HOUSE OF LORDS

Delegated Powers and Regulatory Reform Committee

3rd Report of Session 2021–22

Environment Bill

Professional Qualifications Bill [HL]: Government Amendments

Professional Qualifications Bill [HL]: Government Response

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HL Paper 16

The Delegated Powers and Regulatory Reform Committee

The Committee is appointed by the House of Lords each session and has the following terms of reference:

(i) To report whether the provisions of any bill inappropriately delegate legislative power, or whether they subject the exercise of legislative power to an inappropriate degree of parliamentary scrutiny;

(ii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) sections 14 and 18 of the Legislative and Regulatory Reform Act 2006,

(b) section 7(2) or section 19 of the Localism Act 2011, or

(c) section 5E(2) of the Fire and Rescue Services Act 2004;

and to perform, in respect of such draft orders, and in respect of subordinate provisions orders made or proposed to be made under the Regulatory Reform Act 2001, the functions performed in respect of other instruments and draft instruments by the Joint Committee on Statutory Instruments; and

(iii) To report on documents and draft orders laid before Parliament under or by virtue of:

(a) section 85 of the Northern Ireland Act 1998,

(b) section 17 of the Local Government Act 1999,

(c) section 9 of the Local Government Act 2000,

(d) section 98 of the Local Government Act 2003, or

(e) section 102 of the Local Transport Act 2008.

Membership

The members of the Delegated Powers and Regulatory Reform Committee who agreed this report are:

Baroness Andrews
Lord Blencathra (Chair)
Baroness Browning
Lord Goddard of Stockport
Lord Haselhurst
Lord Hendy
Lord Janvrin
Baroness Meacher
Lord Rowlands
Lord Tope

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Contacts for the Delegated Powers and Regulatory Reform Committee

Any query about the Committee or its work should be directed to the Clerk of Delegated Legislation, Legislation Office, House of Lords, London, SW1A 0PW. The telephone number is 020 7219 3103. The Committee's email address is hldelegatedpowers@parliament.uk.

Historical Note

In February 1992, the Select Committee on the Committee work of the House, under the chairmanship of Earl Jellicoe, noted that "in recent years there has been considerable disquiet over the problem of wide and sometimes ill-defined order-making powers which give Ministers unlimited discretion" (Session 1991–92, HL Paper 35-I, paragraph 133). The Committee recommended the establishment of a delegated powers scrutiny committee which would, it suggested, "be well suited to the revising function of the House". As a result, the Select Committee on the Scrutiny of Delegated Powers was appointed experimentally in the following session. It was established as a sessional committee from the beginning of Session 1994–95. The Committee also has responsibility for scrutinising legislative reform orders under the Legislative and Regulatory Reform Act 2006 and certain instruments made under other Acts specified in the Committee's terms of reference.

Third Report

ENVIRONMENT BILL

1. The Environment Bill was brought from the House of Commons on 26 May 2021. It contains a legal framework for environmental governance, and specific measures on matters including waste, resource efficiency, air quality, water, nature and biodiversity.

2. The Bill contains 110 delegated powers, 48 of which (a comparatively large number) allow for the affirmative procedure. The Department for Environment, Food and Rural Affairs has furnished us with a thorough and exceedingly helpful Delegated Powers Memorandum ("the Memorandum"), a model of its kind.

3. In our Report on the Rivers Authorities and Land Drainage Bill,[1] we expressed concern at provisions relating to internal drainage boards. We described them as an attempt, upon flimsy grounds, to set aside the procedures which Parliament has put in place to protect the interests of citizens who would be unfairly affected by legislation.

4. We welcome the fact that clauses 88 to 91 of the Environment Bill have recast those provisions in ways that address our concerns. The provisions in the earlier bill that disapplied the hybrid instrument procedure for regulations made under new sections 37(5ZA) and 41A of the Land Drainage Act 1991[2] have been removed. A new requirement for consultation before any exercise of those powers has been added.[3]

5. We welcome also the fact that Defra has made significant improvements to the explanation and justification given in the Memorandum to address shortcomings identified in our earlier Report - in particular, a failure fully to justify the breadth of the powers taken.[4]

6. Although we draw attention to one aspect of the provision in clauses 88 and 90 of the Bill, **this Bill and its Memorandum have benefited substantially from our scrutiny of the earlier Bill. We welcome the Government's positive response to our earlier recommendations.**

Guidance

7. Several clauses in the Bill, including clauses 24, 56, 67, 99, 102 and 103 contain provisions for the issuance of guidance. In most cases, regard must be had to the guidance by various bodies (though not the guidance in clauses 102(7) and 103(8)). And in most cases the guidance is not subject to any parliamentary oversight (though clause 24(4) contains a welcome exception).

8. Guidance that is merely intended to guide does not require any parliamentary procedure. It does not even require legislation, given that Ministers have common-law powers to issue guidance. But we have often recommended

1 54th Report, Session 2017–19 (HL Paper 370).
2 Those new sections are inserted by clauses 88(3) and 90(3) of the Bill.
3 See new clauses 37(5ZG) and 41A(12) of the Land Drainage Act 1991, inserted by clauses 88(3) and 90(3) of the Bill.
4 See paras 47 and 70 of that Report.

that statutory guidance to which regard must be had (which in practice will be followed in the absence of cogent reasons), and which is designed to have a transformative effect on behaviour, should be subject to a parliamentary procedure.[5] This is not to say that such guidance should be drafted like regulations contained in a statutory instrument. This would be inappropriate given the language, form and purpose of guidance compared to binding regulations.

9. To take an example, clause 67(3) contains a power for Ministers to issue guidance to litter authorities on the exercise of littering enforcement functions. Paragraph 262 of the Memorandum states that the purpose of the guidance is to "ensure" that the various littering authorities act consistently and proportionately. Despite this, the Government do not propose any parliamentary oversight because the guidance would contain lengthy details that do not require such oversight (Memorandum, para. 263).

10. Clause 24(4), a provision added at Commons Committee stage, states that any guidance that the Secretary of State issues to the new Office for Environment Protection ("the OEP"), to which the OEP must have regard, must be laid before Parliament and published. If applied to some of the other clauses on guidance, this would mark an improvement in the Bill's scrutiny arrangements. **We recommend that the parliamentary procedure in clause 24(4) be extended to other guidance provisions in the Bill, particularly clause 67 on littering enforcement.**

Clause 73: environmental recall of motor vehicles

11. Clause 73 contains wide-ranging powers for the Secretary of State by regulations to make provision relating to the recall of motor vehicles, certain engines and their components, if they fail to meet relevant environmental standards to be specified in the regulations. The powers on enforcement allow for the creation of an enforcement authority, specify no limit on the amount of financial penalties that can be levied and allow wide powers of entry, search and seizure.

12. The regulations are to be made under the negative procedure. We do not find the Government's justifications (Memorandum, paragraph 327) to be convincing.

    (a) Once the scheme has begun operating, changes may have to be made quickly in response to new environmental standards.

    This is an argument for making the changes in regulations rather than in a new Bill. It is not an argument for the negative procedure because regulations can be made as expeditiously under the "made affirmative" procedure as they can under the negative procedure.

    (b) The power is similar to the power to make regulations contained in section 54 of the Road Traffic Act 1988.

    But the powers in section 54 do not concern recall and, in any event, the 1988 Act is perhaps a dated precedent.

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5 For example, the Committee's 18th Report, Session 2015-16, para 13; 20th Report, Session 2015-16, paras 10-11; 21st Report, Session 2015-16, para 27; 22nd Report, Session 2015-16, para 19; 1st Report, Session 2016-17, para 38.

(c) Regulations will not apply to individuals, only to manufacturers and distributors of relevant vehicles, engines or components.

If important subordinate legislation is otherwise deserving of the affirmative procedure, it should not be downgraded to the negative procedure merely because businesses (rather than individuals) are the particular Ministerial target.

13. **We recommend that the affirmative procedure should apply to regulations made under clause 73.**

Clauses 88 and 90: valuation of land in drainage districts

14. Clause 88 inserts a new section 37(5ZA) to (5ZH) into the Land Drainage Act 1991 ("the 1991 Act"), allowing the Secretary of State by regulations to make provision for the value of non-agricultural land in an English internal drainage district to be determined in accordance with the regulations. New section 37(5ZE) allows the regulations to make incidental, supplementary, consequential etc. provision. As part of this, new section 37(5ZF) contains a Henry VIII power to amend any Act of Parliament including the 1991 Act itself.

15. The Government's justification for the power (Memorandum, paragraphs. 404 and 414) is:

> "… in case the application of the new calculation requires incidental or consequential provision to be made to the Land Drainage Act 1991, or to repeal specific provisions of the LDA 1991 which are to be made redundant as a result of the regulations applying in relation to all internal drainage boards."

16. The power in new section 37(5ZF) of the 1991 Act is arguably wider than is necessary to achieve its stated purpose. **In the absence of a clear justification why new section 37(5ZF) of the 1991 Act should be able to amend any Act of Parliament, its scope should be confined to amending the 1991 Act only.** This is, after all, the only Act that the Government say might require consequential etc. amendment.

17. A similar point applies in relation to clause 90. Clause 90(3) inserts a new section 41A in the 1991 Act, and new section 41A(11) allows regulations to make incidental, supplementary, consequential etc. provision allowing the amendment or repeal of any provision of any Act of Parliament. However, the Memorandum (paragraph 431) makes clear that the powers may be needed to amend only the 1991 Act:

> "the powers enable incidental, supplementary, consequential, transitional, transitory or saving provisions to be made to the LDA 1991 under new section 41A(11), such that in the future, the alternative calculation may, if necessary, replace the existing calculation provided for in the LDA 1991 in full."

18. The power in new section 41A(11) of the 1991 Act is arguably wider than is necessary to achieve its stated purpose. **In the absence of a clear justification why new section 41A(11) of the 1991 Act should be able to amend any Act of Parliament, its scope should be confined to**

amending the 1991 Act only. Once again, this is the only Act that the Government say might require consequential etc. amendment.

Schedule 14, paragraph 2: publication of the biodiversity metric

19. Paragraph 2 of Schedule 14 inserts a new Schedule 7A to the Town and Country Planning Act 1990, imposing a requirement for a biodiversity gain to be required as a condition of all planning permissions granted in England.

20. Central to the calculation of biodiversity value is a biodiversity metric to be produced and published by the Secretary of State. The metric will set out a methodology for calculating biodiversity value of habitat, taking account of a large number of variables.

> "Many of these variables will require the application of expert judgment on the part of an ecologist" (Memorandum, paragraph 448).

21. But where expertise may have a profound effect on the results of planning applications, there is a role for Parliamentary scrutiny of this expertise. One might have expected that the power to make such an important metric would be exercised by regulations subject to the negative procedure or by the procedure in clause 24(4). In fact, the Department will publish the metric but subject to no parliamentary procedure at all: paragraph 4(2) of the new Schedule 7A to the Town and Country Planning Act 1990.

22. We find the Government's reasons (Memorandum, paragraphs 449–450) to be unconvincing.

(a) "The format of the metric means it is unsuitable for putting in legislation. The Department recognizes the need to formalize the status of the metric but considers this is best done by publishing as a document."

But if the metric can be reduced to documentary form, it can be laid before Parliament for scrutiny.

(b) "Prior to publication or republication the metric is to be subject to a consultation requirement, which the Department considers the best way to ensure that stakeholders have an opportunity to express a view on it."

Pre-making consultation of those likely to be affected is best practice. But it is no substitute for parliamentary scrutiny, whether pre-making or post-making.

(c) "The metric is likely to be subject to incremental revision from time to time as it is used in practice and as it is refined".

This is not an argument for denying a role for parliamentary scrutiny, quite the reverse. Legislation is always subject to revision, and much of the work of Parliament involves the scrutiny of amendments to legislation.

(d) The metric "will be highly technical and not easily subject to Parliamentary consideration" and will have been consulted on.

But the work of no expert, ecological or otherwise, should be above the scrutiny of Parliament. Experts are fallible. There should be nothing

in a biodiversity metric that should defeat reasonable attempts to scrutinise it.

23. Furthermore, it is odd that Parliament will be given the opportunity to consider the transitional provisions relating to any revision and republication of the metric (Memorandum, paragraph 450) but will be denied any scrutiny role when the metric is first published.

24. **We recommend that the power to publish the biodiversity metric (in paragraph 4(2) of the new Schedule 7A to the Town and Country Planning Act 1990) should be subject to a parliamentary procedure. The negative procedure, or the procedure in clause 24(4), would suffice.**

PROFESSIONAL QUALIFICATIONS BILL [HL]: GOVERNMENT AMENDMENTS

25. This 19-clause Bill was introduced in the House of Lords on 12 May and had its Second Reading on 25 May.

26. We reported on the Bill in our 2nd Report of this Session.[6]

27. The Government have tabled four amendments to be moved in Committee of the Whole House. The amendments all affect the delegated power in clause 1 of the Bill—one of three powers that we drew to the attention of the House in our earlier Report.[7]

28. The Department for Business, Energy and Industrial Strategy has provided a supplementary Delegated Powers Memorandum ("the Supplementary Memorandum").[8]

29. We draw to the attention of the House the proposed changes to the delegated power in clause 1.

Amendments to clause 1(1), (2) and (3) and insertion of new clause 1(3A)

30. Clause 1 gives Ministers power to make regulations which provide for individuals with overseas qualifications or experience who wish to practise a "regulated profession" in the UK to be treated as if they have the required UK qualifications or experience. "Regulated profession" means any of the 160 or so professions that are regulated by law in the UK. It is a Henry VIII power.

31. In our earlier Report, we expressed concern at the scarcity of explanation in the Delegated Powers Memorandum[9] and we suggested that the House may wish to press the Minister to provide—

- a much fuller explanation about the provision that could be made in regulations under clause 1; and
- full justification for all such provision–including that which amends primary legislation–being made by statutory instrument instead of by primary legislation with its attendant scrutiny.[10]

32. In the Bill as currently drafted, the power in clause 1 is subject to two conditions. Regulations can only provide for a person with overseas qualifications or experience to be treated as if they have the required UK qualifications or experience if—

- a regulator of the profession in question is satisfied that "the overseas qualifications or overseas experience demonstrate substantially the

6 Referred to below as the "earlier Report".
7 See paras 9 to 25 of that Report.
8 Department for Business, Energy and Industrial Strategy, Supplementary Delegated Powers Memorandum, 26 May 2021: https://bills.parliament.uk/publications/41679/documents/323 [accessed 4 June 2021].
9 Department for Business, Energy and Industrial Strategy, Delegated Powers Memorandum: https://bills.parliament.uk/publications/41509/documents/255 .
10 See para 25 of that Report.

same knowledge and skills, to substantially the same standard, as are demonstrated by"[11] the relevant UK qualification or experience;[12] and

- it is "*necessary* to make the regulations for the purpose of enabling the demand for the services of the profession in the UK … to be met *without unreasonable delays or charges*".[13]

33. The proposed amendments to clause 1(2) and (3) and the proposed insertion of a new clause 1(3A) would narrow the delegated power in clause 1 by altering the first of these conditions, shifting the focus from whether the *overseas qualifications or experience* demonstrate an equivalent level of knowledge and skills as are demonstrated by the relevant UK qualification or experience to whether *the individual* who wishes to practise the profession has that level of knowledge and skills.

34. This means that the regulations could not require a person to be treated as if they have the required UK qualification or experience based solely on the regulator's determination as to whether there is equivalence between the overseas qualifications or experience and the required UK qualification or experience. Instead, the regulator would have to be satisfied that the person has "substantially the same knowledge and skills, to substantially the same standard", as are demonstrated by the relevant UK qualification or experience.

35. The effect of new clause 1(3A) is that it would be open to a regulator of a profession to make the determination as to the knowledge and skills of a person solely on the basis of their overseas qualifications or experience, or on such other basis as the regulator considers appropriate ("including the results of any test or other assessment").[14]

36. These amendments go much of the way to addressing the concern we expressed in paragraph 19 of our earlier Report, where we considered the example of existing requirements in primary legislation governing the regulation of dentists. We explained how, under the Dentists Act 1984, those with overseas qualifications or experience who wish to practise as dentists in the UK must not only hold a "recognised overseas diploma" but the starting point is that they must sit an examination for the purpose of satisfying the regulator that they have the requisite knowledge and skill and they must also satisfy the regulator as to their identity, good character, good health and knowledge of English.

37. We noted that clause 1 could allow such requirements—and other comparable requirements in primary legislation relating to other professions-to be watered down by statutory instrument if Ministers considered this to be necessary to enable demand for the services of the profession in question to be met without "unreasonable delays".

38. The amendments would limit the ability of Ministers to do this. Regulators could not be prevented from, for example, requiring those with overseas qualifications or experience to sit an examination or to satisfy them as to

11 See clause 1(2)(b) of the Bill.
12 Or, where the overseas qualifications or experience do not demonstrate this, any deficiency has been made up by the person obtaining such further qualifications or experience or meeting such further condition as the regulator may determine.
13 See clause 2(2) of the Bill.
14 See new clause 1(3A)(b)(ii).

their knowledge of English for the purposes of determining whether they have "substantially the same knowledge and skills as are demonstrated by" the required UK qualification or experience. We welcome this.

39. However, the amendments do not appear to fully address our concerns. The Supplementary Memorandum acknowledges that, even with these proposed amendments, regulations under 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… 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".[15]

According to the Supplementary Memorandum, the purpose of the proposed amendment to clause 1(1) is "to avoid" this "risk" by providing "a means of ensuring that appropriate conditions are met before an overseas-qualified individual is entitled to practise a profession in the UK".[16]

40. However, the Supplementary Memorandum—

- fails to explain what such "additional requirements" or "conditions" might be: it says nothing about any such profession-specific requirements or conditions that existing legislation imposes, or allows a regulator to impose, on overseas-qualified individuals; and

- fails to explain why the amendment would leave it to Ministers to determine, by regulations, whether there are to be any such conditions and, if so, what those conditions are to be. It asserts that, "regulations are the appropriate place to deal with any profession-specific conditions that need to be applied to overseas-qualified individuals" but fails to explain why all such conditions should be a matter for secondary legislation, regardless of profession and whether or not such conditions are currently provided for in primary legislation.

41. We consider that the Supplementary Memorandum—like the Delegated Powers Memorandum before it—therefore lacks important detail and fails to provide adequate explanation for the delegated power in clause 1 of the Bill.

42. **We welcome the narrowing of the power in clause 1 but the House may nonetheless wish to continue to press the Minister to provide—**

- **a much fuller explanation about the provision that could be made in regulations under clause 1; and**

- **full justification for all such provision–including that which amends primary legislation–being made by statutory instrument instead of by primary legislation with its attendant scrutiny.**

15 See para 6 of the Supplementary Memorandum.
16 See para 6 of the Supplementary Memorandum.

PROFESSIONAL QUALIFICATIONS BILL [HL]: GOVERNMENT RESPONSE

43. We considered this Bill in our 2nd Report of this Session.[17] The Government have now responded by way of a letter from Lord Grimstone of Boscobel Kt, Minister for Investment at the Department for International Trade. The response is printed at Appendix 1.

17 2nd Report, Session 2021–22 (HL Paper 13).

APPENDIX 1: PROFESSIONAL QUALIFICATIONS BILL [HL]: GOVERNMENT RESPONSE

Letter from Lord Grimstone of Boscobel Kt, Minister for Investment at the Department for International Trade and Department for Business, Energy and Industrial Strategy, to the Rt Hon. Lord Blencathra, Chair of the Delegated Powers and Regulatory Reform Committee

I am writing in response to the Delegated Powers and Regulatory Reform Committee's Second Report, which included scrutiny of the Professional Qualifications Bill.

I appreciate the insights and recommendations of the Committee, and am grateful that their report confirms the appropriate use of delegated powers in Clauses 5(2), 6(1) and 10(4).

I have carefully considered the rationale for the Henry VIII powers in the Bill, reflecting on the views raised by the Committee. I hope that this letter can go some way to alleviate the Committee's concerns.

Professional Qualifications Bill: rationale for delegated powers

We welcome the Committee's acceptance of the case for profession-specific provisions. The framework proposed by the Bill will, overall, give greater flexibility for national authorities and regulators to establish recognition arrangements that meet the needs of professions in all parts of the UK. It removes the current prescriptive obligations of the EU-derived system and allows regulators to pursue recognition arrangements and to maintain recognition routes in line with existing profession-specific legislation.

The framework permits the UK Government and devolved administrations to make regulations on the recognition of professional qualifications only where necessary to meet unmet demand for the services provided by professions and to implement international agreements. We believe these are both areas where the Government and the devolved administrations may need to act expediently through statutory instruments. Those statutory instruments will of course be held to the rigorous scrutiny of the legislative process, as set out in Clause 15 of the Bill.

The Committee's report recognises that where there are sector-specific needs, these should be addressed by sector-specific legislation. The powers throughout the Bill ensure that these pieces of sector-specific legislation can remain coherent, rather than having closely related legislation in multiple places.

Clauses 1 and 2: power to provide for individuals to be treated as having UK qualifications

The Committee requested a fuller explanation of the provisions that could be made in regulations under Clause 1. Clause 1 enables regulations to be made which would require a specified regulator to have a route in place to assess whether professionals with qualifications and experience from overseas should be treated as if they had the relevant UK qualification or experience. The power can only be used to make specific provisions as set out in clause 1(1), (4) and (5) of the Bill.

Any regulations made must adhere to the conditions established in subsections (2) and (3). They require a regulator to make a determination as to whether an individual has substantially the same knowledge and skills, to substantially the

same standard as are demonstrated by the UK qualification or experience. The regulations do not alter the standards required to practise professions in the UK. These conditions cannot be amended by these regulations.

The substance of the new recognition framework—the conditions applied by regulators when assessing recognition and the impact of their determination—is therefore set out on the Bill. We consider it is appropriate for this new framework to be given effect in relation to specific professions through regulations, as the substantive requirements will have been approved by Parliament through the full scrutiny of the Bill.

The Committee rightly notes that we believe Clause 1 to be constrained by Clause 2. This is because Clause 2 sets a threshold that must be met before using the power in Clause 1.

The Government plans to consider various factors in determining 'unmet demand', and further detail on our approach is provided in the Government's policy statement[18] that accompanies the Bill. Where applicable, the devolved administrations will be able to make their own determinations of the demand for services. We also anticipate that determining whether professions meet this condition would require extensive engagement with a range of interested parties.

The Committee sought further clarification on the point that this demand needs to be met without unreasonable delays or charges. Those words make it clear that regulations can be made where the demand for the services of the profession is, strictly speaking, being met but the consumers of those services are experiencing unreasonable delays or having to pay high charges. An unreasonable delay might, for example, occur if a profession is unable to deliver its services quickly enough without more professionals in the workforce. An unreasonable charge might be where consumers or businesses are facing fees for the services provided by a profession that are higher than deemed acceptable, caused by a shortage of professionals. These are illustrative of the considerations that the appropriate national authority would make in relation to this condition.

The practical effect of this is that the requirement imposed by the Clause 1 power is targeted where the UK can benefit most. Regulators of professions that are not specified under the power are not required to put in place routes.

Clause 2 ensures that regulations introduced under Clause 1 are targeted. This, together with the affirmative procedure required for statutory instruments in Clause 15, and the extensive engagement activity the Government has undertaken and will continue, mean a duty to consult on the face of the Bill would be unnecessary. We believe there would be sufficient checks and oversight before introducing requirements for individual professions.

Clause 3: implementation of international recognition agreements

Clause 3 provides a power for the appropriate national authority to make regulations to implement any parts of international agreements that relate to the recognition of professional qualifications. These could be the relevant provisions of a trade agreement or bespoke agreements on professional qualifications. The power is limited only to the professional qualification elements of international agreements.

18 Recognition of professional qualifications and regulation of professions: policy statement - GOV.UK (www.gov.uk)

Clause 3 is necessary to ensure that the provisions of international agreements can be implemented domestically and be given effect to by particular regulators. What needs to be implemented will depend upon the terms of a particular international agreement. Our 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.

The Committee expressed a concern about the content of these agreements. By way of example, the UK's most ambitious proposal to date was the UK's original offer to the EU, and similar arrangements to which the Prime Minister stated we would propose to the EEA-EFTA states.[19] Under that proposal regulators would have been required to put in place processes to consider applications for recognition from professionals in the EU. There was no obligation on regulators to recognise professionals if they were not satisfied that professionals met the required standards. The regulator would have maintained their autonomy over who practises in their jurisdiction and whether an applicant met the required standards.

However, for other trade partners, we are more likely to consider Mutual Recognition Agreement (MRA) frameworks, a more common precedent in international trade agreements.[20] These would not place obligations on regulators, and instead encourage them to develop MRAs. Often, once the MRA is agreed and has been approved by the FTA's governance processes, it is annexed to the FTA itself. To potentially introduce bespoke primary legislation for an individual MRA would be disproportionate and burdensome, due to lack of a power such as set out in Clause 3. Where the Government signs up to MRA framework agreements in FTAs, it considers that the Clause 3 power to make regulations is a more proportionate method to implement the resultant MRAs.

The implementation of international agreements relating to the recognition of professional qualifications—given the number of professions and different sectoral legislation provisions would interact with—may require amendments to primary legislation. Any regulations which amended primary legislation would be subject to the affirmative procedure, ensuring appropriate parliamentary scrutiny.

Furthermore, all treaties agreed by the UK will be subject to the procedure set out in the Constitutional Reform and Governance Act 2010. It is only after that procedure, and the requisite parliamentary processes have been completed, that this power would be used.

The Trade Act 2021 provides for the implementation of provisions on the recognition of professional qualifications that are included in UK trade agreements with countries with which the EU had signed trade agreements as at 31 January 2020. However, it only provides for the ability to amend primary legislation in respect of these agreements if it is retained EU law. It would not provide for amendment of other domestic sectoral legislation. Finally, the powers provided in the Trade Act 2021 expire after five years, whereas it is anticipated that, for example, MRAs formed as part of trade agreements will need to be implemented well beyond this limited period–especially in light of the lengthy timeframes MRAs typically take to finalise.

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19 Written Ministerial Statement: UK-EU Relations made on 3 February 2020 (https://questions-statements.parliament.uk/written-statements/detail/2020–02-03/HCWS86)

20 See, for example, the EU-Canada Comprehensive Economic and Trade Agreement (CETA) or the UK-EU Trade and Cooperation Agreement.

Clause 4: authorisation to enter into regulator recognition agreements

The Committee noted that noble Lords may wish for a fuller explanation of the effect regulations under Clause 4 could have, and the nature of provisions contained in a regulator recognition agreement.

We can clarify that regulator recognition agreements aim to facilitate the recognition of professional qualifications between two or more jurisdictions. This could include by providing a streamlined process by which professionals who have obtained their qualification in one country can apply for recognition to practise in another.

BEIS has published guidance[21] to help regulators to agree recognition agreements with their international counterparts. This guidance provides further detail on nature of provisions that could be contained in regulator recognition agreements. The exact nature of a regulator recognition agreement will depend upon what the relevant regulators wish to agree. However, 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.

Many regulators and professional bodies have entered into recognition agreements already.[22] Regulations under Clause 4 would be used to provide regulators with the ability to enter into regulator recognition agreements where they lack sufficient abilities, like the Architects Registration Board and the Intellectual Property Registration Board.

We can reassure the Committee that this power is narrow. It cannot be used to compel regulators to enter into recognition agreements or to recognise specific qualifications. Additionally, regulators would only be able to implement recognition arrangements through the powers they have in existing legislation to recognise overseas qualifications or determine who practises in the UK. As a result, this would limit the effect of regulations made under this power.

May I extend my thanks again to the Committee for its careful assessment of the Bill. We have considered these in detail and are content that, following thorough review, the powers are required and proportionate. We hope that the additional detail outlined above provides additional clarity about our approach.

3 June 2021

21 Arrangements for the recognition of professional qualifications - GOV.UK (www.gov.uk)

22 For example, the Royal College of Veterinary Surgeons has a recognition arrangement with the Veterinary Council of Ireland (https://www.rcvs.org.uk/who-we-are/rcvs-council/council-meetings/3-october-2019/) and the Engineering Council has one with the Institution of Professional Engineers New Zealand (https://www.engc.org.uk/international-activity/international-recognition-outside-europe/mutual-recognition-agreement-with-engineering-new-zealand/)

APPENDIX 2: MEMBERS' INTERESTS

Committee Members' registered interests may be examined in the online Register of Lords' Interests at https://www.parliament.uk/hlregister. The Register may also be inspected in the Parliamentary Archives.

For the business taken at the meeting on 4 June 2021 Members declared the following interests:

Environment Bill

Lord Blencathra

Deputy Chair of Natural England

Attendance

The meeting was attended by Baroness Andrews, Lord Blencathra, Baroness Browning, Lord Janvrin, Lord Goddard of Stockport, Lord Haselhurst, Lord Hendy, Baroness Meacher, Lord Rowlands and Lord Tope.