

PROFESSIONAL QUALIFICATIONS BILL

AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 1, Page 2, line 23 insert at end –

“(5) The appropriate authority national authority must consult such persons as it considers appropriate when preparing regulations under subsection (1).”

Effect

This amendment requires the Secretary of State, the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department to consult when preparing regulations under clause 1.

Reason

Lord Hope pointed out the need for consultation by appropriate national authorities when they are preparing regulations in his comments during the Second Reading Debate on the bill:

“The Law Society of Scotland already has in place a system of regulations made under the Solicitors (Scotland) Act 1980 for the recognition of international candidates seeking to requalify in Scotland to practice as solicitors. It is likely that they will need some amendment if they are to give full effect to the provisions in Clause 1. The process for amending regulations made under that Act is lengthy, and it requires the concurrence of the Lord President. As I understand the definition in Clause 16, he is a regulator for the purposes of the Bill. One would want to be sure that he would at least be consulted before the power in Clause 3 to implement is exercised, in view of the overriding responsibility that he has over that branch of the legal profession and the highly sensitive nature of this clause, to which the noble Baroness, Lady Noakes, has drawn our attention.” (House of Lords Hansard vol 812, col 950).

We agree with those comments and the need for consultation on draft regulations under the bill. This is an important and wide-ranging measure which affects a considerable number of professions –160 as is stated in the Explanatory Notes. Government across the UK does not possess the in-depth knowledge which would enable it to legislate without pre-legislative consultation. We note the comments by the Minister Lord Grimstone that he would *“anticipate that determining whether professions meet this condition would require extensive close working with a range of interested parties before introducing regulations. This will ensure that professions are rightly identified and that the introduction of regulation would assist in the alleviation of any shortages. The regulations made would complement regulators’ existing practices* (House of Lords Hansard vol 812, col 974).

We certainly agree that aspects of the bill will require close working between the Government and a “range of interested parties” including the professions. However, close working does not necessarily include statutory consultation. In order to place that issue beyond doubt this amendment is necessary.

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Clause 3, Page 3, line 11 insert at end –

“(4) The appropriate authority national authority must consult such persons as it considers appropriate when preparing regulations under subsection (1).”

Effect

This amendment requires the Secretary of State, the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department in their roles as appropriate national authorities to consult when preparing regulations under clause 3.

Reason

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 lengthy and involves the concurrence of the Lord President of the Court of Session. As already referred to this is one example of a situation where it is vital that there is a requirement to consult about the nature of regulatory changes. In this example, the obligation to consult would rest on the Scottish Ministers.

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Clause 3, Page 3, line 7

leave out line 7

Effect

This amendment deletes clause 3(2)(c).

Reason

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 Trade and Cooperation Agreement. This probing amendment provides the Government the opportunity to put on the record the reason for the different approaches in these two measures.

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Clause 5, Page 4, line 14 insert at end –

“(3) The appropriate authority national authority must consult such persons as it considers appropriate when preparing regulations under subsection (2).”

Effect

This amendment requires the Secretary of State, the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department in their roles as appropriate national authorities to consult when preparing regulations under clause 5(2).

Reason

Clause 5(2) empowers an appropriate national authority to make regulations which amend such legislation as it considers appropriate in the light of the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015 (see clause 5(1)). This is a very wide regulation making power and accordingly should be subject to proper consultation.

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Clause 6, Page 4, line 17 insert at end –

“(2) The appropriate authority national authority must consult such persons as it considers appropriate when preparing regulations under subsection (1).”

Effect

This amendment requires the Secretary of State, the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department in their roles as appropriate national authorities to consult when preparing regulations under clause 6(1).

Reason

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.

These are very wide regulation making powers which permit the amendment of Retained EU recognition law. As such they could have wide ranging effects on a number of professions and ought therefore to be consulted upon before becoming law.

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Clause 7, page 4, line 41 insert at end –

“(2) Before making arrangements under subsection (1), the Secretary of State must seek the consent of the Scottish Ministers, the Welsh Ministers and a Northern Ireland Department.

(3) If consent to the making of the arrangements is not given by any of those authorities within the period of one month beginning with the day on which it is sought from that authority, the Secretary of State may make the arrangements without that consent.

(4) If arrangements are made in reliance on subsection (3), the Secretary of State must publish a statement explaining why the Secretary of State decided to make the arrangements without the consent of the authority or authorities concerned.”

Effect

This amendment requires the Secretary of State to seek the consent of the devolved administrations prior to making arrangements for the assistance centre.

Reason

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 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.

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Clause 7, page 4, line 41 insert at end –

“(d) publish advice and information about immigration requirements for entry to the UK for employment and other related purposes.”.

Effect

This amendment requires the Secretary of State to make arrangements for the assistance centre to provide information about visa and work permit requirements.

Reason

We think it would be important for the assistance centre to also provide advice and information about visa and work permit requirements for entry to the UK for employment and other related purposes. The current assistance centre, the UK National Agency for International Qualifications and Skills <https://www.enic.org.uk/> redirects visitors to its website who wish to see information about visa and nationality matters to the Home Office. We think it would be better if the assistance centre were more of a “one stop shop”. This amendment will help achieve that objective.

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Clause 7, Page 5, line 15

leave out “taken into account” and insert
“considered a defence”

Effect

This amendment ensures that a disclosure of information under this legislation will be a defence in connection with an accusation of contravention of data protection legislation.

Reason

Clause 7(5) provides that “Nothing in this section requires the making of a disclosure which contravenes the data protection legislation (save that the duties imposed by this section are to be taken into account in determining whether any disclosure contravenes that legislation).”.

The question this raises (like the analogous provisions in clauses 9 and 10) concerns the status of the duty of disclosure under the bill. On the face of it complying with the duty is not exculpatory so far as contravention of data protection law is concerned, the duty can be “taken into account” in determining if a disclosure contravenes data protection law. Specifically making compliance with the bill a defence would make the provision simple and clear.

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AMENDMENTS TO BE MOVED IN COMMITTEE

Clause 9, Page 7, line 42

leave out “taken into account” and insert
“considered a defence”

Effect

This amendment ensures that a disclosure of information under this legislation will be a defence in connection with an accusation of contravention of data protection legislation.

Reason

Clause 9(4) provides that “Nothing in this 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).”.

The question this raises (like the analogous provisions in clauses 7 and 10) concerns the status of the duty of disclosure under the bill. On the face of it complying with the duty is not exculpatory so far as contravention of data protection law is concerned, the duty can be “taken into account” in determining if a disclosure contravenes data protection law. Specifically making compliance with the bill a defence would make the provision simple and clear.

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Clause 10, Page 8, line 44

leave out “taken into account” and insert
“considered a defence”

Effect

This amendment ensures that a disclosure of information under this legislation will be a defence in connection with an accusation of contravention of data protection legislation.

Reason

Clause 10(7) provides that “Nothing in this 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).”.

The question this raises (like the analogous provisions in clauses 7 and 9) concerns the status of the duty of disclosure under the bill. On the face of it complying with the duty is not exculpatory so far as contravention of data protection law is concerned, the duty can be “taken into account” in determining if a disclosure contravenes data protection law. Specifically making compliance with the bill a defence would make the provision simple and clear.