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## **Delegated Powers and Law Reform Committee**

# **Legislative Consent Memorandum: delegated powers relevant to Scotland in the Professional Qualifications Bill**



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# Delegated Powers and Law Reform Committee

To consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1;

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule; and

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



[helen.costello@parliament.scot](mailto:helen.costello@parliament.scot)

# Committee Membership



**Convener**  
**Stuart McMillan**  
Scottish National Party



**Deputy Convener**  
**Bill Kidd**  
Scottish National Party



**Graham Simpson**  
Scottish Conservative  
and Unionist Party



**Craig Hoy**  
Scottish Conservative  
and Unionist Party



**Paul Sweeney**  
Scottish Labour

# Introduction

1. This report considers the delegated powers that are relevant to Scotland in the [Professional Qualifications Bill](#) (UK Parliament Legislation).
2. The Professional Qualifications Bill ("the Bill") was introduced in the House of Lords by the UK Government on 12 May 2021. It completed House of Lords Committee stage on 22 June 2021. The Bill was amended at Committee stage and an amended version of the Bill was produced on 22 June 2021.
3. The Bill, as amended, is currently at Report stage in the House of Lords, with a date yet to be announced for the commencement of this stage.
4. Some of the Bill's provisions apply to Scotland for a purpose within the legislative competence of the Scottish Parliament and/or alter the executive competence of the Scottish Ministers. The Bill is therefore a "relevant Bill" for the purposes of Standing Order Rule 9B.1. A [Legislative Consent Memorandum \("LCM"\) for the Bill](#) was lodged by the Scottish Government on 12 July 2021.
5. Paragraph 6 of Rule 9B.3 of the Standing Orders provides that where the Bill that is the subject of a legislative consent memorandum ("LCM") contains provisions conferring on the Scottish Ministers powers to make subordinate legislation, the Delegated Powers and Law Reform Committee ("the Committee") shall consider and may report to the lead committee on those provisions.
6. As the Bill is still progressing through the UK Parliament, it is still subject to amendment. The Committee may therefore require to consider a supplementary LCM in due course.
7. The lead committee for this LCM is the Economy and Fair Work Committee.

## Brief outline of the Bill

8. The Bill relates to the recognition of professional qualifications and the regulation of professions after the UK's withdrawal from the EU.
9. The UK Government's [Explanatory Notes](#) describe the Bill, in overview, as creating a new framework for the recognition of professional qualifications and experience gained overseas; taking steps to reform regulators' practices; and revoking and replacing the interim system for professional qualifications that derives from the UK's membership of the EU.
10. Existing legislative provision in this area covers over 160 professions and more than 50 regulators, although the precise list is not listed in the Bill itself or its accompanying documents.
11. The regulation of professions and therefore the recognition of overseas professionals is a mixture of reserved and devolved competence, dependent on the profession. The Scottish Parliament can legislate in relation to the regulation of professions unless the regulation of a profession is a reserved matter or relates to a reserved matter. Schedule 5 Part 2 Head G of the Scotland Act 1998 sets out the regulation of professions that are reserved, those being architects, certain health professions and auditors. As the LCM points out, the regulation of some social care professions is devolved, as is the regulation of the teaching and legal profession. The Bill applies to all professions, without distinguishing between those which are reserved and devolved.
12. The Bill contains 19 clauses with the primary provisions for the Committee's purposes found in Clauses 1 to 6.
13. Clauses 1, 3, 4, 5 and 6(1) contain powers delegated to the "appropriate national authority" which are "Henry VIII" powers giving the power to amend primary legislation and retained direct principal EU legislation.

### *What are Henry VIII powers?*

14. Henry VIII powers are delegated powers that enable Ministers, by secondary legislation, to amend or repeal primary legislation. The Committee noted that this runs counter to the principle that primary legislation should only be amended or repealed by further primary legislation.

### *What is retained direct principal EU legislation?*

15. Retained direct principal EU legislation is defined in Section 7(6) of the European Union (Withdrawal) Act 2018 (EUWA) and is a form of retained EU law. Whilst it is neither primary nor secondary legislation it is given a status roughly equivalent to domestic primary legislation. In accordance with section 7(2) of EUWA it can only be amended by specified legislation.

# Background to the relevant delegated powers in the Bill

16. The Bill confers powers on the “appropriate national authority” to make subordinate legislation (“Appropriate National Authority”). The Appropriate National Authority is defined in the Bill as:
  - the Secretary of State or the Lord Chancellor; and
  - the Scottish Ministers where the regulations would be within the legislative competence of the Scottish Parliament.
17. The same applies to the other devolved administrations: the Secretary of State/Lord Chancellor may exercise these powers concurrently with the relevant devolved administration in devolved areas.
18. The relevant powers conferred on the Secretary of State or the Lord Chancellor and Scottish Ministers are considered in turn in this report. powers conferred on the Secretary of State and the Lord Chancellor without a requirement for Scottish Ministers’ consent
19. Where the power is exercised within devolved competence by the Secretary of State or the Lord Chancellor, *there is no statutory requirement that they obtain the devolved administration’s consent*. This means that the Secretary of State or Lord Chancellor could make provision, through regulations, in relation to matters falling within devolved competence without the consent of the Scottish Ministers. The UK Government has stated that it will not normally make regulations under these powers in devolved areas without the agreement of the relevant devolved authority. This statement is contained in the UK Delegated Powers Memorandum (UK DPM).
20. There is also *no statutory requirement on the Secretary of State/Lord Chancellor to consult the relevant devolved administration* before making regulations within devolved competence.
21. As is normal for UK Bills, there is no delegated powers memorandum by the Scottish Government. The UK Government has published a [Delegated Powers Memorandum](#) dated 12 May 2021 (the “UK DPM”) and a [supplementary Delegated Powers Memorandum](#) (the “UK sDPM”) dated 26 May 2021. The UK sDPM refers to the amendments made to Clause 1 of the Bill at the Committee stage.
22. Together the UK DPM and UK sDPM identify each of the provisions in the Bill that confer powers to make delegated legislation. They explain in each case the purpose of the power, why a delegated power is appropriate, and the parliamentary procedure that has been selected.
23. As a general point, the UK DPM acknowledges that, with some exceptions, the substantive changes to the law that are envisaged by this Bill will be made through delegated powers rather than in the Bill itself.



# Committee's points of principle on powers conferred on UK Ministers (in this case the Secretary of State and the Lord Chancellor) without a requirement for Scottish Ministers' consent

24. All powers in this Bill, where delegated to the Appropriate National Authority, may be exercised by UK Ministers or Scottish Ministers where the regulations contain only provision which would be within the legislative competence of the Scottish Parliament. This means that UK Ministers could make provision through regulations in relation to matters falling within devolved competence.
25. There is no statutory requirement for the UK Government to obtain the Scottish Ministers' consent before making such regulations. The UK Government states in the UK DPM that the UK Government will not normally make regulations under these powers in devolved areas without the agreement of the relevant devolved authority. However, this is not legally binding because it is not provided for in the Bill itself. It is therefore open to the present and any future UK Government to exercise the power without seeking or obtaining consent. The LCM states that the Scottish Government cannot recommend to the Scottish Parliament that consent is given to the Bill due to concerns regarding these concurrent powers. The LCM indicates that if satisfactory amendments are made to the Bill to respect the devolution settlement, the Scottish Government may be able to recommend that the Scottish Parliament consents to the Bill.

## *Committee consideration*

26. At its meeting on 7 September 2021, the Committee considered the Supplementary LCM for the Environment Bill (UK Parliament legislation). It subsequently wrote to both the [Cabinet Secretary for Net Zero, Energy and Transport](#) and the [Secretary of State for Environment Food and Rural Affairs](#) highlighting a number of points of principle in relation to powers in the Environment Bill being conferred on UK Ministers without a corresponding power for Scottish Ministers and without a requirement to obtain the consent of the Scottish Ministers.
27. These points of principle were also consistent with the approach that the Committee's predecessor in session 5 of the Scottish Parliament took in relation to delegated powers conferred solely on UK Ministers which may be exercisable within devolved competence. This focuses on the Committee's interest in ensuring that when a power to make legislation within the Parliament's legislative competence is given to others, the power is appropriate, and that Parliamentary scrutiny is ensured.
28. The Committee agreed to restate these principles in relation to the relevant powers in this Bill. These are listed in full in the Committee's recommendations in clause 1.

# Delegated powers conferred on the Appropriate National Authority

## Clause 1(1) – power to provide for individuals to be treated as having UK qualifications

### Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers

### Power exercisable by: Regulations

### Procedure: Affirmative procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative procedure applies

#### *Purpose*

29. The purpose of this power (according to the UK DPM) is to establish a means by which professional qualifications that are gained overseas can be recognised in the UK (or part of the UK). The objective (again according to the UK DPM) is to ensure that, where it is in the UK's interests to have overseas-qualified professionals working in the UK (or any part of it) those professionals have a means to have their professional qualifications recognised here, so as to enable them to practice that profession.
30. The power is, by regulations, to make provision for individuals with overseas qualifications who meet certain conditions to be treated as if they have the relevant UK qualification for the purpose of determining whether they are entitled to practise that profession in the UK or any part of it.
31. The power enables duties to put on regulators with regard to the applications. "Regulators" means, in effect, the regulators of any of the approximately 160 professions regulated by law in the UK.
32. The power conferred by clause 1 is restricted by clause 2 which provides regulations can only be made by an Appropriate National Authority under clause 1 if that 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.
33. Clause 2 doesn't apply to regulations made under clause 1 in so far as they are modifying earlier regulations provided they do not add further professions into those regulations.
34. The power is to be exercised in regulations subject to the affirmative procedure where the regulations amend, revoke or repeal primary legislation or retained direct principal EU legislation and subject to the negative procedure in other circumstances.

#### *Committee consideration*

35. The Committee was unclear how this power might be used. This was relevant both to the Committee's consideration of whether the provision is sufficiently clearly drafted, and also to its consideration of whether it is appropriate for the power to be delegated at all.
36. The Explanatory Notes state that the power is to make regulations "that require specified regulators to consider and assess" whether someone's overseas qualifications should be treated equivalent. The UK DPM states that "[w]here the power is used in relation to a profession, the specified regulator will be obligated to consider applications for recognition from individuals with qualifications/experience from every country in the world and provide a decision in line with the conditions set out in clause 1 and further requirements in the relevant regulations." However, neither of these aspects appears to be clear from the clause itself as it makes no mention of regulators being obliged to "consider and assess", nor to consider applications from every country in the world, and makes no mention of regulators being obliged to provide a decision. These are presumably the type of obligations that it is envisaged will be put on regulators in the regulations themselves, but in that case, in the Committee's view, this should be more obvious on the face of the Bill.
37. What the clause itself says, in relation to what obligations can be put on regulators under this power, is that the following provisions (among others) can be made:
- provision requiring a specified regulator to have regard to guidance issued from time to time by a specified person when determining an application (clause 1(5)(f));
  - provision as to the other duties of a specified regulator in connection with an application (clause 1(5)(g)); and
  - provision as to the powers of a specified regulator in connection with an application (clause 1(5)(h)).
38. Given the lack of specification in the power itself, combined with the width of these indicative uses of the power, the Committee considered that it would be appropriate for the Bill to pin down more precisely how the power can be used. If the intention of the clause is to enable the Appropriate National Authority, by regulations, to compel regulators to consider overseas applications then this should be spelt out in the clause. The nature of the provision that the Appropriate National Authority can make "as to the other duties" and "as to the powers" of regulators should also be more narrowly defined.
39. The content of regulations made under this clause could cover a broad area and numerous professions. Whilst the restrictions in clause 2 were noted these restrictions are effectively discretionary on the Appropriate National Authority's satisfaction that there is a demand for the services of the particular profession in question.
40. As noted above, the UK DPM states that the purpose of this clause is to establish a means by which professional qualifications obtained outside the UK may be recognised within the UK (or part of it).
41. In providing justification for the delegation of the power in clause 1 the UK DPM states that the availability of this new route to recognition of overseas qualifications

is to be demand led, and the use of the power is restricted by the requirement that in order to make regulations the Appropriate National Authority must be satisfied that the regulations are necessary for enabling the demand for the services of the profession to be met without unreasonable delays or charges.

42. Furthermore, the UK DPM states the professions that are in scope of the power have pre-existing legislative frameworks governing how each is regulated. The UK DPM states that it isn't feasible to provide, on the face of the Bill, for an approach that would interface with each of these various frameworks and their different approaches to the recognition of professional qualifications or to address them individually.
43. The Committee noted some inconsistency between the statement in the UK DPM that on the one hand, this power will only be used where the demand requires it, so presumably on a piecemeal basis, and on the other hand the statement in the UK Government's letter to the UK Parliament ([page 11 of the DPRRC's third report of session 2021-22](#)) that "the substance of the new framework is set out in the Bill" and (in the UK DPM) that this framework will replace the current approach. The current approach is provided in the European Union (Recognition of Professional Qualifications) Regulations 2015, which implemented EU including EU Directive 2005/36/EC, whereby EEA and Swiss qualifications are given preferential treatment and qualifications from elsewhere are "lacking a consistent framework" for entry into the UK market. Both statements suggest that the Bill is setting up a comprehensive scheme.
44. The UK sDPM states that clause 1 has no effect on a regulator unless that regulator is specified in regulation made under the clause. It adds that those regulations are the appropriate place to deal with any profession-specific conditions that need to be applied to overseas-qualified individuals, and that this is consistent with the overall approach of the Bill, which is to set out a framework under which profession specific provisions can be made in regulations.
45. The justifications given in the UK DPM and UK sDPM for the delegation of this power were noted by the Committee. However, it does not appear to be fully justified as to why the provisions in clause 1 in respect of the recognition of professional qualifications are to be made by statutory instrument, which may permit the amendment of primary legislation, instead of being made by primary legislation itself. The reason given in the DPM, that it would not be feasible to provide on the face of the Bill for an approach that would interface with the different existing legislative frameworks for each of the professions, does not appear to the Committee to be sufficient reason.
46. The Committee noted that its counterpart committee in the House of Lords, the Delegated Power and Regulatory Reform Committee ("DPRRC"), had raised similar concerns. It considered the clause in its [report published on 27 May 2021](#) and [considered the amendments to the clause on 7 June 2021](#). It concluded that a much fuller explanation was required about the provision that could be made in regulations under clause 1; and that full justification was required for all such provision – including that which amends primary legislation – being made by statutory instrument instead of by primary legislation with its attendant scrutiny.
47. The UK DPM states that where regulations are made under this power that amend, revoke or repeal primary legislation or retained direct principal EU legislation, it is

appropriate that the affirmative procedure is required in order to ensure a higher level of parliamentary scrutiny. In all other circumstances the negative procedure would be required. The Committee considered that the affirmative procedure is certainly appropriate for provision that amends primary legislation or retained direct principal EU legislation, but that this procedural safeguard alone is not sufficient to resolve the Committee's concerns with this clause.

48. The Committee considers that insufficient justification has been provided for why all provision that can be made under clause 1 is suitable for secondary, rather than primary, legislation. The Committee also considers that, in the absence of further specification in the Bill of how the power can be used, the power is too wide.
49. The Committee also notes that there is no statutory requirement for the UK Government to obtain the Scottish Ministers' consent when exercising the power within devolved competence, although the UK Government has stated in the UK DPM that UK Ministers will not normally use the powers conferred by the Bill in devolved areas without the agreement of the Scottish Ministers.
50. The Committee maintains the approach adopted by the Session 5 Delegated Powers and Law Reform Committee and by this Committee in relation to the Environment Bill LCM, as a matter of principle, in relation to delegated powers conferred solely on the Secretary of State/Lord Chancellor which may be exercisable within devolved competence. It therefore makes the following points in relation to the delegated power in clause 1:
  - The Scottish Parliament should have the opportunity to effectively scrutinise the exercise of all legislative powers within devolved competence.
  - Where the powers in the Bill are exercised by the Secretary of State/Lord Chancellor in devolved areas, there would be no formal means by which the Scottish Parliament could scrutinise such regulations or be notified that they had been laid before the UK Parliament.
  - That powers which are conferred on Secretary of State/Lord Chancellor and are exercisable within devolved competence should be subject to a requirement for the Scottish Ministers' consent.
  - As a minimum, it is appropriate that all powers under the Bill exercisable by Secretary of State/Lord Chancellor in devolved areas are subject to the process set out in the SI Protocol agreed between the Scottish Parliament and the Scottish Government.
51. In addition, the Committee notes that no distinction has been made in the Bill between reserved and devolved professional qualifications. This is despite the regulation of many professions being devolved, including some social care professions and the teaching and legal professions. The [United Kingdom Internal Market Act 2020](#) excluded the school teaching and legal professions in Scotland from its provisions on mutual recognition for the purpose of access to those professions between the different parts of UK. The Committee therefore questions why a different approach is being taken in this Bill.

### **Clause 3(1) – implementation of international recognition agreements**

#### **Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

#### **Power exercisable by: Regulations**

#### **Procedure: Affirmative procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative procedure applies**

#### *Purpose*

52. Clause 3(1) confers powers on the Appropriate National Authority to make regulations which make such provision as the authority considers appropriate for the purpose of, or in connection with, implementing any international recognition agreement to which the UK is a party.
53. This is a Henry VIII power which, as highlighted above, could be used to amend primary legislation and retained direct principal EU legislation.
54. The Explanatory Notes state that this would enable the implementation of the relevant sections of free trade agreements and specific agreements on the recognition of professional qualifications that the UK makes with an international partner (i.e. another country or international body). This 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.
55. The UK DPM states this power is intended to enable the implementation, through regulations, of components of any international agreement formed between the UK Government and the governments of other states, so far as the agreement relates to the recognition of overseas qualifications or overseas experience for the purposes of determining whether individuals are entitled to practise a profession.
56. Regulations may make provision to confer functions on a person (such as a regulator) including a discretion but not including a power to make subordinate legislation; for the sharing of information; and for the charging of fees.

#### *Committee consideration*

57. The UK DPM states that the power is necessary to ensure commitments made by the UK under international agreements can be met. Further that since the power will be available in relation to international agreements concluded in the future, and the terms of those agreements are not known, it is not possible to deliver the necessary changes on the face of the Bill.
58. The Committee considers that it was unclear from the accompanying documents why the implementation of international agreements on professional qualifications should be done by regulations as opposed to primary legislation. The implementation of international agreements by primary legislation affords a much greater level of scrutiny.
59. The UK DPM mentions that the terms of future trade agreements will normally be

subject to scrutiny in the UK Parliament under the process in section 20 of the Constitutional Reform and Governance Act 2010 (“CRAGA”). Under this process, the UK Government must lay a copy of the draft treaty before the UK Parliament for 21 days, during which the UK Parliament could resolve that it should not be ratified. If the 21 days pass without such a resolution, the UK Government can proceed to ratify the treaty. The Committee notes that CRAGA does not require a debate or vote on the draft treaty. In exceptional cases, the CRAGA procedure can be disapplied entirely, as happened with the UK-EU Trade and Cooperation Agreement in late 2020. This procedure therefore provides only a limited role for the UK Parliament, and at a point in time when the terms of the treaty have already been finalised, and the decision for the UK Parliament is effectively whether to accept or reject the treaty as a whole.

60. The standard procedure is that international agreements are implemented in domestic law by primary, not secondary, legislation. Legislation during the EU exit process was a departure from this normal procedure in conferring powers to implement certain trade agreements by secondary legislation. Going forward beyond the EU exit process, there appears to be no special reason why future agreements with third countries should be implemented by secondary rather than primary legislation, and no special reason why this should be so particularly in relation to recognition of professional qualifications aspects of such agreements. Before the UK joined the EU in 1972, the UK Government did not have a general power to implement aspects of international agreements by secondary legislation.
61. The Committee considers that implementation of international recognition agreements in domestic law may raise considerable public interest. The interaction of mutual recognition of professional qualifications with other aspects of trade agreements may be of particular interest.
62. The Committee noted that a further justification given in the DPM for the power is that the professions in the scope of the Bill all have pre-existing legislative frameworks governing how each is regulated and that it is not possible to provide an overarching approach to the implementation of international agreements that covers the varying legislative backgrounds of the professions on the face of the Bill.
63. The UK DPM does not set out what type of agreements might need to be implemented, the type or scale of amendments that may be made to domestic law in exercise of the power or how many international recognition agreements are anticipated.
64. During its consideration of the delegated powers in this Bill, the [House of Lords DPRRC raised various matters with the UK Government](#). The [UK Government responded](#), as regards what might require to be implemented, that “[o]ur firm position in negotiations has been that regulator autonomy to set standards and determine who practises a profession is critical and will be maintained. Regulations made using this clause would not alter this position.” However, this statement of current intention does not, of course, place any legal restriction on how the power could be used by the present, or any future, UK or Scottish administration.
65. The House of Lords' DPRRC had strong concerns about this clause. In its [report published on 27 May 2021](#) it concluded “[we] consider that clause 3 represents an inappropriate delegation of power and should be removed from the Bill.”

66. The LCM makes no comment on whether it is appropriate to delegate this power.
67. In considering this power the Committee noted that it relates to post-EU trade agreements. It is not a transitional arrangement but is rather setting up the new regime which will apply going forward as the UK reaches new trade agreements outwith the EU. It is also not related to the UK-EU agreement on professional qualifications, which is catered for already in the EU (Future Relationship) Act 2020. This relates to future trade agreements with third countries.
68. The Committee noted that the Law Society of Scotland was of the view that a statutory requirement to consult the affected regulator(s) before exercising the power should be included in this clause. In its [briefing on the Bill](#) it cited, as an example of one situation where consultation was vital, the process for amending the Law Society of Scotland admissions regulations. These are lengthy and involve the concurrence of the Lord President of the Court of Session. Across the 160 regulated professions there will undoubtedly be other special features such as this, which would highlight the importance of consultation.
69. The Committee considers that, in the absence of further specification, it is not appropriate to delegate the general power in clause 3(1), to implement the professional qualifications aspects of agreements which have not yet been made, and the content of which is therefore not known.
70. The Committee also recommends that the lead committee pursues with the Scottish Government whether a statutory requirement to consult the affected regulator(s) before exercising the power should be included in this clause. This is particularly so given that the clause covers a multiplicity of different regulators. Separately, clause 3(1)(c) enables regulations under this power to make provision for the charging of fees. The lead committee may also wish to explore whether this could be used to compel devolved regulators to charge (or not to charge) a fee, and what the implications of this might be.
71. The recommendation in paragraphs 50 above (in relation to the exercise by the Secretary of State/Lord Chancellor of powers within the legislative competence of the Scottish Parliament) applies also to the power in clause 3(1).

## **Clause 4(1) – authorisation to enter into regulator recognition agreements**

**Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

**Power exercisable by: Regulations**

**Procedure: Affirmative procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative procedure applies**

*Purpose*

72. Clause 4(1) confers powers on the Appropriate National Authority to make provision by regulations, as the authority considers appropriate, for the purpose of, or in connection with, authorising a regulator of a regulated profession to enter into



regulator recognition agreements.

73. The Explanatory Notes explain that a regulator recognition agreement is an agreement between a UK regulator and an international counterpart on the recognition of professional qualifications. This would be both in terms of recognising UK qualifications and experience overseas and recognising overseas qualifications and experience in the UK.
74. The UK DPM states that these agreements would be outside of a government negotiated international agreement framework.
75. The UK DPM further states that the power is intended to only be used once in relation to each profession further that the power 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.
76. The UK DPM states that this is narrow power that the Government believes is necessary to maintain flexibility. This is also a Henry VIII power which will permit the amendment of primary legislation (albeit under the affirmative procedure where it does so).

#### *Committee consideration*

77. The Committee noted that the House of Lords DPRRC obtained further information from the UK Government with regard to what provisions could be included in such recognition agreements or how significant the effect of the agreement would be. The UK Government advised that detail on the nature of the provisions that could be contained in regulator recognition agreements is provided in guidance published by BEIS to help regulators reach such agreements; that the exact nature of a regulator recognition agreement will depend upon what the relevant regulators wish to agree; but that common provisions can include consistent approaches to dealing with applications for recognition from the other jurisdiction, any requirements for compensatory measures and the basis for recognition. The UK Government advised that this power cannot be used to compel regulators to enter into recognition agreements or to recognise specific qualifications.
78. The Committee noted the further explanation provided by the UK Government to DPRRC on the use of this power and was content with the delegation of the power in principle. The Committee was also content he proposed parliamentary procedure on the basis that the use of this power to amend primary legislation or retained direct principle EU law will require the affirmative procedure.
79. However, the Committee considered, as regards who will exercise this power, that the decision as to whether a Scottish regulator of a devolved profession should be given a general authorisation to enter into recognition agreements is a matter that the Scottish Parliament should scrutinise.
80. The Committee considered that a statutory requirement to consult the affected regulator before exercising this power may again be appropriate here and the lead committee may wish to raise this with the Scottish Government.

81. The Committee is content with the appropriateness of the power and the

proposed parliamentary procedure.

82. The recommendation in paragraph 50 (in relation to the exercise by the Secretary of State/Lord Chancellor of powers within the legislative competence of the Scottish Parliament) applies also to the power in clause 4(1).
83. The Committee considers that a statutory requirement to consult the affected regulator before exercising this power would be appropriate.

## **Clause 5(2) – Modification of legislation in consequence of the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015**

### **Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

#### **Power exercisable by: Regulations**

#### **Procedure: Affirmative procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative procedure applies**

#### *Purpose*

84. Clause 5(2) provides for consequential amendments to be made to other legislation, including primary legislation, as a result of the revocation of the [European Union \(Recognition of Professional Qualifications\) Regulations 2015](#) (the “2015 Regulations”). Transitional and savings provisions will also be permissible in conjunction with clause 13(1)(c).
85. Subsection (1) of this clause revokes the 2015 Regulations. The 2015 Regulations provide 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 provided for in Clause 1 of the Bill will be implemented alongside revoking the 2015 Regulations.

#### *Committee consideration*

86. The Committee noted that the 2015 Regulations are a very substantial piece of legislation, running to 80 paragraphs and 6 schedules, which implements EU law on the recognition of professional qualifications, including the [principal EU Directive in this area](#). The Directive was itself very substantial. It is significant that this detailed regime is being replaced by a short Bill which established only a framework for a regime which can be established by secondary legislation, hence the Committee's comments about the appropriateness of the delegation of the power in clauses 1 and 3.
87. The Explanatory Notes further explain that other legislation may require to be modified following the revocation of the 2015 Regulations this may include matters such as references to the “2015 Regulations” and other transitional and savings provisions to provide for a regulator to consider applications in progress at the time

the 2015 Regulations are revoked.

88. The Committee is content with the appropriateness of the power and the proposed parliamentary procedure.
89. The Committee's wider recommendation in paragraph 50 also applies to the power in clause 5(2).

### **Clause 6(1) – Modification of retained EU Law on the recognition of overseas qualifications or experience**

**Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

**Power exercisable by: Regulations**

**Procedure: Affirmative procedure if amending, revoking or repealing primary legislation or retained direct principal EU legislation, otherwise the negative procedure applies**

#### *Purpose*

90. Clause 6(1) gives the Appropriate National Authority the power to make regulations modifying retained EU recognition law so that it ceases to have effect.
91. The Explanatory Notes explain that this power 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.
92. Clause 6(2) 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 purposes of determining whether individuals are entitled to practise a regulated profession in the United Kingdom or a part of it.
93. The UK DPM states that the pieces of legislation that need to be revoked in these cases will not necessarily all be revoked at the same time, this will depend on the needs of particular sectors i.e healthcare.

#### *Committee consideration*

94. The Committee is satisfied that it is appropriate to allow for these measures to be revoked at an appropriate time without fixing a particular date in the Bill. It is therefore content with the appropriateness of the power and the proposed parliamentary procedure.
95. The Committee's wider recommendation in paragraph 50 also applies to the power in clause 6(1).

### **Clause 8(2)(j) – Specify additional information for regulators to publish**

## **Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

### **Power exercisable by: Regulations**

#### **Procedure: Negative procedure**

##### *Purpose*

96. Clause 8(2)(j) provides a delegated power for the Appropriate National Authority to make legislation which specifies additional information for regulators to publish on requirements to practise.
97. The Explanatory Notes explain that Clause 8 of the Bill requires regulators to publish information about the requirements they place on individuals to enter or remain in their profession.
98. The UK DPM explains that the purpose of the power is to improve transparency by requiring regulators to publish on their websites information that relates to the qualification and practice requirements of the profession. The clause contains a list of information that must be published and delegated power to permit other information to be specified in secondary legislation in the future. The power does not include the ability to modify legislation, other than earlier regulations made under the relevant section.
99. The UK DPM further states that the power is intended to be used to provide ongoing improvements in transparency where it could benefit the professions and the consumers of professional services. This will also provide that information published is relevant and up to date.
100. Unlike the powers referred to above, this power cannot be used to amend primary legislation.

##### *Committee consideration*

101. The Committee is content that this is a narrow power to supplement the publication requirements as set out in the Bill and that the negative procedure provides a suitable level of scrutiny.
102. The Committee's wider recommendation in paragraph 50 also applies to the power in clause 8(2)(j).

## **Clause 10(4) – make provision in connection with the duty of UK regulators under clause 10(2) to provide information to overseas regulators**

### **Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

#### **Power exercisable by: Regulations**

#### **Procedure: Negative procedure**

##### *Purpose*

103. This clause allows the Appropriate National Authority to make regulations containing such provision as they consider appropriate in connection with the duty of a regulator to provide information to an overseas regulator as set out in clause 10(2). This includes power to make provision to limit that duty.
104. The Explanatory Notes explain that the 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.
105. The UK DPM adds that the purpose of the power is to support the operation of the aforementioned duty set out in clause 10(2). Clause 10(5) sets out a list of the types of provisions that may be included in regulations made under clause 10(4) and this includes provisions on fees and the timeframe in which the duty is to be complied with.
106. The power does not include the ability to amend, revoke or repeal the text of primary legislation. Further it is not capable of making amendments to any legislation other than pre-existing regulations made under clause 10(4).
107. The power is a narrow one only exercisable in relation to the duty under clause 10(2) of the Bill and is concerned with largely technical matters.

#### *Committee consideration*

108. The Committee is content with the appropriateness of the power and the proposed parliamentary procedure.
109. The Committee's wider recommendation in paragraph 50 also applies to the power in clause 10(4).

#### **Clause 13(1)(c) – supplementary power**

##### **Power conferred on: Secretary of State (or the Lord Chancellor) and the Scottish Ministers**

#### *Purpose*

110. This provision enables the Appropriate National Authority to make supplementary, incidental, consequential, transitional, transitory or saving provision) when exercising the power to make regulations under the Bill.

#### *Committee consideration*

111. The Committee is content with the supplementary provision.
112. The Committee's wider recommendation in paragraph 50 also applies to the power in clause 13(1)(c).

