

Delegated Powers and Regulatory Reform Committee
Professional Qualifications Bill
Supplementary Memorandum

Introduction

1. The Professional Qualifications Bill was introduced in the House of Lords on 12 May 2021. This Supplementary Memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee by the Department for Business, Energy and Industrial Strategy (BEIS) to assist with the scrutiny of Government amendments to clause 1 of the Bill which are to be moved at Committee Stage in the House of Lords.

Clause 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).

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

2. The context and purpose of the power in clause 1 is set out in the original Memorandum and is unaffected by the amendments except in the following respects.
3. The amendments to clause 1(2) and (3) would alter the determinations that must be made by a regulator in order for an individual to meet the conditions set out in these subsections. Under these amendments, instead of considering the knowledge and skills *demonstrated by the overseas qualification or experience*, the regulator would consider the knowledge and skills of *the individual*. The determination could be made on the basis of the overseas qualification or experience alone, or on such other basis as the regulator considered appropriate (for example through a separate test or assessment). The question for the regulator would be whether the individual has substantially the same knowledge and skills, to substantially the same standard, as are demonstrated by the UK qualification or UK experience specified in regulations. As part of this, the regulator could, in appropriate cases, consider whether the individual had the language skills that would be demonstrated by holding the UK qualification.
4. The amendments to clause 1(2) and (3) would not directly impact on the power in clause 1, the central purpose of which would remain to specify professions and regulators to which clause 1 will apply.
5. The amendment to clause 1(1) would expand the power in one specific respect. It would have the effect that regulations could include additional conditions that an individual must meet before being treated as having a specified UK qualification or specified UK experience.
6. The purpose of the amendment to clause 1(1) is to avoid the risk that clause 1 could allow an overseas-qualified individual to circumvent additional requirements that other legislation imposes, or allows a regulator to impose, on overseas-qualified individuals. Without this amendment, in a case where profession-specific legislation provides an automatic right to practise to those with UK qualifications but imposes conditions on overseas-qualified individuals, an overseas-qualified individual who meets the knowledge and skills test in clause 1(2) would be treated as having UK qualifications and would not be subject to those conditions. The amendment therefore provides a means of ensuring that appropriate conditions are met before an overseas-qualified individual is entitled to practise a profession in the UK or part of the UK.

Justification for delegation

7. The justification for the delegated power in clause 1 is set out in the original Memorandum. The justification for expanding the power in this way is that it would not be practicable to set out on the face of the Bill every requirement that legislation imposes, or allows any regulator to impose, on an overseas-qualified individual before they are to be treated as if they were UK-qualified. Clause 1 has no effect on a regulator until that regulator is specified in regulations made under the clause. Those regulations are the appropriate place to deal with any profession-specific conditions that need to be applied to overseas-qualified individuals. This is consistent with the overall approach of the Bill, as explained in the original Memorandum, which is to set out a framework under which profession-specific provisions can be made in regulations.

Justification for the level of parliamentary scrutiny

8. This remains as set out in the original Memorandum and is unaffected by the amendments.

BEIS

26 May 2021