales) Act 2016. This power will enable regulations to be made by an appropriate national authority to revoke retained EU law that relates to the preferential recognition of qualifications or experience from the EEA and Switzerland.

49. Transitional, savings and consequential amendments are also possible due to clause 13.

Justification for delegation

50. The pieces of legislation that need to be revoked in these cases will not necessarily all be revoked at the same time, with certain arrangements kept for a longer period, based on the needs of particular sectors. In particular, it is expected that the healthcare sector will need a longer period of time to transition to the new system to avoid recruitment and retention issues in those sectors.

BEIS is of the view that it is appropriate to allow for Departments and devolved authorities to revoke these measures at an appropriate time, without fixing a particular date in the Bill.

Justification for the level of parliamentary scrutiny

51. Regulations made under this section are subject to the affirmative resolution procedure where they amend, revoke or repeal primary legislation or retained direct principal EU legislation. BEIS is of the view that it is appropriate that Parliament should debate and approve any changes made to such legislation.
52. Where regulations do not make such amendments, BEIS is of the opinion that the negative resolution procedure provides sufficient scrutiny.

Clause 10(2): Duty of regulator to provide information to overseas regulators

Power conferred on: The "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department). This includes a limited Henry VIII power.

Parliamentary procedure: Negative resolution procedure.

Context and purpose

53. The purpose of this power is to support the operation of the duty imposed by clause 10 - for UK regulators to provide requested information to their overseas counterparts (with the permission of the individual concerned).
54. As set out in subsection (4), regulations may make such provision as the appropriate national authority deems appropriate in connection with the duty, including provision limiting the duty itself. A list indicating the type of provisions that may be made in the regulations appears in subsection (5). For example, the regulations could make provision in relation to fees and the timeframe within which the duty is to be complied with.
55. The power includes the ability to make supplementary, incidental, consequential, transitional, transitory or saving provisions.
56. The power does not include the ability to amend, revoke or repeal the text of primary legislation. However, subsection (4) does provide for the power to be used to limit the effect of the duty set out in the clause. The result is a power that, while a Henry VIII power in that it has the capacity to alter the effect of primary legislation, is much more limited than a conventional Henry VIII power. It is only available in relation to the clause 10 duty, and can only act so as to limit the duty in relation to the specific regulator or regulators that are specified in regulations. It is not capable of making amendments to the text of clause 10 or to any legislation other than pre-existing regulations made under subsection (4). This constraint on the use of the power in subsection (4) is set out in clause 13, subsection (3), which specifies that it does not include the ability to amend, repeal or revoke legislation other than earlier regulations made under clause 10. Due to these restrictions, any use of the subsection (4) power would fall within the negative resolution procedure in accordance with clause 15, subsection (2).

Justification for delegation

57. As the matters to be addressed in regulations made under this power are generally technical in nature and the measures taken may be required to be adapted as circumstances change, BEIS is of the view that it is reasonable and appropriate for the power to be delegated. As set out elsewhere, it is also the case that, in light of the diverse range of professions to which this duty applies, it is desirable that the power allows for the approach to each to be tailored as necessary.

Justification for the level of parliamentary scrutiny

58. As outlined above the power is limited to the non-textual modification and can only be used to make technical provision related to a duty set out in the Bill itself, BEIS is of the view that the negative procedure is appropriate in relation to regulations made under this power.

Clause 8(2)(j): Duty of regulator to publish information on requirements to practise

Power conferred on: The "appropriate national authority" – Secretary of State or the Lord Chancellor, Welsh Ministers, Scottish Ministers, or a Northern Ireland department.

Power exercisable by: Regulations made by statutory instrument (for the Secretary of State or the Lord Chancellor, Scottish and Welsh Ministers) or statutory rule (for a Northern Ireland department).

Parliamentary procedure: Negative resolution procedure.

Context and purpose

59. The objective of this clause is to improve transparency by requiring regulators to publish on their websites information relating to the qualification and practice requirements of a profession. The clause contains a list of information that must be published and a delegated power is included to permit other information to be specified in secondary legislation in the future. The power does not include the ability to modify legislation, other than earlier regulations made under the relevant section (see clause 13(2)).

Justification for delegation

60. This power is intended to be used to provide ongoing improvements in transparency where it could benefit the professions and the consumers of professional services.

61. This will ensure that the duty to publish information remains a useful and up-to-date mechanism for accessing information about the regulation of professions. If BEIS identifies that there is a lack of transparency in relation to other types of information held by regulators, for example diversity and inclusion data or appeals processes, then that information can be specified via this delegated power.

62. The delegated power will not enable amendments to be made to the information specified in the Bill (see clause 13(2)).

Justification for the level of parliamentary scrutiny

63. This is a narrow power to supplement the publication requirements that the Bill will place on regulators. It can only be used to require the publication of information relating to the regulation of professions. BEIS considers that negative resolution procedure provides a suitable level of scrutiny.

Clause 11(3): Power of Architects Registration Board to prescribe an application process for the exclusion of part or all of the regular business address of a registered person

Power conferred on: The Architects Registration Board

Power exercised by: Rules

Parliamentary procedure: None

Purpose and context

64. Clause 11(3) amends the existing requirements at section 3 of the Architects Act 1997 (“the 1997 Act”) for the information to be published on the Register of Architects (“the Register”). Section 3(2) of the 1997 Act requires the Register to show the regular business address of every person entitled to be registered under the 1997 Act. In some cases, a registrant’s business address is the same as their residential address, for example due to unemployment or home working arrangements, which leads to the publication of their residential address.

65. The amendment to section 3 of the 1997 Act enables the Architects Registration Board (“the Board”), the statutory regulator of architects in the UK, to prescribe a process for a registered person to request the exclusion of part or all of their regular business address from the published version of the Register where a registrant has supplied their residential address as their business address. The full regular business address of the registered person will remain on the Register held by the Board, but will not be accessible to the general public.

Justification for delegation

66. Section 23 of the 1997 Act enables the Board to make rules generally for carrying out or facilitating the purposes of that Act. Subsection 25(1) of the 1997 Act provides that references to “prescribe” and “prescribed” in that Act means prescribed by rules made by the Board. The Board has established a set of General Rules for this purpose, which include the administrative processes for applications under the 1997 Act. The General Rules provide substantive detail on the process for a request by a registered person for removal of their name from the Register pursuant to subsection 3(3) of the 1997 Act.

67. The Board will determine the process by which a registered person may request the exclusion of all or part of their regular business address from the published version of the Register. The Government does not consider it is appropriate to put the application process on the face of the Bill or in secondary legislation given that prescribing such criteria is primarily administrative as part of a person’s entry on the Register. The Board needs the power to determine and assess what process is appropriate for a registered person’s application for partial or full exclusion of their regular business address.

Justification for procedure selected

68. The power to prescribe the application process for partial or full exclusion of a registered person’s regular business address is exercised by the Board publishing General Rules, as is currently the method for prescribing the application process for the removal of a registered person’s name from the Register pursuant to subsection 3(3) of the 1997 Act. As the prescription of an application process involves administrative assessment and determination, we consider it is inappropriate for such prescription to be subject to scrutiny in Parliament.

Clause 11(4): Power of Architects Registration Board to prescribe training, test or other condition for persons satisfying subsection 4(1)(a) of the Architects Act 1997 by reason of holding overseas qualifications or gaining overseas practical experience

Power conferred on: The Architects Registration Board

Power exercised by: Rules

Parliamentary procedure: None

Purpose and context

69. Clause 11(4) amends the existing requirements at section 4 of the 1997 Act (registration: general), which enable the Board to prescribe training, tests or other conditions in respect of persons holding qualifications issued by a body that is based outside the UK ("overseas qualifications") or practical experience obtained mainly outside the UK ("overseas experience") who seek to enter the Register via subsection 4(1)(a). This will enable the Board to verify that overseas applicants have the knowledge and understanding of the UK context before they can practise in the UK as an architect who is registering using prescribed overseas qualifications under subsection 4(1)(a) of the 1997 Act.
70. The training, tests and conditions will be determined by the Board but can include additional academic or vocational training and qualifications, supervised workplace experience or competence tests. Under section 23(2) of the 1997 Act, the Board must consult with those to whom the rules would be applicable before making any rules.

Justification for delegation

71. In respect of applicants with qualifications and experience obtained in the UK, the General Rules published by the Board prescribe the qualifications and practical experience required for entry on the Register under section 9 of the 1997 Act. The General Rules set out in detail the subject material that must be covered by students gaining qualifications, and the additional knowledge and skills that an individual is expected to have in order to register and practise in the UK.
72. The Board will determine which overseas qualifications and overseas experience are sufficient to ensure that applicants with such qualifications and experience have sufficient knowledge to practise as an architect in the UK. The Government does not consider it is appropriate to put the further tests, training or other conditions on the face of the Bill or in secondary legislation given that prescribing such criteria is primarily administrative as part of a person entering or remaining on the Register. It would not be practicable for the further tests, training or other conditions to be prescribed via legislation. The Board needs the power to determine and assess what further tests, training or other conditions are appropriate for a person to be entered or remain on the Register.

Justification for procedure selected

73. The power to prescribe further experience or training is exercised by the Board publishing General Rules, as is currently the method for prescribing qualifications and practical experience for applicants with qualifications and experience obtained in the UK. As the prescription of further experience or training involves detailed administrative assessment and determination, we consider it is inappropriate for such prescription to be subject to scrutiny in Parliament. A further justification for taking a power is that it is consistent with the power of the Board to prescribe qualifications and experience under the existing section 4(1)(a). Given that the Board can already make rules under section 4(1)(a), it seems appropriate for the Board to be able to prescribe the additional training, tests and conditions in the new accompanying subsection (1A).

Clause 18: Commencement

Power conferred on: The Secretary of State

Power exercisable by: Regulations made by statutory instrument

Parliamentary procedure: No procedure.

Context and purpose

74. This clause contains a standard power for the Secretary of State to bring provisions of the Bill into force through commencement regulations. This clause specifies which provisions in the Bill come into force on the day the Bill gains Royal Assent, or at another specified time after Royal Assent. It also specifies which provisions the Secretary of State is empowered to appoint the day, or different days, on which they come into force by regulations.
75. The regulations may appoint different days for different purposes, and may also make transitional, transitory or saving provisions in connection with the coming into force of any provision of this Act. This is a standard power to enable the changes made by the Bill to be implemented in an orderly manner.

Justification for delegation

76. Some parts of the Bill may need to be commenced earlier than others, and it will be necessary to give regulators time to make appropriate arrangements after the Bill receives Royal Assent.

Justification for the level of parliamentary scrutiny

77. It is usual for commencement regulations to not be subject to parliamentary procedure. Parliament has already scrutinised and given its consent to the substance of the provisions by voting on the Bill. Commencement regulations enable the provisions to be brought into force at the appropriate time.
78. Regarding transitional, transitory or savings provisions made under this power, BEIS considers that these should not be subject to any Parliamentary procedure on the grounds that Parliament would already have approved the principle of the Bill more generally.