



Law Society
of Scotland

Second Reading Briefing

Professional Qualifications Bill

May 2021



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

The Professional Qualifications Bill was introduced into the House of Lords on 12 May 2021 by Minister for Investment, Lord Grimstone of Boscobel. This follows a [call for evidence](#) by the Department for Business Energy and Industrial Strategy on Recognition of Professional Qualifications and Regulation of Professions to which we submitted a response¹.

We welcome the opportunity to comment on the Professional Qualifications Bill and have the following comments on the text of the Bill to put forward for consideration. If you would like to discuss this paper, or if you would like more information on the points that we have raised, please do not hesitate to contact us. Contact details can be found at the end of the paper.

General Comments

As noted in the policy statement accompanying the Bill, there are some 160 professions regulated by legislation in the UK (and worldwide), and numerous others with voluntary regulatory arrangements. Many of these professions, such as nursing and teaching, provide a wide range of employment opportunities and much of the policy intent around this legislation centres around maintaining adequate supply of professionals in those areas where potential shortage is a concern. As such, its focus is to facilitate cross-border recognition and regulation to ensure as integrated a system of transfer of professionals as immigration rules will permit. We support this aim.

As recognised by the UK Internal Market Act 2020, the legal profession is somewhat different. Even across the separate jurisdictions of the UK there are sufficient differences between our legal systems to warrant an exclusion from the provisions that create greater regulatory integration between the UK's composite parts.

We would therefore welcome a commitment to respecting the distinct nature of legal services across the UK (as well as the teaching professions that are also excluded from the mutual recognition principle in the UK Internal Market Act, which also fall within devolved competence). We would also welcome a more

¹ <https://www.lawscot.org.uk/research-and-policy/influencing-the-law-and-policy/our-responses-to-consultations/regulation/>

prominent reference to the fact that the regulation of a number of professions is devolved, as going by the explanatory notes alone, this is not clear – particularly in the context of paragraph 13, which states that 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*”, which might not necessarily reflect the intent of the devolved administrations². This could be satisfied if the [policy statement](#)³ were to be published alongside the bill and explanatory notes, as this point is expressed much more clearly in it (see for example on page 4: “*We also recognise that regulation is devolved in many areas. Our proposals will uphold the autonomy of regulators and devolved administrations to determine professional standards and assess who meets these standards in ways they deem fit*”).

Finally, for a measure that introduces a number of regulation-making powers that have the potential to impact upon regulators and regulated professionals, we would want to see a corresponding requirement to consult on draft regulations.

Specific Comments

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

Clause 1 of the Bill contains regulation-making powers for the purposes of recognising qualifications gained overseas. Clause 2 limits the powers in this clause to situations where it is necessary to meet demand.

We have no comment to make.

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

See above. We have no comment to make.

Clause 3 - Implementation of international recognition agreements

This clause grants a power to Ministers to amend legislation to put into effect provisions negotiated in free trade agreements or other types of agreement relating to the regulation of professions, such as recognition of professional qualifications. Under the Admission as Solicitor (Scotland) Regulations 2019 made under section 5 of the Solicitors (Scotland) Act 1980 we have in place a system for recognition of international candidates seeking to requalify in Scotland. The process for amending our admissions regulations is

² We would note the potential discrepancy with the aim of the UK Withdrawal from the European Union (Continuity) (Scotland) Act in this regard.

³ <https://www.gov.uk/government/publications/recognition-of-professional-qualifications-and-regulation-of-professions-policy-statement>

lengthy and involves the concurrence of the Lord President of the Court of Session. This is one example of a situation where it is vital that there is a requirement to consult about the nature of regulatory changes.

We also note that clause 3(2)(c) provides that regulations under this clause can make provision for the charging of fees. This seems at odds with the terms of section 31(4) of the European Union (Future Relationship) Act 2020 which does not allow for the imposition of fees in regulations designed to implement the TCA. We believe it would be useful for the Government to put on the record the reason for the different approaches in these two measures.

Clause 4 - Authorisation to enter into regulator recognition agreements

This clause grants the power to regulators to enter into Mutual Recognition Agreements (MRAs) with international counterparts, should the power to do so not already exist. We support this provision.

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

Clause 5 revokes the European Union (Recognition of Professional Qualifications) Regulations 2015 and provides regulation making powers to the appropriate national authority (the Secretary of State, the Lord Chancellor and the devolved administrations) to modify any legislation it considers necessary as a consequence of this provision. This is a broad regulation-making power which underlines the need to consult before it is exercised.

Clause 6 - Revocation of other retained EU recognition law

Clause 6 provides the appropriate national authority with a regulation making power to modify other legislation for professions outside the scope of these regulations, but which are still part of the broader EU-derived qualification recognition framework.

Clause 7 - Assistance centre

We welcome the provisions regarding the assistance centre to provide advice and assistance about entry requirements to those seeking to practise a profession in the UK or to those with UK qualifications seeking to practise overseas. We think it would be important for the assistance centre to also provide information about visa, and work permit requirements where this is appropriate.

We note the obligation on regulators contained in subsection (2) to provide the designated assistance centre with any information it may need to carry out its functions. This seems entirely appropriate in the circumstances.

The obligation to make arrangements for the assistance centre lies on the Secretary of State. However, the assistance centre will provide advice and assistance covering the whole UK. Accordingly, we consider it would be important (and reflect the acknowledgement of the role of the devolved administrations in earlier clauses in the bill) were the devolved administrations to be consulted on the arrangements for the creation of the assistance centre.

Clause 8 - Duty of regulator to publish information on requirements to practise

The provisions in this clause seem reasonable.

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

The provisions in this clause seem reasonable for the most part. However, the terms of clause 9(3) and (4) raise some questions. Clause 9(3) provides that a disclosure of information does not breach “...*(b) any other restriction on the disclosure of information (however imposed)*”. This provision sits uneasily alongside clause 9(4).

Clause 9(4) provides that “*Nothing in the section requires the making of a disclosure which contravenes the data protection legislation (save that the duty imposed by this section is to be taken into account in determining whether any disclosure contravenes that legislation)*”.

These provisions lack clarity. The duty under clause 9 can be taken into account when considering if a disclosure contravenes data protection law. Why should it not simply be that compliance with clause 9 is a defence to an accusation that data protection law has been contravened?

Clause 10 - Duty of regulator to provide information to overseas regulator

Our comments in relation to clause 9 apply equally to clause 10(6) and (7).

Clause 11 - Amendments to the Architects Act 1997

Clause 12 - Crown application

We have no comments to make on these clauses.

Clause 13 – Regulations

This Bill creates a number of regulation-making powers without including a corresponding requirement to consult on those regulations.

Clause 14 - Authority by whom regulations may be made

Clause 15 - Parliamentary procedure for making regulations

Clause 16 - Interpretation

We have no comment to make to these clauses.