

FARRIERS (REGISTRATION) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Farriers (Registration) Bill as introduced in the House of Commons on 29 June 2016 (Bill 17).

- These Explanatory Notes have been prepared by Defra, with the consent of Byron Davies, the Member-in-Charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The principal objective of the Farriers (Registration) Bill is to make changes to the constitution of the Farriers Registration Council and its committees.

Policy background

- 2 The Farriers Registration Council (FRC) is the regulatory body for the farriery profession in Great Britain (GB). It has statutory responsibilities as set out in the Farriers (Registration) Act 1975 (FRA) to maintain a register of farriers, determining who is eligible for registration and to regulate farriery training. The FRC investigates and, where necessary, determines disciplinary cases through the statutory Investigating Committee and Disciplinary Committee. In common with other statutory regulatory bodies its primary function is to protect and maintain the public interest; in doing so this also serves to act in the interests of animal welfare.
- 3 The FRA was introduced in the 1974/75 session of Parliament as a Private Members Bill in the ballot. It is believed that the FRA has had a positive impact on the welfare of horses in Great Britain through the legal requirement of ensuring that only suitably qualified, approved and registered persons can shoe horses.
- 4 A number of developments over the years and reforms to the regulation of other professions, including those recently introduced for veterinary surgeons, have left some of the arrangements for the regulation of farriers out-of-date and at risk of legal challenge.
- 5 In addition, the FRC has also explained how the constraints of the FRA, which is a highly prescriptive Act, meant that they were experiencing some real operational difficulties, and has sought Government help to remedy the deficiencies it sees within the FRA. The overall aim is to modernise the regulation of the farriery profession thereby providing greater protection of the public interest, reducing burdens upon the regulator while making continued improvement towards the welfare of horses.
- 6 Since then the Government, in conjunction with the Scottish and Welsh devolved administrations, has worked with the FRC to consider the most appropriate way to reform its constitution and its committees as well as introducing flexibility for the future into the FRA. It should be noted that the regulatory reforms within this Bill and to the farriery profession, are concerned only with the internal governance, structure and operation of the regulatory body itself.
- 7 The intended effect of the proposed changes is to:
 - a. eliminate some serious practical difficulties being encountered by the FRC;
 - b. modernise the regulatory structure and internal practices of the FRC;
 - c. eliminate the risk of legal challenge and bring the regulation of the farriery profession into line with other professions;
 - d. build flexibility into the FRA and allow future necessary changes to be made by a more straightforward process than amendment of primary legislation, given pressures on Parliamentary time.
- 8 The Government's position throughout this process has been that these reforms should provide a better fit with the five principles of Better Regulation, as established by the Legislative and Regulatory Reform Act 2006. This Act obliges regulatory bodies to have regard to certain principles, which are:

- a. Proportionality – intervene only when necessary; remedies appropriate to the risks posed
 - b. Accountability – decisions need to be justified and subject to public scrutiny
 - c. Consistent – rules and standards must be joined-up and implemented fairly
 - d. Transparent – regulators should be open with simple, user-friendly rules and regulations
 - e. Targeted – regulation needs to focus on the problem and should minimise side-effects.
- 9 A joint Defra and Scottish and Welsh Governments, 6-week consultation was launched on the 12 November 2013. This consultation was in line with Cabinet Office consultation principles published in July 2012. Defra has therefore deemed that the 6 weeks was sufficient to gather any further written responses necessary as the proposals were deemed to be of interest to a small and targeted audience and the department had already ensured that relevant interested parties had had a chance to contribute during the policy development stage.
- 10 The responses to the consultation were analysed and have been used to inform the final proposals for the required legislative changes and this Bill makes the legislative changes needed to take forward those reforms.
- 11 The Bill:
- a. Replaces the current legal prescription requiring both self-employed and employed working-farrier members of the FRC. This distinction is no longer necessary, representative or valid as 96% of registered farriers are self-employed.
 - b. Stipulates that the chair of the FRC must be elected by the FRC.
 - c. Alters the membership of the statutory Investigating Committee and Disciplinary Committee. Instead of the committees constituted from members of the FRC the reverse will apply; membership must not be members of the FRC. This is to achieve 'separation of powers' ensuing that those who set standards for the profession are not the same as those who investigate and adjudicate upon potential breaches of those standards. The current system is considered out of date and at risk of legal challenge on the grounds of insufficient independence and lack of impartiality. Such a challenge might arise in the form of a judicial review or on the basis that the Act is incompatible with the European Convention on Human Rights (ECHR).
 - d. Introduces 'fitness to serve' requirements for all members of the FRC and the statutory committees, as is the practice in other regulatory bodies, as well as defined terms of office;
 - e. Provides that any future amendments to the governance arrangements of the FRC and committees can be made by secondary legislation.

Legal background

- 12 The existing constitution of the FRC and its committees, and related provisions, are currently laid down prescriptively in the primary legislation, the FRA and its Schedules.
- 13 The FRC's functions are (references are to the FRA):
- a. to appoint a registrar (paragraph 10 of Schedule 1);
 - b. to maintain a register of farriers (section 3) and to determine who is entitled to be

- registered in it (sections 7, 8 and 9);
- c. to make rules with respect to the form and keeping of the register (section 4);
 - d. to approve courses, qualifications and institutions providing training in farriery and keep itself informed of approved institutions and examinations (sections 11 and 12);
 - e. to undertake preliminary investigation of disciplinary cases through an Investigating Committee (section 13);
 - f. to determine disciplinary cases through a Disciplinary Committee (sections 14 and 15).
- 14 The FRC is the competent authority for the profession of farriery in Great Britain in accordance with the requirements of the European Union (Recognition of Professional Qualifications) Regulations 2015 (SI 2015 No. 2059 (Regulation 4 and Schedule 1)).
- 15 The FRA will continue to be the primary Act dealing with the constitution of the FRC, and this Bill inserts new provisions into that Act.

Territorial extent and application

- 16 The provisions of the Bill extend to England and Wales and Scotland.
- 17 The matters to which the provisions of the Bill relate are within the legislative competence of the Scottish Parliament and the National Assembly for Wales, and therefore Legislative Consent Motions will be sought from these devolved legislatures. As the Bill is a Private Member's Bill, the new English votes provisions in the House of Commons Standing Orders do not apply.
- 18 The table in Annex A sets out the extent and application of each provision in the Bill.

Commentary on provisions of Bill

- 19 The Bill makes changes to the FRA.
- 20 The constitution of the FRC, as laid down in the FRA, was representative of the industry needs at the time. With the passage of time, it has been found that changes in the profession and the wider rural community, coupled with the inflexible nature of the legislation, causes serious practical difficulties. For example, there is no flexibility within Schedule 1 to amend the appointees to the FRC.
- 21 The constitution, in particular the membership structure, of the FRC is prescribed exactly in primary legislation. Any required changes, such as those described here, would mean a return to Parliament to change the legislation. It is desired that in future that this could be changed by the Secretary of State, through a statutory instrument.

Clause 1: Constitution of Farriers Council and its Committees

- 22 Clause 1 introduces a Schedule which amends the FRA and makes changes to the constitution of the following:
 - a. The FRC;
 - b. The Investigating Committee of the FRC; and
 - c. The Disciplinary Committee of the FRC.

Clause 2: Power to make further changes to the constitution of Council and its Committees

- 23 Clause 2 inserts a new section 17A into the FRA.
- 24 New section 17A, subsection 1 gives the Secretary of State power to make regulations to amend, or replace any, or all of the following:
 - a. Part 1 of Schedule 1 (constitution of the Council);
 - b. Schedule 2 (constitution of the Investigating Committee);
 - c. Part 1 of Schedule 3 (constitution of the Disciplinary Committee).
- 25 New section 17A, subsection 2 requires that, before making regulations under section 17A, the Secretary of State must obtain the consent of the Scottish Ministers and the Welsh Ministers.
- 26 New section 17A, subsection 3 requires the Secretary of State to consult the FRC as well as any other person that the Secretary of State considers appropriate before making regulations under section 17A of the amended Act.
- 27 New section 17A, subsection 4 contains provision that requires that any regulations under section 17A be made by statutory instrument and provides that the regulations may include incidental, supplementary, consequential, transitional, transitory or saving provisions.
- 28 New section 17A, subsection 5 sets out the requirement that any statutory instrument made under section 17A will be subject to the negative resolution parliamentary procedure.

Clause 3: Extent, commencement and short title

- 29 Clause 3, subsection 1 provides that this Bill extends to England and Wales and Scotland.
- 30 Clause 3, subsection 2 and 3 makes provision that this Act (apart from section 3 which has immediate effect) will come into force in the future and enables to the Secretary of State to appoint, by regulations, the day or days that the Act will come into force.

- 31 Clause 3, subsection 4 allows the Secretary of State to make transitional, transitory or saving provision arrangements in connection with commencement.
- 32 Clause 3, subsection 5 requires that any regulations which are made to bring this Bill into force be made by statutory instrument.
- 33 Clause 3, subsection 6 provides that this Act will be known as 'The Farriers (Registration) Act 2017'

Schedule: Constitution of Farriers Registration Council

- 34 Paragraph 1 requires that the Bill substitutes the following sections into Part 1 of Schedule 1 to the FRA which makes changes to the constitution of the FRC:

New Part 1 of Schedule 1 to the FRA: Constitution

Membership

- 35 Sub-paragraph 1 of paragraph 1 provides and lists the membership of the FRC.
- 36 Sub-paragraph 2 gives the names of the appointing bodies that are able to appoint one lay person as a member of the FRC.
- 37 Sub-paragraph 3 makes provision about the FRC scheme under which four farriers are to be appointed. The scheme may provide for elections to be held to choose those who are to be appointed.
- 38 Sub-paragraph 4 requires that the FRC must consider the need for the FRC to represent all parts of Great Britain when setting up, amending or replacing any election process for appointing four registered farriers.
- 39 Sub-paragraph 5 provides the definition for the meaning of "lay person" within the Act.

Term of office

- 40 Sub-paragraph 2 (1) of Schedule 1 provides that this Bill will restrict members of the FRC to a term of no more than 4 years.
- 41 Sub-paragraph 2 (2) of Schedule 1 provides that this Bill will restrict members of the FRC to serving no more than two terms of office (i.e. they may be appointed and then reappointed only once).
- 42 Sub-paragraph 2 (3) of Schedule 1 provides that members of the FRC may resign at any time by giving notice to the FRC registrar.
- 43 Sub-paragraph 2 (4) of Schedule 1 provides that members whose conduct falls below, or is in breach, of the conditions about fitness determined by the FRC may be removed.
- 44 Sub-paragraph 2 (5) of Schedule 1 provides and requires that the procedures for removing a member of FRC are to be determined by the FRC.

Casual vacancies

- 45 Sub-paragraph 3 (1) of Schedule 1 concerns the requirement that, when a FRC position becomes vacant outside of the normal appointment cycle, that position must be filled and cannot be 'left open'.
- 46 Sub-paragraph 3 (2) of Schedule 1 sets out a requirement that, as far as possible, any FRC position that becomes vacant during the appointment cycle should be filled at the same time that the position becomes vacant.

- 47 Sub-paragraph 3 (3) of Schedule 1 sets out a provision that FRC members who are appointed outside of the appointment cycle will fit back into the appointment cycle of the original position. Therefore, their appointment cycle and time of re-appointment will be the same as that for the other FRC members and, as if, the position had never been vacated or temporarily filled.
- 48 Sub-paragraph 3 (4) of Schedule 1 sets out that, if a FRC position is filled outside of the normal appointment cycle, that appointment will not count towards that FRC member's number of appointments to the FRC.

Procedure

- 49 Sub-paragraph 4 (1) of Schedule 1 provides that the quorum for a FRC meeting is seven (7), unless a different number is chosen by the FRC itself.
- 50 Sub-paragraph 4 (2) of Schedule 1 requires that the FRC must elect one of its members to act as a chair of the FRC.
- 51 Sub-paragraph 4 (3) of Schedule 1 provides that the FRC may make the rules governing its meetings and procedures itself.
- 52 Sub-paragraph 4 (4) of Schedule 1 provides that the FRC may make rules and procedures to deal with absences of its Chair. This sub-paragraph specifies that it may make the rules governing the procedures for a member of the FRC to act as Chair of the FRC in the rightfully appointed Chair's absence as well as the rules governing for a member acting as Chair, in the absence of the rightfully appointed Chair, to have an additional casting vote.

Validity of acts

- 53 Sub-paragraph 5 of Schedule 1 makes provision to confirm that anything done by the FRC will not be affected by either a vacancy within the FRC itself or as a result of a defect in the procedures followed in the appointment or the election of any member of the FRC.
- 54 Sub-paragraph 2 (1) of the Schedule to the Bill amends Part 2 of Schedule 1 to the FRA.
- 55 Sub-paragraph 2 (2) removes paragraphs 7 and 8 of Schedule 1 to the FRA.
- 56 Sub-paragraph 2 (3) (a) provides that the existing text within paragraph 9 of the original text will become sub-paragraph 1 of Part 2 of Schedule 1 to the FRA.
- 57 Sub-paragraph 2 (3) (b) inserts the indicated text into sub-paragraph 1 of Part 2 of Schedule 1 to the FRA, as sub-paragraph 9 (2) and sub-paragraph 9 (3).
- 58 Paragraph 3 of the Schedule to the Bill provides for the definition of "registered person", "veterinary practitioner" and "veterinary surgeon".
- 59 Paragraph 4 of the Schedule to the Bill removes the wording "from among its members" from section 13 (1) of the FRA so that section 13 (1) should read: "The Council shall set up a committee to be known as the Investigating Committee, for the preliminary investigation of cases (hereinafter referred to as "disciplinary cases") in which it is alleged that a person is liable to have his name erased from the register on any grounds specified in section 15 of this Act." Along with the proposed amendment to section 14 (1) of the FRA (see below) this will mean that that FRC will be required to set up the two named committees but, will not be required to establish these committees from within its own membership .
- 60 Paragraph 5 of the Schedule to the Bill substitutes Schedule 2 to the FRA with a new Schedule which makes changes to the constitution of the FRC's Investigating Committee.

Constitution of the Investigating Committee

New Schedule 2: Constitution of the Investigating Committee

Membership

- 61 Sub-paragraph 1 (1) of the new Schedule 2 states that the Investigating Committee will consist of six (6) members and will be appointed by the FRC.
- 62 Sub-paragraph 1 (2) of Schedule 2 states of the 6 members making up the Investigating Committee, at least two (2) must be registered farriers.
- 63 Sub-paragraph 1 (3) of Schedule 2 is a provision that prevents the Investigating Committee from having on it either members of the FRC, officers or servants of the FRC, or members of the Disciplinary Committee.
- 64 Sub-paragraph 1 (4) of Schedule 2 requires that the chair of the Investigating Committee will be designated by the FRC.
- 65 Sub-paragraph 1 (5) of Schedule 2 permits the FRC to delegate the appointment of the Investigating Committee.

Terms of office

- 66 Sub-paragraph 2 (1) of Schedule 2 provides that the term of office for a member of the Investigating Committee will be determined by the FRC.
- 67 Sub-paragraph 2 (2) of Schedule 2 provides that members of the Investigating Committee may resign at any time by giving notice to the FRC registrar.
- 68 Sub-paragraph 2 (3) of Schedule 2 provides that the Bill makes a provision allowing the FRC to remove from office members whose conduct falls below, or is in breach of, the conditions about fitness determined by the FRC.
- 69 Sub-paragraph 2 (4) of Schedule 2 provides and requires that the procedures for removing a member of the Investigating Committee are to be determined by the FRC.

Procedure

- 70 Sub-paragraph 3 (1) of Schedule 2 is a provision that states that the quorum of the Investigating Committee is three (3), one of whom must be a registered person.
- 71 Sub-paragraph 3 (2) of Schedule 2 is a provision that requires the FRC to make rules governing the Committee's meeting and procedure.
- 72 Sub-paragraph 3 (3) of Schedule 2 is a provision relating to specific rules that the FRC may wish to include when making the governing procedures of the Committees.

Validity of acts

- 73 Sub-paragraph 4 of Schedule 2 is a provision to prevent the Investigating Committee's procedures being invalidated by matters such as a vacancy or a defect in the appointment of a member.

Constitution of the Disciplinary Committee

- 74 Paragraph 6 of the Schedule to the Bill makes certain changes to Section 14 of the FRA with regards to the following:
- 75 Sub-paragraph (a) ensures that members of the Disciplinary Committee can no longer be members of the FRC.

- 76 Sub-paragraph (b) states that the provisions of Schedule 3 to the Act shall apply with respect to the constitution of, and to proceedings before, the Disciplinary Committee.
- 77 Paragraph 7 substitutes Part 1 of Schedule 3 to the FRA with new wording, which makes changes to the constitution of the FRC's Disciplinary Committee.

Schedule 3 to the FRA: New Part 1 - Constitution of Disciplinary Committee

Membership

- 78 Sub-paragraph 1 (1) states that the Disciplinary Committee will consist of nine (9) members who are appointed by the FRC.
- 79 Sub-paragraph 1 (2) states that at least three (3) of the nine (9) members making up the Disciplinary Committee must be registered farriers.
- 80 Sub-paragraph 1 (3) is a provision that prevents the Disciplinary Committee from having on it either members of the FRC, officers or servants of the FRC, or members of the Investigating Committee.
- 81 Sub-paragraph 1 (4) is a provision relating to the appointment of the Chair, who must be designated by the FRC from amongst the Disciplinary Committee members.
- 82 Sub-paragraph 1 (5) states that the FRC may delegate the function of appointing the members of the Disciplinary Committee.

Terms of office

- 83 Sub-paragraph 2 (1) provides that the term of office for members of the Disciplinary Committee will be determined by the FRC.
- 84 Sub-paragraph 2 (2) provides that members of the Disciplinary Committee may resign at any time by giving notice to the FRC registrar.
- 85 Sub-paragraph 2 (3) provides that the FRC may remove from office members whose conduct falls below, or is in breach of, the conditions about fitness determined by the FRC.
- 86 Sub-paragraph 2 (4) provides and requires that the procedures for removing a member of the Disciplinary Committee are to be determined by the FRC.

Procedure

- 87 Sub-paragraph 3 (1) is a provision that states that the quorum of the Disciplinary Committee is five (5), one of whom must be a registered person.
- 88 Sub-paragraph 3 (2) is a provision that states that no member of the Investigating Committee can act in relation to the same case as a member of the Disciplinary Committee
- 89 Sub-paragraph 3 (3) is a provision that requires the FRC to make rules governing the Committee's meeting and procedure.
- 90 Sub-paragraph 3 (4) is a provision relating to specific rules that the FRC may wish to include when making the governing procedures of the Committee.
- 91 Sub-paragraph 3 (5) makes provision that prevents the committee using its power to make rules that could have been made under paragraph 4 of the existing Schedule 3 to the FRA

Validity of acts

- 92 Paragraph 3A prevents the Disciplinary Committee's procedures being invalidated by matters such as a vacancy or a defect in the appointment of a member.
- 93 Paragraph 8 of the Schedule to the Bill clarifies that Part 2 of Schedule 3 to the FRA relates to proceedings before the Disciplinary Committee and are not part of the governance procedures of the Committee.

Commencement

- 94 Section 3 of the Bill comes into force on the day on which it is passed. Sections 1 and 2 and the Schedule come into force on such day as the Secretary of State may by Regulations appoint.

Financial implications of the Bill

- 95 There are no costs or obligations being placed upon business or civil society organisations. The changes resulting from the Bill only affect the statutory regulator itself, a public interest organisation.

Related documents

- 96 The following documents are relevant to the Bill and can be read at the stated locations:

- The Farriers Registration Act 1975 - <http://www.legislation.gov.uk/ukpga/1975/35/contents>
- The consultation for the Reform of the governance, structure and operation of the Farriers Registration Council, the statutory regulator for the farriery profession November 2013 document - https://consult.defra.gov.uk/veterinary-services/reform-of-frc-statutory-governance-structure/supporting_documents/FRA%20consultation%20document.pdf
- The consultation on a proposal to reform the governance, structure and operation of the Farriers Registration Council, the statutory regulator for the farriery profession 12 November – 23 December 2013 - Summary of responses document - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/293093/farriers-consult-sum-resp.pdf

Annex A - Territorial extent and application in the United Kingdom

The provisions of the Bill extend to England and Wales and Scotland.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 (Farriers (Registration) Bill)	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Clause 1	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Clause 2	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Clause 3	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Schedule 1	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Schedule 2	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes
Schedule 3	Yes	Yes	Yes	No	Yes	Yes	N/A	Yes

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