

# PROFESSIONAL QUALIFICATIONS BILL [HL]

## EXPLANATORY NOTES

### What these notes do

These Explanatory Notes relate to the Professional Qualifications Bill [HL] as introduced in the House of Lords on 12 May 2021 (HL Bill 2).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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## Overview of the Bill

- 1 The Professional Qualifications Bill (“the Bill”) creates a new framework for the recognition of professional qualifications and experience gained overseas and takes steps to reform regulators’ practices. It will revoke and replace the interim system for professional qualifications that derives from the UK’s membership of the EU.
- 2 The Bill contains provisions to:
  - a. End the interim system for professional qualifications that derives from the UK’s membership of the EU.
  - b. Create a framework for the recognition of professional qualifications and experience from overseas by professions in the UK, or a part of the UK, to meet the needs and demands for the services provided by those professions.
  - c. Enable Government to implement international agreements or parts of international agreements that the UK strikes with partners so far as they relate to the recognition of professional qualifications.
  - d. Enable Government to provide regulators with a consistent set of powers to enter into agreements with regulators overseas to recognise professional qualifications.
  - e. Maintain a designated ‘Assistance Centre’ with which regulators must cooperate, to provide advice and guidance to the public.
  - f. Require regulators in the UK to provide certain information to overseas regulators where an individual is or has been entitled to practise that profession in the UK, or a part of the UK, and is seeking entitlement to practise overseas.
  - g. Require regulators of professions in all parts of the UK to publish information on the entry and practice requirements of their profession.
  - h. Require regulators in the UK to, where requested, provide certain information to counterpart regulators in other parts of the UK.
  - i. Amend the Architects Act 1997 to allow a new recognition system for architects, alongside adjustments to the administration of the Architects Registration Board to support efficiency.

## Policy background

### The regulation of professions

- 3 In the UK there are over 160 professions that are regulated by legislation by a network of more than 50 regulators, in addition to a range of other professions regulated voluntarily. A regulated profession is one in which there are restrictions to pursuing the activities or a subset of activities of the profession, such as for doctors, and/or legal restrictions for using a professional title, such as the use of ‘architect’ in the UK.
- 4 Regulating professions by law is usually done to protect the public interest. Professions that are regulated in this way typically have requirements to practise in the UK, or part of the UK, which include licensing and certification. Licensing is where the individual cannot practise unless their qualification meets standards set out in legislation, such as a nurse. Certification can be by a public authority established for that purpose by legislation, such as the Architects Registration Board certifying architects.

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- 5 Regulating professions is a critical element of UK public and private services. It ensures safety of service provisions, provides consumer confidence, and helps to maintain professional standards. Qualification requirements for professionals help make sure that people have the appropriate professional knowledge, skills and experience to undertake certain activities. Recognition requirements make sure that holders of professional qualifications obtained in other jurisdictions have the professional knowledge, skills and experience required to practise in the UK. In many cases the professional title which goes with the professional recognition means that those individuals can responsibly practise professions which hold a higher degree of risk, for example an architect.
- 6 Some regulatory bodies in the UK can recognise professional qualifications from overseas to grant access to that profession in the UK, or part of the UK. Overseas professionals play an important role in several key professions in addressing current and future workforce needs.
- 7 Qualification recognition is often covered in international trade negotiations. In order to deliver a paid service overseas, many UK services providers need their qualifications to be recognised in the host country. Qualification recognition, or a lack of it, can be an enabler or a constraint on professionals qualified in one country bidding for and winning contracts to provide services in another.
- 8 Whilst qualification recognition is important in addressing workforce needs and supporting trade, it also plays a key role in ensuring that the UK is meeting its commitments to uphold the Common Travel Area (CTA). The CTA is a long-standing political arrangement between the UK and Ireland which pre-dates both the UK and Ireland's membership of the EU. Under the CTA, UK and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work.
- 9 A Memorandum of Understanding (MoU) concerning the CTA was signed by the UK and Irish governments in 2019, reinforcing both parties' existing commitments to the CTA as the UK prepared for exiting the EU. The MoU states that recognition of professional qualifications 'is an essential facilitator of the right to work' and therefore, both the UK and Irish governments have agreed to ensure there are adequate routes to recognition for qualified professionals across the UK and Ireland. These routes to recognition will be established either through regulators putting in place routes if their profession is within the new framework, or through recognition arrangements either agreed between UK and Irish regulators and professional bodies or using the UK-EU Trade and Cooperation Agreement mutual recognition agreement framework.

## EU Exit and legislative context for the Bill

- 10 On 31 January 2020, the UK left the European Union and the Withdrawal Agreement agreed with the EU entered into force. The Withdrawal Agreement provided for a transition period which ended at 11pm on 31 December 2020.
- 11 For the recognition of professional qualifications, the EU Directive 2005/36/EC on the mutual recognition of professional qualifications ("MRPQ Directive") provided a framework for the recognition of professional qualifications across the EU. The MRPQ Directive enabled European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised in an EEA State or Switzerland, other than the state in which the qualification was obtained.
- 12 The European Union (Recognition of Professional Qualifications) Regulations 2015 ("2015 Regulations") implement part of the MRPQ Directive. As part of preparing the statute book for the UK's exit from the EU, the Government made the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 ("2019 Regulations") which

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provide for an interim system of recognition of professional qualifications from the EEA and Switzerland and came into force at the end of the transition period. The Professional Qualifications and Services (Amendments and Miscellaneous Provisions) (EU Exit) Regulations 2020 amended the 2019 Regulations, primarily to implement transitional arrangements that the UK agreed with the EU, EEA EFTA states (Iceland, Liechtenstein and Norway), and Switzerland.

- 13 The Bill is part of the Government's plans to exercise the UK's new regulatory flexibility, as outlined in the HM Treasury report, *Build Back Better: Our Plan for Growth*. To make way for the new recognition of professional qualifications framework set out in the Bill, the Bill revokes the 2015 Regulations and contains powers to revoke other EU-derived legislation on the recognition of professional qualifications, which was retained following the EU exit Transition Period to provide continuity in services and surety for business. This includes legislation where preference is given to certain professional qualifications issued in the EEA and Switzerland.
- 14 The Government issued a written Call for Evidence in August 2020 that sought views from stakeholders on the recognition of professional qualifications and the regulation of professions. The Call for Evidence was part of a wider programme of work considering recognition of professional qualifications; however, the insights from it have also informed Bill planning. The summary of responses to the Call for Evidence was published on 12 May 2021.

## Legal background

- 15 The relevant legal background is explained in the policy background section of these notes.

## Territorial extent and application

- 16 Clause 17 sets out the territorial extent of the Bill. The Bill extends to England, Wales, Scotland and Northern Ireland. In addition, amendments made by the Bill have the same territorial extent as the legislation they are amending.
- 17 The UK Parliament will not normally legislate for areas within the competence of Senedd Cymru, the Scottish Parliament, or the Northern Ireland Assembly without the consent of the legislature concerned. Aspects of the Bill fall within devolved competence. In line with the Sewel Convention, the UK Government will seek the legislative consent of all the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

# Commentary on provisions of the Bill

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

- 19 This Clause provides a power for the “appropriate national authority” (defined in clause 14 as the Secretary of State (or the Lord Chancellor), Scottish Ministers, Welsh Ministers or Northern Ireland Departments, depending on whether a regulated profession falls within devolved competence). The power is to make regulations that require specified regulators to consider and assess whether qualifications and experience gained outside of the UK should be treated as if they were a specified UK qualification for the purposes of making a decision on whether an individual is entitled to practise a regulated profession. The term ‘regulator’ is defined in Clause 16. A regulator may cover the whole of the UK or a part of it, namely: England, Wales, Scotland or Northern Ireland. The term ‘regulated profession’ is also defined in Clause 16 and refers to a profession where, by reason of legislation, individuals are entitled to practise only if they have specified qualifications or experience (or meet an alternative condition or requirement).
- 20 This Clause is designed to allow specified regulators to make an assessment in a way they see fit, subject to the high-level framework set out in the Clause and whatever other criteria may be provided for in regulations by the appropriate national authority. Regulations may, for example, make provision in relation to the acceptance and processing of applications, including, amongst other things, the relevant information, documentation, or fees connected to an application.
- 21 Subsection (1) sets out that regulators that have been specified in regulations may determine that overseas qualifications or experience can be treated as if they were the relevant UK qualification or experience. This is subject to one of two conditions being met.
- 22 Subsection (2) sets out the first condition. This is that the specified regulator has decided that the overseas qualification or experience demonstrates substantially the same knowledge and skills, to substantially the same standard as the UK qualification or experience. Subsection (2) does not specify how regulators reach this decision and regulators can assess qualifications and experience as they see fit. However, further detail on the approach to be taken in assessing such qualifications may be set out in regulations made under subsection (1).
- 23 Subsection (3) sets out the second condition. This is that the specified regulator has made a determination that an overseas qualification or overseas experience falls short of the necessary standard under subsection (2), and that the shortfall could be “made up” by meeting such additional conditions as the regulator may specify; and the individual has met those conditions. Whether or not the shortfall can be made up is for the regulator to decide.
- 24 Where neither condition is met, the overseas qualification or experience cannot be recognised under the Clause.
- 25 The Clause only deals with qualifications (as defined in Clause 16) and experience. Recognition of a qualification under regulations made under Clause 1 does not, by itself, entitle the applicant to practise the relevant profession in the UK. Other requirements to practise in the UK, such as suitability requirements, safeguarding checks, criminal record checks, and visa requirements must also be satisfied as may be applicable.
- 26 Subsections (4) and (5) set out non-exhaustive examples of what regulations made under subsection (1) may include. For example, these regulations may include provision requiring a regulator to have regard to guidance, the manner and form of applications, the fees payable and the appeals process. The appropriate national authorities may also wish to provide in regulations for those who hold qualifications that are determined not to meet the

requirements in subsections (2) and (3) to be given reasons for that decision and, where a shortfall may be made up under subsection (3), appropriate information on the steps open to them to do so.

- 27 Subsection (6) sets out how a UK qualification or UK experience may be specified for the purpose of this Clause.

### Clause 2: Power conferred by section 1 exercisable only if necessary to meet demand

- 28 Subsections (1) and (2) mean that regulations can be made under Clause 1 only if the “appropriate national authority” is satisfied that it is necessary to do so to meet the demand for the services provided by that profession in the UK, or the part of it to which the regulations relate, without unreasonable delays or charges. For example, this may include areas where there are skills shortages in the UK.
- 29 Subsection (3) provides that Clause 2 does not apply to regulations made under Clause 1 in so far as they are modifying (which includes revoking, repealing or amending) earlier regulations under that Clause, as long as they do not also add further professions into those regulations. This allows for the revocation, repeal and amendment of such regulations without having to meet the requirements of subsection (2).

### Clause 3: Implementation of international recognition arrangements

- 30 Subsection (1) (read with subsection (4)) of the Clause establishes that the “appropriate national authority” can make regulations to implement any parts of international agreements that the UK has entered into that relate to the recognition of professional qualifications.
- 31 This would include the relevant sections of free trade agreements and specific agreements on the recognition of professional qualifications that the UK makes with an international partner. It includes future agreements negotiated from scratch between the UK and international partners and ones already in existence that the UK accedes to. It includes agreements with a single partner and agreements with several international partners.
- 32 This power will not be necessary to implement any mutual recognition agreements agreed through the EU-UK Trade and Cooperation Agreement, which can be implemented using powers in the European Union (Future Relationship) Act 2020. However, it will be necessary to implement the recognition of professional qualifications provisions of ongoing and future international agreements, so far as doing so falls outside the powers available in the Trade Act 2021 to implement international trade agreements where the other signatory (or signatories) had an agreement with the EU immediately before exit day.
- 33 Subsection (4) of the Clause provides further clarification around what provisions can be implemented under this power. It explains that “international recognition agreement”, as used in this Clause, refers only to the portions of international agreements relating to the recognition of overseas qualifications or experience. Therefore, any aspect of international agreements not concerned with the recognition of professional qualifications cannot be implemented under this power, even if the agreement which they are part of contains provisions on the recognition of professional qualifications.
- 34 Subsection (5) of this Clause provides further clarification on the provisions that can be implemented under this power, noting that modifications and amendments to the UK’s international agreements (as long as they are made in line with the provisions of the original agreement) can be implemented through this power.
- 35 Subsection (2) of the Clause explains that the regulations made under this Clause may deal with the following topics to support the implementation of these international agreements:

- a. First, conferring functions on a person. This includes a corporate or any other legal entity. This might be necessary, for example, to confer functions on a regulator to enable them to comply with the processes established in an international agreement around the recognition of qualifications from another country.
- b. Second, for the sharing of information. This might be necessary where an international agreement stipulates that UK regulators and overseas regulators must share information to facilitate the recognition of qualifications.
- c. Third, provisions to charge fees. This may be necessary if an international agreement references fees and to ensure that regulators can charge appropriately for any systems established under international agreements.

36 Subsection (3) of this Clause clarifies that regulations made using this Clause that concern information sharing cannot contravene the UK's data protection legislation.

#### Clause 4: Authorisation to enter into regulator recognition arrangements

- 37 This Clause enables the "appropriate national authority" to make regulations to authorise the regulators of regulated professions to enter into regulator recognition agreements. A regulator recognition agreement is an agreement between a UK regulator and an international counterpart on the recognition of professional qualifications. Regulator recognition agreements can give professionals who have gained their qualifications in one jurisdiction the ability to have them recognised in another. For example, to provide a route for a UK-qualified engineer to be able to practise their profession outside the UK. Such agreements can support professions to operate internationally, including trade in services, and they also support the value of UK qualifications internationally.
- 38 This ability 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. Regulators will only be able to implement recognition arrangements through their existing provisions to recognise and assess overseas qualifications and overseas applicants. It is expected this power would only need to be used once for each regulator, to provide them with the necessary authorisation to enter into recognition agreements with overseas regulators.
- 39 Subsection (1) of the Clause contains the power to make regulations. Currently, not all regulators have specific provisions in their legislation that would enable them to enter into recognition agreements with overseas regulators, so allowing this ability to be conferred on them provides clarity to the regulators. This would be done by amending any legislation that governs the regulator's existing powers. Subsection (1) includes the wording "in connection with". This is intended to cover the ability to impose limitations and conditions on a regulator's authorisation to enter into a regulator recognition agreement. In other words, the regulations made permitting the regulator to enter into these agreements can authorise them to only enter into these agreements in particular situations, authorise them to only enter into particular kinds of regulator recognition agreement, or include requirements that have to be met before a regulator recognition agreement is entered into.
- 40 Subsection (2) provides a definition of a regulator recognition agreement. This subsection explains who can be party to a regulator recognition agreement made using an authorisation provided by this power, namely a regulator of a UK profession and an overseas regulator who regulates a profession that corresponds to the UK profession. This would not require the UK regulator and the overseas regulator to regulate professions that were exactly similar in every way. Professions may vary between countries in their exact requirements and the activities that are regulated, but as long as they are substantially similar this would not prevent

regulators making a recognition agreement. It also explains that a regulator recognition agreement is an agreement where the content relates to the recognition of UK or overseas qualifications and experience.

- 41 Subsection (3) provides supplementary explanation of some of the terms used in subsection (2). Specifically, it explains how overseas qualifications and experience should be understood in this context. Qualifications are considered to have been obtained in a country or territory if they have been awarded by a body based in that country or territory. Experience is understood to have been obtained in a particular overseas country or territory where it has “mainly” been obtained in that country or territory. This means that some of the relevant experience could have been obtained in a different country, but the experience is counted as from a particular country where it has, for the most part, been obtained in that country.
- 42 Subsection (4) defines “corresponding profession” and “overseas regulator” as used in this Clause. It explains that a corresponding profession is one where ordinarily the activity the professional undertakes is the same, or substantially the same, as the UK version. It also explains that overseas regulators are those that carry out activities related to regulating professions anywhere outside of the UK. This definition differs from the definition of a regulator in the UK since it does not specify that overseas regulators need to have a legal basis for the regulation of the profession in that country. This allows the definition of overseas regulator to capture professions regulated overseas on a voluntary basis or by professional associations.

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

- 43 Subsection (1) of the Clause provides that the 2015 Regulations are revoked. The 2015 Regulations provided a general system of recognition for qualifications from the EEA and Switzerland. Following the end of the transition period, this system had been retained in the interim to provide certainty to businesses and public services by offering preferential qualification recognition to holders of EEA and Swiss qualifications. The new recognition framework, as set out in Clause 1, will be implemented alongside revoking the 2015 Regulations.
- 44 Ministers may need to modify other legislation as a result of the revocation of the 2015 Regulations. Modifications may include amendments to references to “the 2015 Regulations” and making transitional and saving provisions to provide for a regulator to consider applications which are in progress at the time when the 2015 Regulations are revoked. Such modifications may need to be made in legislation for professions which are regulated at a devolved level. Subsection (2) enables the “appropriate national authority” to modify legislation which falls under devolved competence for regulated professions, as a consequence of revoking the 2015 Regulations in subsection (1).
- 45 The revocation of the 2015 Regulations does not affect commitments under the CTA. The UK is retaining law on qualification recognition that implements international obligations on the recognition of professional qualifications, under the Withdrawal, EEA EFTA Separation, and Swiss Citizens’ Rights Agreements.

#### Clause 6: Revocation of other retained EU recognition law

- 46 Subsection (1) of the Clause gives the “appropriate national authority” the power to make regulations modifying “retained EU recognition law” so that it ceases to have effect. This will enable regulations to be made to revoke legislation for professions outside the scope of the 2015 Regulations, but which are still part of the broader EU-derived qualification recognition framework. Such legislation is sector-specific and continues to include qualification recognition measures which offer preferential treatment to EEA and Swiss qualifications

compared to non-EEA and non-Swiss qualifications. The new recognition framework, as set out in Clause 1, will be implemented alongside revoking retained EU recognition law in sector-specific legislation.

- 47 Subsection (2) of the Clause defines “retained EU recognition law” which means retained EU law that provides for, or relates to, the recognition of overseas qualifications or overseas experience for the purpose of determining whether individuals are entitled to practise a regulated profession in the United Kingdom or a part of it.

### Clause 7: Assistance centre

- 48 Subsection (1) places an obligation on the Secretary of State to ensure there is a designated person (the assistance centre) which provides advice and assistance to individuals who wish to gain recognition in, and practise in, a regulated profession in the UK, and to other persons as the Secretary of State considers appropriate. The purpose of this is to facilitate transparency on the recognition and regulation of professional qualifications in the UK. The Secretary of State must also make arrangements for the assistance centre to provide advice and assistance to UK-qualified professionals who want their qualifications and experience to be recognised overseas, and to publish certain advice and information.
- 49 Subsection (2) places an obligation on regulators of professions in the UK to, when requested, provide the designated assistance centre with any information it may need to carry out the functions under the arrangements detailed in subsection (1).
- 50 Subsection (3) places an obligation on the assistance centre to, when requested, provide the Secretary of State with any information relating to the advice and assistance functions provided by the assistance centre, as outlined in subsection (1).
- 51 Subsection (4) provides that any information shared between regulators in the UK and the assistance centre does not breach confidentiality obligations or any other restriction on the disclosure of information.
- 52 Subsection (5) explains that no provision in this Clause requires information to be disclosed where to do so would breach data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this Clause are to be considered when determining whether any disclosure breaches that legislation.

### Clause 8: Duty of regulator to publish information on requirements to practise

- 53 Clause 8 requires regulators to publish information about the requirements they place on individuals to enter or remain in their profession. This is a new transparency duty, which aims to reduce the risk of a lack of information being a barrier to entering and practising professions.
- 54 Subsections (1)(a) and (1)(b) require regulators to publish the information specified in subsections (2)(a) to (2)(j) on their public website. The website must be easy to use. This might be achieved by meeting Government accessibility requirements, ensuring the information is easy to find and clearly signposted to website visitors, and ensuring it is collated, where possible, under clear headings rather than found in general documents or pamphlets. It is also required to be kept up to date.
- 55 Subsections (2)(a) to (2)(j) list the information that regulators must publish. These are a consistent requirement across all regulated professions in the UK. Within this:
- a. Subsection (2)(a) refers to the qualifications or experience that an individual must obtain to become entitled to practise in the UK. This includes alternative, or non-examination, routes to qualification such as vocational schemes.

- b. Subsections (2)(b) and (2)(c) refer to the application process for applying with an overseas qualification or a qualification gained in another part of the UK. Subsection 2(d) requires regulators to set out detail about the numbers of individuals applying through these processes and the outcome of the recognition decisions, as well as the qualifications or experience held by these individuals.
  - c. Subsections (2)(e) refers to any requirement for an individual to be registered, licensed or otherwise authorized in order to be entitled to practise the profession. Subsection (2)(f) refers to any other requirement required to be entitled to practise their profession.
  - d. Subsections (2)(g) and (2)(h) refer to any requirements, such as training and learning, that a professional must meet in order to continue to practise their profession. Regulators will be required to provide information as to how these requirements may be met, which could include signposts to relevant educational providers.
  - e. Subsection (2)(i) refers to the costs set by the regulators for an individual or professional to enter and / or remain in the profession, for example, registration renewal fees. This does not require a regulator to publish any other costs which the individual or professional may incur elsewhere.
  - f. Subsection (2)(j) provides a delegated power for the “appropriate national authority” to make legislation which specifies additional information for regulators to publish.
- 56 Subsection (3) requires regulators who do not have the kinds of entry and practice requirements set out in subsection (2) to state this on their websites.
- 57 Subsection (4) provides that, if there are multiple regulators for a profession, this duty of a regulator to publish information on how to qualify to practise can be fulfilled by only one of the regulators so long as the other regulators are identified on the website of the regulator that is fulfilling this duty.
- 58 Subsections (5) and (6) acknowledge that a regulator carries out its regulatory functions within the part or parts of the United Kingdom it has responsibility for. Therefore, a regulator does not have to fulfil the duty to publish information on requirements to practise for regulatory functions outside of their part, or parts, of the United Kingdom.
- 59 Subsection (7) sets out the definition of “regulatory functions” for this Clause only.

### Clause 9: Duty of regulator to provide information to regulator in another part of UK

- 60 This Clause places a duty on regulators who operate in one or more of the four UK nations to share information, when requested, with their counterpart in another part of the UK (if such a regulator exists). This information must relate to an individual’s entitlement to practise that profession. For example, a regulator in one part of the UK could ask an equivalent regulator in another part of the UK for information relating to an individual’s fitness to practise and, where applicable, any instances of professional sanctions. This provision ensures that regulators in all parts of the UK have access to information that helps them fulfil their obligations.
- 61 Subsection (1) specifies that this duty applies where the information relates to an individual qualified to practise a regulated profession in one part of the UK and this individual is seeking to practise the same or equivalent profession in another part of the UK.
- 62 Subsection (2) sets out the conditions that must be met for information sharing to occur. A regulator in one part of the UK is only required to share information with their counterpart in another part of the UK if it is held by them, relates to a named individual, is requested by their counterpart or the individual in question, and will be used for the purposes of determining that individual’s ability to practise.

- 63 Subsection (3) provides that information that is shared by regulators within the UK to comply with this provision does not breach confidentiality obligations or other restrictions on disclosure that are placed on the regulator.
- 64 Subsection (4) explains that no provision in this Clause requires information to be disclosed where to do so would breach data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this Clause are to be considered when determining whether any disclosure breaches that legislation.
- 65 Subsection (5) defines the term “corresponding regulated profession” as used in this Clause.

#### Clause 10: Duty of a regulator to provide information to overseas regulator

- 66 This Clause imposes a duty on regulators to assist individuals who are or have been entitled to practise the relevant profession in the UK, by providing information to overseas regulators. This information is to enable those overseas regulators to determine that individual’s entitlement to practise in the overseas regulator’s country or territory.
- 67 Subsection (1) addresses the circumstances in which a regulator is obliged to provide information to an overseas regulator. The individual must be or have been entitled to practise a regulated profession in the UK, or part of the UK, and be seeking to practise a corresponding profession in a country or territory outside the UK.
- 68 Subsection (2) places a duty on UK regulators to provide overseas regulators of the corresponding profession with information they require to make a decision on the entitlement of the individual to practise in that country. This extends to any information held by the UK regulator about the individual that the UK regulator is requested to provide by either the overseas regulator, or the individual themselves.
- 69 Subsection (3) provides that, where an overseas regulator is requesting information on an individual, the duty does not apply if it is made without the permission of that individual.
- 70 Subsection (4) allows the “appropriate national authority”, provided it is within their legislative competence, to make regulations they consider appropriate in connection with the duty of a regulator to provide information to an overseas regulator set out in subsection (2). This includes the ability to limit that duty.
- 71 Subsection (5) gives more detail on the specific limitations that could be included in regulations made under this Clause. These include, but are not limited to, provisions to the effect that the duty only applies to certain specified information or if the request is made in a specified manner.
- 72 Subsection (6) provides that any information that is shared with overseas regulators does not breach confidentiality obligations or other restrictions on disclosure that are placed on the regulator.
- 73 Subsection (7) explains that no provision in this Clause requires information to be disclosed where to do so would breach the data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this Clause are to be considered when determining whether any disclosure breaches that legislation.
- 74 Subsection (8) defines the terms “corresponding profession” and “overseas regulator”.

#### Clause 11: Amendments to the Architects Act 1997

- 75 Subsection (2) enables the Architects Registration Board (“the Board”) to nominate a member of staff to carry out the functions of the Registrar.
- 76 Under section 2 (the Registrar) of the Architects Act 1997 (the 1997 Act), the Registrar is responsible for maintaining the Register, which includes adding and removing architects to

and from the Register. The new provision will allow the Registrar to delegate functions to a member of the staff of the Board who is nominated by the Board. This is to ensure that the functions undertaken by the Registrar can continue if the Registrar is absent or is otherwise unable to exercise those functions.

- 77 For example, in the event the Registrar is on leave or unwell, the Board can nominate the Director of Qualifications or another Director to deputise for the Registrar.
- 78 Subsection (3) enables the Board to exclude from the published Register the whole or part of a registrant's residential address where the registrant has successfully applied for it to be removed.
- 79 Section 3(2) (the Register) of the 1997 Act provides that the Register shall show the regular business address of each registered person. In some cases, a registrant's business address is the same as their residential address, which leads to the publication of their residential address.
- 80 In such a case, where a registrant has supplied their residential address as their business address, for example due to unemployment or home working arrangements, the registrant can apply to the Board to have their address removed from the published Register, provided that this is a residential address. The Board will still privately hold the registrant's full address, but will only publish a geographical indicator (a county or the international equivalent) on the Register to ensure that the individual is identifiable to the public in searches of the Register.
- 81 Subsection (4) allows the Board to require compensatory measures from overseas applicants who seek to register via section 4(1)(a) (registration: general) of the 1997 Act. This will enable the Board to verify that overseas applicants who are registering using prescribed overseas qualifications under section 4(1)(a) of the 1997 Act have knowledge and understanding of the UK context before they can practise in the UK as an architect.
- 82 Compensatory measures will be determined by the Board but can include additional academic or vocational training and qualifications, supervised workplace experience or competence tests.
- 83 Currently, the Board has the power to prescribe international qualifications, but does not do so, as the 1997 Act does not provide a means for ensuring that all applicants have an understanding of the UK context. Overseas applicants have in the past sought recognition under section 4(2A)(a) if holding a listed EU qualification under the MRPQ Directive, or via section 4(1)(b) which provides for an assessment of equivalence and a prescribed examination. Subsection (4) of Clause 11 will enable the Board to request compensatory measures alongside prescribed overseas qualifications and experience.
- 84 Once the applicant shows the required evidence of the compensatory measure alongside their qualification and practical experience, the Board will then approve their application, subject to their rules, and admit the applicant onto the Register.
- 85 Subsection (5) amends the 1997 Act to prevent the Board from establishing a committee to discharge its function under subsection (4).

## Clause 12: Crown application

- 86 This Clause states that the Bill will apply to and bind the Crown.

## Clause 13: Regulations: general

- 87 This Clause makes provision in relation to powers conferred by the Bill on the appropriate national authority to make regulations. The powers may be used to modify legislation,

including, where relevant, Acts of Parliament. When exercised for their stated purpose, the powers may also be used to make supplementary, incidental, consequential, transitional, transitory or saving provisions. Subsection (1)(a) does not apply to Clause 8 (except where modifying earlier regulations made under this Clause). A power to make regulations under Clause 10 or Clause 18 does not include the power to amend, repeal or revoke legislation other than previous regulations made under those Clauses.

#### Clause 14: Authority by whom regulations may be made

88 This Clause defines the “appropriate national authority” by which regulations may be made under this Bill as the Secretary of State, the Lord Chancellor or, where a provision falls within devolved competence, Welsh Ministers, Scottish Ministers or Northern Ireland Departments, as stipulated in subsections (2) to (4). This is because some professions are regulated on a devolved, rather than a UK wide, basis. The Bill reflects this regulatory landscape by enabling devolved administrations to make regulations under this Bill as they see fit for such devolved professions.

#### Clause 15: Parliamentary procedure for making regulations

89 This Clause sets out the parliamentary procedure for how regulations under this Bill should be made, including the situations in which legislation must be made either through the affirmative or negative resolution procedure, and what this means for such regulation to be passed through the relevant legislatures of the UK, Wales, Scotland or Northern Ireland. These are set out in subsections (1) - (7) and (9). This Clause does not apply to regulations made under Clause 18.

90 Subsection (8) provides for the ability to pass regulations under this Act that are subject to the negative resolution procedure via the affirmative resolution procedure should there be such a need.

#### Clause 16: Interpretation

91 This Clause provides information on how terms should be interpreted in the Bill.

#### Clause 17: Extent

92 This Clause specifies that the Bill extends to England and Wales, Scotland and Northern Ireland.

#### Clause 18: Commencement

93 See paragraphs 95-96 below.

#### Clause 19: Short title

94 This Clause contains the short title by which the Bill may be cited.

## Commencement

- 95 Clause 18 makes provision about when the provisions of this Bill will come into force.
- 96 The powers and the final provisions in the Bill will come into force on the day of Royal Assent. Clause 11(1), (2) and (3) will come into force at the end of the period of 3 months beginning with the day of Royal Assent. Clause 8 (where not already in force) will come into force at the end of the period of 6 months beginning with the day of Royal Assent. The remainder of the Bill will come into force on a day appointed by regulations made by the Secretary of State.

## Financial implications of the Bill

- 97 The Bill primarily enables other legislation to be made, and therefore does not by itself trigger significant financial implications. The costs for regulators from the majority of the Bill provisions will only arise if and when enacted by regulations. The Impact Assessment (see paragraph 107 below) includes estimates of the potential costs and benefits of these regulations. The one exception is clause 8. As set out in the Impact Assessment, the Department for Business, Energy and Industrial Strategy (BEIS) estimates a total of around £90,000 in transitional costs which could apply across affected regulators arising from this clause.
- 98 Different regulators are funded in different ways, some regulators may receive funding from government, though BEIS understands most regulators raise their funds from fees paid by professionals. For further discussion of the estimated costs to regulators, please see the Impact Assessment.

## Parliamentary approval for financial costs or for charges imposed

- 99 This section will be completed when the Bill transfers to the House of Commons.

## Compatibility with the European Convention on Human Rights

- 100 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Lord Grimstone of Boscobel, Minister of State, has made a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. The ECHR rights which are considered to be relevant to the Bill are Article 1 of Protocol 1 (“A1P1”) (right to property) and Article 8 (right to respect for private and family life, home and correspondence), each of which is addressed below. BEIS considers that the Clauses of this Bill which are not mentioned below do not give rise to any issues under the ECHR.
- 101 **Removing the existing system (Clause 5)** – the 2015 Regulations are revoked by Clause 5(1) of the Bill. It is BEIS’s intention that the commencement regulations for this will include savings and transitional provisions relating both to qualifications that have already been recognised and to applications that are already in progress but not yet complete. The effect of these provisions will be that the revocation of the 2015 Regulations does not affect the status of qualifications that have already been recognised, and that applications can be completed. Where parts of the existing system are reflected in other, sector-specific legislation that may be

repealed by other Government Departments or the Devolved Administrations using Clause 6, then the ability to provide similar savings and transitional provisions is found in the general clause on regulations, Clause 13.

- 102 As a result of the savings and transitional provisions in the Bill, nothing in the Bill prevents, qualifies or otherwise impacts the ability of those with existing recognised qualifications from continuing their areas of practice in the UK and so does not interfere with professionals' AIP1 rights.
- 103 **New international recognition framework (Clauses 1 and 2)** – Article 8 protections can apply to professional activities, including the restriction of access to the same (for example by restricting access to membership of a profession – paragraphs 80 to 82 of the European Court of Human Rights guidance on [Article 8](#)). However, as these provisions do not impose restrictions on access, but rather seek to broaden access, it is not believed to be likely to give rise to any issues in either case. The framework (where put in place through regulations) will be on offer to nationals of all countries. As a result, it is not anticipated that this broadening will be done in a way which favours a particular class of applicant e.g. on nationality grounds; the system will be expanded so that EEA and Switzerland professionals do not have preferential treatment.
- 104 **Duty for UK regulators to provide specified information to overseas regulators when requested (Clause 10)** - the provision of information under this duty can only be made with the consent of the individual in question. Insofar as this might engage Article 8's right to privacy, the power is limited by Clause 10(7) such that no disclosure of information is required that would contravene the data protection legislation (as defined in section 3(9) of the Data Protection Act 2018). Any potential infringement of Article 8 rights is therefore subject to the safeguards of the data protection legislation.
- 105 **Duty for UK regulators to provide specified information to regulators in other parts of the UK when requested (Clause 9)** – If an individual qualified to practise in one part of the UK is seeking to practise in another part of the UK, then the respective regulators are able to request and share information, relating to that entitlement to practise. This data sharing may be triggered by the individual requesting that this information be shared, or by the regulator requesting this information. Accordingly, this duty may include the release of personal data without consent (e.g. when a regulator, rather than the individual, requests information from its counterpart regulator), and the collection and storage of personal data, which could amount to interferences with an individual's right to respect for his or her privacy. Disclosing this information is required to ensure public safety and for public health (particularly with healthcare professionals), which are legitimate aims to justify infringing the right to privacy within Article 8. This disclosure is also proportionate to the purpose for which the information is disclosed in that it is limited to disclosure to the corresponding regulator in the other part of the UK and limited to information required for the purpose of determining whether an individual is able to enter and practise in a particular profession. Thus, the information shared will be used for the same purposes for which the information was originally disclosed to a regulator by that individual.
- 106 **Assistance centre (Clause 7)** - The purpose of the assistance centre is to provide advice and assistance to individuals who wish to gain recognition in, and practise in, a regulated profession in the UK, and to other interested parties (such as employers, regulators, students, or UK professionals wishing to have their qualifications and experience recognised overseas). This facilitates transparency on the recognition and regulation of professional qualifications in the UK. The Clause allows the Secretary of State to request information from the assistance centre, regarding the discharge of its functions. Insofar as this might engage Article 8's right to privacy, the power is limited by Clause 7(5) such that no disclosure of information is required

that would contravene the data protection legislation (as defined in section 3(9) of the Data Protection Act 2018). Any potential infringement of Article 8 rights is therefore subject to the safeguards of the data protection legislation. To the extent that any information shared under this provision still represented a possible infringement of Article 8, it would be in pursuit of a legitimate aim. Ensuring the standards for recognition of appropriate qualifications and experience of registered professions is important both for public safety and also for public health (particularly with healthcare professionals). Ensuring that appropriate qualifications are held by regulated professionals is also important for the UK's labour market, and hence its economic wellbeing.

## Related documents

107 The following documents are relevant to the Bill and can be read at the stated locations:

- Recognition of professional qualifications and regulation of professions: call for evidence – <https://www.gov.uk/government/consultations/recognition-of-professional-qualifications-and-regulation-of-professions-call-for-evidence>
- Summary of responses to the Call for Evidence into the recognition of professional qualifications and the regulation of professions - <https://www.gov.uk/government/consultations/recognition-of-professional-qualifications-and-regulation-of-professions-call-for-evidence>
- The recognition of professional qualifications and regulation of professions: policy statement <https://www.gov.uk/government/publications/recognition-of-professional-qualifications-and-regulation-of-professions-policy-statement>
- The Professional Qualifications Bill Impact Assessment – this document can be found on the Professional Qualifications Bill's Parliamentary webpage.

## Annex A – Territorial extent and application in the United Kingdom

108 The Bill will apply and extend to the whole of the United Kingdom.

109 The devolution settlements make provision for the regulation of certain professions to be reserved to Westminster, though not all:

- a. Northern Ireland: In relation to legislative competence, there are no reserved or excepted matters that deal directly with the regulation of the professions. The regulation of the profession may be an excepted or reserved matter if the subject matter of the profession is an excepted or reserved matter (for example, intellectual property is a reserved matter and so the regulation of patent agents may be a reserved matter). See sections 6 and 8 of the Northern Ireland Act 1998 and Schedules 2 and 3 to that Act.
- b. Scotland: In relation to legislative competence, the regulation of the professions listed under Head G of Schedule 5 to the Scotland Act 1998 is reserved to the UK (architects, most health professions including veterinary surgeons (but not social workers), and auditors). In addition, the regulation of the profession may be reserved if the subject matter of the profession is a reserved matter (eg intellectual property) (see s.29 Scotland Act 1998).
- c. Wales: In relation to legislative competence, the regulation of professions listed under Head G of Schedule 7A of the Government of Wales Act 2006 is reserved to the UK (architects, most health professions (but not social work and social care), veterinary surgeons and auditors.) In addition, the legal professions are a reserved matter under Head L of Schedule 7. As with the Northern Ireland Act 1998 and the Scotland Act 1998, the regulation of the profession may be reserved where the subject matter of the profession is a reserved matter (see s.108A Government of Wales Act 2006).

110 The Bill is not limited to particular professions. It therefore contains provisions regarding devolved matters in Scotland and Wales and transferred matters in Northern Ireland. The Territorial Offices are aware and agree with this analysis.

111 Legislative Consent Motions (LCMs) will be sought from each of the devolved legislatures.<sup>1</sup>

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)

<sup>1</sup> References in this Annex to a provision being within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly are to the provision being within the legislative competence of the relevant devolved legislature for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of Senedd Cymru?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion sought?
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 7	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 8	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 9	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 10	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (S, NI, W)
Clause 11	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No

*These Explanatory Notes relate to the Professional Qualifications Bill [HL] as introduced in the House of Lords on 12 May 2021 (HL Bill 2)*

# PROFESSIONAL QUALIFICATIONS BILL [HL]

## EXPLANATORY NOTES

These Explanatory Notes relate to the Professional Qualifications Bill [HL] as introduced in the House of Lords on 12 May 2021 (HL Bill 2).

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