



Law Society  
of Scotland

# Law Society Scotland

Professional Qualifications Bill Second Reading  
Briefing House of Commons

December 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 response<sup>1</sup>.

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.

We would note that the regulation of a number of professions (for example the Teaching and Legal Professions) is devolved. Accordingly, as detailed in the explanatory notes the Legislative Consent (Sewel) Convention is engaged in respect of the first 10 clauses in the bill (see – *Explanatory Notes Annex, page 22*).

This is a measure that introduces a number of regulation-making powers that have the potential to impact upon regulators and regulated professionals. Accordingly, we welcome the terms of clause 15 which

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

places a duty on the “appropriate national authority” to consult regulators of a regulated profession before making regulations under clauses 1, 3 or 4.

## 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 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.

### **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 underpins 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 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 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.

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

The provisions in this clause seem reasonable for the most part.

### **Clause 11 - Amendments to the Architects Act 1997**

### **Clause 12 - Crown application**

We have no comments to make on these clauses.

### **Clause 13 – General provision about Regulations**

This Bill creates a number of regulation-making powers without including a corresponding requirement to consult on those regulations. We believe that such a statutory duty should be included in the bill.

#### **Clause 14 - Protection of regulator autonomy**

We welcome the inclusion of clause 14 in the bill. This clause, which was inserted in the bill at Report Stage in the House of Lords, prevents the appropriate national authority making regulations under clauses 1, 3 or 4 unless satisfied that the conditions in subsections (2) (that the regulations do not remove the ability of any regulator of a regulated profession to prevent individuals who are unfit to practise the profession from doing so) and (3) (that the regulations will not have a material adverse effect on any regulated profession in terms of the knowledge, skills or experience of the individuals practising it.) of the new clause are met.

#### **Clause 15 – Consultation with regulators**

We welcome the inclusion of clause 15 in the bill. This clause, which was inserted in the bill at Report Stage in the House of Lords, requires the appropriate national authority to consult a regulator of a regulated profession before making regulations under clause 1, 3 or 4 if the authority considers that the regulator is likely to be affected by the regulations or it is otherwise appropriate to consult the regulator.

#### **Clause 16 – Authority by whom regulations may be made**

This clause defines the meaning of “appropriate national authority”. The default authority is the Secretary of State or the Lord Chancellor subject to the other provisions in the clause. The Scottish Ministers are also an “appropriate national authority” in relation to regulations under the bill which contain only provision which are within the legislative competence of the Scottish Parliament. The same provision applies to the Welsh and Northern Irish administrations.

#### **Clause 17 – Parliamentary procedure**

Regulations under the bill are subject to the affirmative resolution procedure where they contain provision amending, repealing or revoking primary legislation or retained direct principal EU legislation. Otherwise, regulations are subject to the negative resolution procedure.

Affirmative resolution Regulations which the bill proposes should be made by the Scottish Ministers, are made under the Interpretation and Legislative Reform (Scotland) Act 2010 section 27 (Scottish statutory instruments).

#### **Clause 18 – Interpretation**

#### **Clause 19 – Extent**

#### **Clause 20 – Commencement**

#### **Clause 21 – Short title**

We have no comment to make to these clauses.



**For further information, please contact**

Michael P Clancy

Director Law Reform

Law Society of Scotland

DD: 07785 578333

[michaelclancy@lawscot.org.uk](mailto:michaelclancy@lawscot.org.uk)