

PROFESSIONAL QUALIFICATIONS BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Professional Qualifications Bill [HL] as brought from the House of Lords on 18 November 2021 (Bill 194).

- These Explanatory Notes have been prepared by the Department for Business, Energy and Industrial Strategy 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 Professional Qualifications Bill ("the Bill") revokes the current EU-based system for recognising professional qualifications gained overseas and establishes a new approach based on regulator autonomy and delivering international agreements. It also helps aspiring professionals understand how to access professions.
- 2 The Bill contains provisions to:
 - a. End the interim system for professional qualifications that derives from the UK's membership of the EU.
 - b. Provide appropriate national authorities with the power to make regulations which facilitate the assessment of individuals with overseas qualifications or experience for the purposes of establishing if they should be allowed to work in the UK. The regulations must be necessary in order to enable demand to be met for the services of a regulated profession in the UK, or a part of the UK.
 - c. Enable Government to implement international agreements or parts of international agreements, such as Free Trade Agreements (FTAs), that the UK strikes with partners so far as they relate to the recognition of professional

qualifications.

- d. Enable Government to provide regulators with a consistent set of powers to enter into agreements with regulators overseas to recognise professional qualifications, where they do not have this power already.
- e. Provide for an Assistance Centre service for individuals who wish to practise in a regulated profession in the UK or overseas. The centre will function as a single point of information on the entry requirements of regulated professions in the UK.
- f. Require regulators of professions in all parts of the UK to publish information on the entry and practice requirements of their profession, including any requirements for remaining in that profession.
- g. Require regulators in the UK to provide certain information to overseas regulators (with permission of the individual) where an individual is or has been entitled to practise that profession in the UK, or a part of the UK, and is seeking entitlement to practise overseas.
- h. Require regulators in the UK to provide certain information to counterpart regulators in other parts of the UK where

an individual is or has been entitled to practise in a part of the UK, and is seeking entitlement to practise in another part of the UK.

- i. Amend the Architects Act 1997 to allow a new recognition system for architects, alongside adjustments to the administration of the Architects Registration Board to support efficiency.
- j. Protect the autonomy of regulators in relation to regulations made under the powers in the Bill that most directly intersect with regulators' existing powers. Regulations will not remove the ability of regulators to prevent an unfit individual from practising a profession, and cannot have a material adverse effect on the knowledge, skills or experience of individuals practising a profession.
- k. Require the appropriate national authority to consult relevant regulators ahead of making regulations under the powers in the Bill that most directly intersect with regulators' existing powers.

Policy background

The regulation of professions

- 3 A regulated profession is one in which there are restrictions to pursuing the activities or a

subset of activities of the profession, such as for doctors, and/or legal restrictions for using a professional title, such as the use of ‘architect’ in the UK.

- 4 Regulating professions by law is usually done to protect the public interest. Professions that are regulated in this way typically have requirements to practise in the UK, or part of the UK, which include licensing and certification. Licensing is where the individual cannot practise unless their qualification meets standards set out in legislation, such as a nurse. Certification can be by a public authority established for that purpose by legislation, such as the Architects Registration Board certifying architects.
- 5 Regulating professions is a critical element of UK public and private services. It ensures safety of service provisions, provides consumer confidence, and helps to maintain professional standards. Qualification requirements for professionals help make sure that people have the appropriate professional knowledge, skills and experience to undertake certain activities. In the UK there are over 200 professions that are regulated by legislation by a network of more than 80 regulators, in addition to a range of other professions that

are regulated voluntarily.¹

- 6 Recognition requirements make sure that holders of professional qualifications obtained in other jurisdictions have the professional knowledge, skills and experience required to practise in the UK. In many cases the professional title which goes with the professional recognition means that those individuals can responsibly practise professions which hold a higher degree of risk, for example an architect. Some regulatory bodies in the UK can recognise professional qualifications from overseas to grant access to that profession in the UK, or part of the UK. Overseas professionals play an important role in many professions in addressing current and future workforce needs.
- 7 The recognition of professional qualifications is often covered in international trade negotiations. In order to deliver a paid service overseas, many UK services providers need their qualifications to be recognised in the host country. Qualification recognition, or a lack of it, can be an enabler or a constraint on professionals qualified in one country bidding for and winning contracts to provide services in another. In most FTAs the UK has signed so far, the professional qualifications provisions –

¹ <https://www.gov.uk/government/publications/professions-regulated-by-law-in-the-uk-and-their-regulators/uk-regulated-professions-and-their-regulators>:

and the implementation of them – will not place new requirements on regulators. They create provisions which regulators can utilise if they choose to do so. However, some FTAs, such as the UK’s recent agreement with the EEA EFTA states², can require the government to place obligations on regulators.

- 8 While qualification recognition is important in addressing workforce needs and supporting trade, it also plays a key role in ensuring that the UK is meeting its commitments to uphold the Common Travel Area (CTA). The CTA is a long-standing political arrangement between the UK and Ireland which pre-dates both the UK and Ireland’s membership of the EU. Under the CTA, UK and Irish citizens can move freely and reside in either jurisdiction and enjoy associated rights and privileges, including the right to work.
- 9 A Memorandum of Understanding (MoU) concerning the CTA was signed by the UK and Irish governments in 2019, reinforcing both parties’ existing commitments to the CTA as the UK prepared for exiting the EU. The MoU states that recognition of professional qualifications ‘is an essential facilitator of the right to work’ and therefore, both the UK and Irish governments have agreed to ensure there

² Iceland, Liechtenstein, and Norway

are adequate routes to recognition for qualified professionals across the UK and Ireland. These routes to recognition will be established either through UK and Irish regulators putting in place routes for their profession on a unilateral basis, or through recognition arrangements either agreed between UK and Irish regulators and professional bodies or using the UK-EU Trade and Cooperation Agreement mutual recognition agreement framework.

EU Exit and legislative context for the Bill

- 10 On 31 January 2020, the UK left the European Union and the Withdrawal Agreement agreed with the EU entered into force. The Withdrawal Agreement provided for a transition period which ended at 11pm on 31 December 2020.
- 11 For the recognition of professional qualifications, the EU Directive 2005/36/EC on the mutual recognition of professional qualifications ("MRPQ Directive") provided a framework for the recognition of professional qualifications across the EU. The MRPQ Directive enabled European Economic Area (EEA) and Swiss nationals to have their professional qualifications recognised in an EEA State or Switzerland, other than the state

in which the qualification was obtained.

12 The European Union (Recognition of Professional Qualifications) Regulations 2015 ("2015 Regulations") implement part of the MRPQ Directive. As part of preparing the statute book for the UK's exit from the EU, the Government made the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 ("2019 Regulations") which provide for an interim system of recognition of professional qualifications from the EEA and Switzerland and came into force at the end of the transition period. The Professional Qualifications and Services (Amendments and Miscellaneous Provisions) (EU Exit) Regulations in 2020 amended the 2019 Regulations, primarily to implement transitional arrangements that the UK agreed with the EU, EEA EFTA states, and Switzerland.

13 The Bill is part of the Government's plans to exercise the UK's new regulatory flexibility, as outlined in the HM Treasury report on the Autumn Budget and Spending Review 2021.³ To make way for the new approach to the recognition of professional qualifications set out in the Bill, the Bill revokes the 2015 Regulations and contains powers to revoke

³ <https://www.gov.uk/government/publications/autumn-budget-and-spending-review-2021-documents>

other EU-derived legislation on the recognition of professional qualifications, which was retained following the EU exit Transition Period to provide continuity in services and surety for business. This includes legislation where preference is given to certain professional qualifications issued in the EEA and Switzerland.

14 The Government issued a written Call for Evidence in August 2020 that sought views from stakeholders on the recognition of professional qualifications and the regulation of professions. The Call for Evidence was part of a wider programme of work considering recognition of professional qualifications; however, the insights from it have also informed Bill planning. The summary of responses to the Call for Evidence was published on 12 May 2021.

Legal background

15 The relevant legal background is explained in the policy background section of these notes.

Territorial extent and application

16 Clause 19 sets out the territorial extent of the Bill. The Bill extends to England, Wales, Scotland and Northern Ireland. In addition, amendments made by the Bill have the same

territorial extent as the legislation they are amending.

- 17 The UK Parliament will not normally legislate for areas within the competence of Senedd Cymru, the Scottish Parliament, or the Northern Ireland Assembly without the consent of the legislature concerned. Aspects of the Bill fall within devolved competence. In line with the Sewel Convention, the UK Government will seek the legislative consent of all the Devolved Legislatures for the provisions that engage the Legislative Consent Motion process.
- 18 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom.

Commentary on provisions of Bill

Clause 1: Power to provide for individuals to be treated as having UK qualifications

19 This clause provides a power which can be exercised by an "appropriate national authority", which is defined in clause 18 as the Secretary of State (or the Lord Chancellor), Scottish Ministers, Welsh Ministers or a Northern Ireland Department, depending on whether a regulated profession falls within devolved legislative competence. The power relates to a regulator's decision about whether an individual with overseas qualifications or experience should be entitled to practise a regulated profession in the UK.

20 It allows the appropriate national authority to, by regulations, specify that individuals who meet either of two conditions should be treated as if they had the UK qualifications or experience required to practise the profession. The first condition is that the regulator has assessed that the knowledge and skills of the individual are substantially the same as if they had the UK qualifications or experience. The second condition is that if the individual's knowledge and skills are lacking, they have obtained further qualifications or experience to make up the difference.

21 For the purposes of the Bill, the term

‘regulator’ refers to a person, usually an organisation, with functions under legislation relating to the regulation of a regulated profession. A regulator may cover the whole of the UK or a part or parts of it, namely: England, Wales, Scotland or Northern Ireland. The term ‘regulated profession’ refers to where, under legislation, an individual must have certain qualifications or experience (or meet an alternative condition or requirement) to practise the professional activity or use a protected title.

22 This clause is designed to allow regulators to assess an individual with qualifications or experience gained overseas any way the regulator sees fit, subject to the conditions set out in the clause and whatever other criteria may be provided for in regulations by the appropriate national authority. Regulations may, for example, make provision in relation to the acceptance and processing of applications, including, amongst other things, the relevant information, documentation, or fees connected to an application.

23 Subsection (1) sets out that individuals are treated as if they had the UK qualification or experience required by the law to practise a particular profession. This is subject to either of the following two conditions being met.

24 Subsection (2) sets out the first condition. This is that the regulator has decided that the individual with overseas qualifications or experience has demonstrated substantially the same knowledge and skills, to substantially the same standard, as an individual with the specified UK qualification or experience would demonstrate. Subsection (2) does not specify how regulators reach this decision and regulators can assess knowledge and skills as they see fit. However, further detail on the approach to be taken in assessing such qualifications may be set out in regulations made under subsection (1).

25 Subsection (3) sets out the second condition. This is that the specified regulator has made a determination that an individual with overseas qualifications or overseas experience falls short of the necessary standard under subsection (2), and that the shortfall could be "made up" by meeting such additional conditions as the regulator may choose to specify where appropriate; and the individual has met those conditions. Whether or not the shortfall can be made up is for the regulator to decide.

26 Subsection (4) sets out that a condition may be specified under subsection (1) regardless of whether or not it is connected to

the specified UK qualification or experience. Subsection 4 also provides that regulations made under clause 1 may provide for the specified regulator making the determination in subsection (2) or (3) to do so only on the basis of overseas qualifications or experience, or on any other basis. The latter would allow a regulator to make a determination in (2) or (3) by considering, for example, both UK gained and overseas gained qualifications and experience, and/or any other criteria, such as language proficiency, proof of indemnity insurance, identity or criminal records checks.

27 Where neither of the conditions in (2) or (3) are met, the individual with overseas qualifications or experience cannot be treated as if they have the UK qualification or experience under regulations made under clause 1.

28 A determination under regulations under clause 1 that an individual with overseas qualifications or experience should be treated as if they had the UK qualifications or experience does not necessarily, by itself, entitle the applicant to practise the relevant profession in the UK. Other requirements to practise in the UK, such as requirements to hold indemnity insurance, suitability requirements, safeguarding checks, criminal

record checks, and visa requirements may also need to be satisfied.

29 Subsection (5) provides that regulations made under clause 1 may include provisions relating to an individual's application for a determination of whether their knowledge or skills meet UK standards.

30 Subsection (6) sets out non-exhaustive examples of what regulations made under clause 1 may include. For example, these regulations may include provision requiring a regulator to have regard to guidance, the manner and form of applications, the fees payable and the appeals process. The appropriate national authorities may also wish to provide in regulations for those whose knowledge and skills do not meet the requirements in subsections (2) or (3) to be given reasons for that decision and, where a shortfall may be made up under subsection (3), appropriate information on the steps open to them to do so.

31 Subsection (7) sets out how a UK qualification or UK experience may be specified for the purpose of this clause.

32 Clause 1 should be read in conjunction with clause 14 (protection of regulator autonomy). clause 14 limits the potential effect of regulations made under clause 1, ensuring

that they cannot remove the ability of a regulator of a regulated profession to prevent individuals who are unfit to practise from doing so, or have a material adverse effect on any regulated profession in terms of the knowledge and skills of the individuals practising it.

Clause 2: Power conferred by section 1 exercisable only if necessary to meet demand

33 Subsections (1) and (2) of clause 2 mean that regulations can be made under clause 1 only if the appropriate national 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 the UK to which the regulations relate, without unreasonable delays or charges. In making the determination, the appropriate national authority will consider a range of information relevant to that profession, and which would typically include whether there are skills shortages.

34 Subsection (3) provides that clause 2 does not apply to regulations made under clause 1 in so far as they are modifying (which includes revoking, repealing or amending) earlier regulations under that clause, as long as they do not also add further professions into those regulations. This allows for the revocation,

repeal and amendment of such regulations without having to meet the requirements of subsection (2).

Clause 3: Implementation of international recognition arrangements

35 Subsection (1) (read with subsection (4)) of the clause establishes that the "appropriate national authority" can make regulations to implement any parts of international agreements that the UK has entered into that relate to the recognition of professional qualifications.

36 This would include the relevant sections of free trade agreements and specific agreements on the recognition of professional qualifications that the UK makes with an international partner. It 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, such as the UK-EEA EFTA States free trade agreement. For example, as a result of the agreement with the EEA-EFTA States, UK regulators will be required to operate a system to recognise qualifying qualifications obtained in the EEA EFTA states. This means that professionals with these qualifications who

meet the required standards can practise in a regulated profession in the UK. This agreement also contains a mutual recognition agreement (MRA) framework for regulators wishing to agree profession-specific arrangements. The agreement will not affect UK national authorities' and regulators' autonomy to uphold professional standards for UK regulated professions.

37 This power will not be necessary to implement any MRAs agreed through the EU-UK Trade and Cooperation Agreement, which can be implemented using powers in the European Union (Future Relationship) Act 2020. However, it will be necessary to implement the recognition of professional qualifications provisions of ongoing and future international agreements, so far as doing so falls outside the powers available in the Trade Act 2021 to implement international trade agreements where the other signatory (or signatories) had an agreement with the EU immediately before exit day.

38 Subsection (4) of the clause provides further clarification around what provisions can be implemented under this power. It explains that "international recognition agreement", as used in this clause, refers only to the portions of international agreements relating to the

recognition of overseas qualifications or experience. Therefore, any aspect of international agreements not concerned with the recognition of professional qualifications cannot be implemented under this power, even if the agreement which they are part of contains provisions on the recognition of professional qualifications.

39 Subsection (5) provides further clarification on the provisions that can be implemented under this power, noting that modifications and amendments to the UK's international agreements (as long as they are made in line with the provisions of the original agreement) can be implemented through this power. An example of such a modification intended to be covered by subsection (5) includes, for instance, a new Mutual Recognition Agreement annexed to an existing international agreement the UK is party to.

40 Subsection (2) explains that the regulations made under this clause may deal with the following topics to support the implementation of these international agreements:

- a. First, conferring functions on a person. This includes a corporate or any other legal entity. This might be necessary, for example, to confer functions on a regulator

to enable them to comply with the processes established in an international agreement around the recognition of qualifications from another country.

b. Second, for the sharing of information.

This might be necessary where an international agreement stipulates that UK regulators and overseas regulators must share information to facilitate the recognition of qualifications.

c. Third, provisions to charge fees. This may be necessary if an international agreement references fees and to ensure that regulators can charge appropriately for any systems established under international agreements.

41 Subsection (3) clarifies that regulations made using this clause that concern information sharing cannot contravene the UK's data protection legislation.

42 Clause 3 should be read in conjunction with clause 14 (protection of regulator autonomy). This clause limits the potential effect of regulations made under clause 3, ensuring that they cannot remove the ability of a regulator of a regulated profession to prevent individuals who are unfit to practice from doing so, or have a material adverse effect on any regulated profession in terms of the knowledge

and skills of the individuals practising it.

Clause 4: Authorisation to enter into regulator recognition arrangements

43 This clause enables the "appropriate national authority" to make regulations to enable the regulators of regulated professions to enter into regulator recognition agreements. Regulator recognition agreements (RRAs) are a broad term for any type of agreement between regulators which facilitates the recognition of professional qualifications or experience. As RRAs are usually country- and regulator-specific, their form can vary, but they are typically agreed on a profession-by-profession basis by the relevant regulators or professional bodies across two or more jurisdictions. They enable professionals who qualified in one regulator's jurisdiction to gain recognition of their professional qualification in another regulator's jurisdiction.

44 This ability 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. Regulators will only be able to implement recognition arrangements through their existing provisions to recognise and assess

overseas qualifications and overseas applicants. It is expected this power would only need to be used once for each regulator, to provide them with the necessary authorisation to enter into recognition agreements with overseas regulators.

45 Subsection (1) of the clause contains the power to make regulations. Currently, not all regulators have specific provisions in their legislation that would enable them to enter into recognition agreements with overseas regulators, so allowing this ability to be conferred on them provides clarity to the regulators. This would be done by amending any legislation that governs the regulator's existing powers. Subsection (1) includes the wording "in connection with". This is intended to cover the ability to impose limitations and conditions on a regulator's authorisation to enter into a regulator recognition agreement. In other words, the regulations made permitting the regulator to enter into these agreements can authorise them to only enter into these agreements in particular situations, authorise them to only enter into particular kinds of regulator recognition agreement, or include requirements that have to be met before a regulator recognition agreement is entered into.

46 Subsection (2) provides a definition of a regulator recognition agreement. This subsection explains who can be party to a regulator recognition agreement made using an authorisation provided by this power, namely a regulator of a UK profession and an overseas regulator who regulates a profession that corresponds to the UK profession. This would not require the UK regulator and the overseas regulator to regulate professions that were exactly similar in every way. Professions may vary between countries in their exact requirements and the activities that are regulated, but as long as they are substantially similar this would not prevent regulators making a recognition agreement. It also explains that a regulator recognition agreement is an agreement where the content relates to the recognition of UK or overseas qualifications and experience.

47 Subsection (3) provides supplementary explanation of some of the terms used in subsection (2). Specifically, it explains how overseas qualifications and experience should be understood in this context. Qualifications are considered to have been obtained in a country or territory if they have been awarded by a body based in that country or territory. Experience is understood to have been obtained in a particular overseas country or

territory where it has "mainly" been obtained in that country or territory. This means that some of the relevant experience could have been obtained in a different country, but the experience is counted as from a particular country where it has, for the most part, been obtained in that country.

48 Subsection (4) defines "corresponding profession" and "overseas regulator" as used in this clause. It explains that a corresponding profession is one where ordinarily the activity the professional undertakes is the same, or substantially the same, as the UK version. It also explains that overseas regulators are those that carry out activities related to regulating professions anywhere outside of the UK. This definition differs from the definition of a regulator in the UK since it does not specify that overseas regulators need to have a legal basis for the regulation of the profession in that country. This allows the definition of overseas regulator to capture professions regulated overseas on a voluntary basis or by professional associations.

49 Clause 4 should be read in conjunction with clause 14 (protection of regulator autonomy). This clause limits the potential effect of regulations made under clause 4, ensuring that they cannot remove the ability of

a regulator of a regulated profession to prevent individuals who are unfit to practice from doing so, or have a material adverse effect on any regulated profession in terms of the knowledge and skills of the individuals practising it. Clause 4 cannot be used by an appropriate national authority to require a regulator to enter into a regulator recognition agreement.

Clause 5: Revocation of general EU system of recognition of overseas qualifications

50 Subsection (1) provides that the 2015 Regulations are revoked. This will come into effect by commencement regulations. The 2015 Regulations provided 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 set out in clause 1, will be implemented alongside revoking the 2015 Regulations.

51 “Appropriate national authorities” may need to modify other legislation as a result of the revocation of the 2015 Regulations. This may include amendments to references to “the

2015 Regulations". Modifications may need to be made in legislation for professions which are regulated at a devolved level. Subsection (2) enables the "appropriate national authority" to modify legislation which falls under devolved competence for regulated professions, as a consequence of revoking the 2015 Regulations in subsection (1).

52 Additionally, the Government, as the appropriate national authority, intends to use the commencement regulations to make transitional and saving provisions for recognition decisions obtained under the 2015 Regulations and applications which are in progress at the time when revocation of the 2015 Regulations comes into effect. This is to ensure professionals' existing recognition will continue to be valid, and applications made before revocation comes into effect by the commencement regulations will continue to be assessed under the relevant retained EU recognition law.

53 The revocation of the 2015 Regulations does not affect commitments under the CTA. The UK is retaining law on qualification recognition that implements international obligations on the recognition of professional qualifications, under the EU Withdrawal, EEA EFTA Separation, and Swiss Citizens' Rights

Agreements.

Clause 6: Revocation of other retained EU recognition law

- 54 Subsection (1) gives the "appropriate national authority" the power to make regulations modifying "retained EU recognition law" so that it ceases to have effect. This 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 compared to non-EEA and non-Swiss qualifications. The new recognition framework, as set out in clause 1, will be implemented alongside revoking retained EU recognition law in sector-specific legislation.
- 55 Subsection (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 purpose of determining whether individuals are entitled to practise a regulated profession in the United Kingdom or a part of it.

Clause 7: Assistance centre

56 Subsection (1) places an obligation on the Secretary of State to ensure there is a designated person (the assistance centre) which provides advice and assistance to individuals who wish to gain recognition in, and practise in, a regulated profession in the UK, and to other persons as the Secretary of State considers appropriate. The assistance centre will help UK-qualified professionals to provide services overseas, and overseas-qualified professionals to get their qualifications recognised in the UK. It will do this by providing a signposting and enquiry service, to help professionals identify the relevant UK or overseas regulator to get their qualifications recognised. It will also provide a website with information – provided by the regulators themselves – on the entry requirements for a profession.

57 Subsection (2) places an obligation on regulators of professions in the UK to, when requested, provide the designated assistance centre with any information it may need to carry out the functions under the arrangements detailed in subsection (1).

58 Subsection (3) places an obligation on the assistance centre to, when requested, provide the Secretary of State with any information relating to the advice and assistance functions

provided by the assistance centre, as outlined in subsection (1).

59 Subsection (4) provides that any information shared between regulators in the UK and the assistance centre does not breach confidentiality obligations or any other restriction on the disclosure of information.

60 Subsection (5) explains that no provision in this clause requires information to be disclosed where to do so would breach data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this clause are to be considered when determining whether any disclosure breaches that legislation.

Clause 8: Duty of regulator to publish information on requirements to practise

61 Clause 8 requires regulators to publish information about the requirements they place on individuals to enter or remain in their profession. This is a new transparency duty, which aims to reduce the risk of a lack of information being a barrier to entering and practising professions for aspiring professionals.

62 Subsections (1)(a) and (1)(b) require regulators to publish the information specified in subsections (2)(a) to (2)(j) on their public

website. The website must be easy to use. This might be achieved by meeting Government accessibility requirements, ensuring the information is easy to find and clearly signposted to website visitors, and ensuring it is collated, where possible, under clear headings rather than found in general documents or pamphlets. It is also required to be kept up to date.

63 Subsections (2)(a) to (2)(j) list the information that regulators must publish. These are a consistent requirement across all regulated professions in the UK. Within this:

a. Subsection (2)(a) refers to the qualifications or experience that an individual must obtain to become entitled to practise in the UK. This includes alternative, or non-examination, routes to qualification such as vocational schemes.

b. Subsections (2)(b) and (2)(c) refer to the application process for applying with an overseas qualification or a qualification gained in another part of the UK. Subsection 2(d) requires regulators to set out detail about the numbers of individuals applying through these processes and the outcome of the recognition decisions, as well as the qualifications or experience held by these individuals.

- c. Subsections (2)(e) refers to any requirement for an individual to be registered, licensed or otherwise authorized in order to be entitled to practise the profession. Subsection (2)(f) refers to any other requirement required to be entitled to practise their profession.
- d. Subsections (2)(g) and (2)(h) refer to any requirements, such as training and learning, that a professional must meet in order to continue to practise their profession. Regulators will be required to provide information as to how these requirements may be met, which could include signposts to relevant educational providers.
- e. Subsection (2)(i) refers to the costs set by the regulators for an individual or professional to enter and / or remain in the profession, for example, registration renewal fees. This does not require a regulator to publish any other costs which the individual or professional may incur elsewhere.
- f. Subsection (2)(j) provides a delegated power for the "appropriate national authority" to make legislation which specifies additional information for regulators to publish.

64 Subsection (3) requires regulators, who do not have the kinds of entry and practice requirements set out in subsection (2), only need to publish a statement explaining they do not hold the information on their websites.

65 Subsection (4) provides that, if there are multiple regulators for a profession, this duty of a regulator to publish information on how to enter or remain in the profession can be fulfilled by only one of the regulators so long as the other regulators are identified on the website of the regulator that is fulfilling this duty. This means that regulators can agree how the information publication requirement is best divided between the relevant regulators and signpost between websites.

66 Subsections (5) and (6) acknowledge that a regulator carries out its regulatory functions within the part or parts of the United Kingdom it has responsibility for. Therefore, a regulator does not have to fulfil the duty to publish information on requirements to practise for regulatory functions outside of their part, or parts, of the United Kingdom.

67 Subsection (7) sets out the definition of "regulatory functions" for this clause only.

Clause 9: Duty of regulator to provide information to regulator in another part of UK

- 68 This clause places a duty on regulators who operate in one or more of the four UK nations to share information, when requested, with their counterpart in another part of the UK (if such a regulator exists). This information must relate to an individual's entitlement to practise that profession. For example, a regulator in one part of the UK could ask an equivalent regulator in another part of the UK for information relating to an individual's fitness to practise. This could include, where applicable, any evidence of disciplinary action, professional sanctions, or criminal offences inside or outside of practise. This provision ensures that regulators in all parts of the UK have access to information that helps them fulfil their obligations.
- 69 Subsection (1) specifies that this duty applies where the information relates to an individual entitled to practise a regulated profession in one part of the UK and this individual is seeking to practise the same or equivalent profession in another part of the UK.
- 70 Subsection (2) sets out the conditions that must be met for information sharing to occur. A regulator in one part of the UK is only required to share information with their counterpart in another part of the UK if it is held by them,

relates to a named individual, is requested by their counterpart or the individual in question, and will be used for the purposes of determining that individual's entitlement to practise.

71 Subsection (3) provides that information that is shared by regulators within the UK to comply with this provision does not breach confidentiality obligations or other restrictions on disclosure that are placed on the regulator.

72 Subsection (4) explains that no provision in this clause requires information to be disclosed where to do so would breach data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this clause are to be considered when determining whether any disclosure breaches that legislation.

73 Subsection (5) defines the term "corresponding regulated profession" as used in this clause.

Clause 10: Duty of a regulator to provide information to overseas regulator

74 This 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.

75 Subsection (1) addresses the circumstances in which a regulator is obliged to provide information to an overseas regulator. The individual must be or have been entitled to practise a regulated profession in the UK, or part of the UK, and be seeking to practise a corresponding profession in a country or territory outside the UK.

76 Subsection (2) places a duty on UK regulators to provide overseas regulators of the corresponding profession with information they require to make a decision on the entitlement of the individual to practise in that country. This extends to any information held by the UK regulator about the individual that the UK regulator is requested to provide by either the overseas regulator, or the individual themselves.

77 Subsection (3) provides that, where an overseas regulator is requesting information on an individual, the duty does not apply if it is made without the permission of that individual.

78 Subsection (4) allows the "appropriate national authority", provided it is within their legislative competence, to make regulations they consider appropriate in connection with

the duty of a regulator to provide information to an overseas regulator set out in subsection (2). This includes the ability to limit that duty.

79 Subsection (5) gives more detail on the specific limitations that could be included in regulations made under this clause. These include, but are not limited to, provisions to the effect that the duty only applies to certain specified information or if the request is made in a specified manner.

80 Subsection (6) provides that any information that is shared with overseas regulators does not breach confidentiality obligations or other restrictions on disclosure that are placed on the regulator.

81 Subsection (7) explains that no provision in this clause requires information to be disclosed where to do so would breach the data protection legislation, as defined in the Data Protection Act 2018, section 3(9). The obligations imposed in this clause are to be considered when determining whether any disclosure breaches that legislation.

82 Subsection (8) defines the terms "corresponding profession" and "overseas regulator".

Clause 11: Amendments to the Architects Act 1997

- 83 Subsection (2) enables the Architects Registration Board ("the Board") to nominate a member of staff to carry out the functions of the Registrar.
- 84 Under section 2 (the Registrar) of the Architects Act 1997 (the 1997 Act), the Registrar is responsible for maintaining the Register, which includes adding and removing architects to and from the Register. The new provision will allow the Registrar to delegate functions to a member of the staff of the Board who is nominated by the Board. This is to ensure that the functions undertaken by the Registrar can continue if the Registrar is absent or is otherwise unable to exercise those functions.
- 85 For example, in the event the Registrar is on leave or unwell, the Board can nominate the Director of Qualifications or another Director to deputise for the Registrar.
- 86 Subsection (3) enables the Board to exclude from the published Register the whole or part of a registrant's residential address where the registrant has successfully applied for it to be removed.
- 87 Section 3(2) (the Register) of the 1997 Act provides that the Register shall show the

regular business address of each registered person. In some cases, a registrant's business address is the same as their residential address, which leads to the publication of their residential address.

88 In such a case, where a registrant has supplied their residential address as their business address, for example due to unemployment or home working arrangements, the registrant can apply to the Board to have their address removed from the published Register, provided that this is a residential address. The Board will still privately hold the registrant's full address, but will only publish a geographical indicator (a county or the international equivalent) on the Register to ensure that the individual is identifiable to the public in searches of the Register.

89 Subsection (4) allows the Board to require compensatory measures from overseas applicants who seek to register via section 4(1)(a) (registration: general) of the 1997 Act. This will enable the Board to verify that overseas applicants who are registering using prescribed overseas qualifications under section 4(1)(a) of the 1997 Act have knowledge and understanding of the UK context before they can practise in the UK as

an architect.

90 Compensatory measures will be determined by the Board but can include additional academic or vocational training and qualifications, supervised workplace experience or competence tests.

91 Currently, the Board has the power to prescribe international qualifications, but does not do so, as the 1997 Act does not provide a means for ensuring that all applicants have an understanding of the UK context. Overseas applicants have in the past sought recognition under section 4(2A)(a) if holding a listed EU qualification under the MRPQ Directive, or via section 4(1)(b) which provides for an assessment of equivalence and a prescribed examination. Subsection (4) of clause 11 will enable the Board to request compensatory measures alongside prescribed overseas qualifications and experience.

92 Once the applicant shows the required evidence of the compensatory measure alongside their qualification and practical experience, the Board will then approve their application, subject to their rules, and admit the applicant onto the Register.

93 Subsection (5) amends the 1997 Act to prevent the Board from establishing a committee to discharge its function under

subsection (4).

Clause 12: Crown application

94 This clause states that the Bill will apply to and bind the Crown.

Clause 13: General provision about regulations

95 This clause makes provision in relation to powers conferred by the Bill on the appropriate national authority to make regulations. The powers may be used to modify legislation, including, where relevant, Acts of Parliament. When exercised for their stated purpose, the powers may also be used to make supplementary, incidental, consequential, transitional, transitory or saving provisions. Subsection (1)(a) does not apply to clause 8 (except where modifying earlier regulations made under this clause). A power to make regulations under clause 10 or clause 20 does not include the power to amend, repeal or revoke legislation other than previous regulations made under those clauses.

Clause 14: Protection of regulator autonomy

96 This clause prevents an “appropriate national authority” making regulations under clauses 1, 3 or 4 unless two conditions which protect regulators’ autonomy are met; namely the regulations do not affect regulators’ ability to prevent an unfit individual from practising a

profession, and that regulations cannot have a material adverse effect on standards required to practise a profession.

97 Subsection (1) provides that an “appropriate national authority” can only make regulations under clauses 1, 3 or 4 if it is satisfied that the conditions in subsections (2) and (3) are both met.

98 Subsection (2) stipulates that the regulations do not remove the ability of any regulator of a regulated profession to prevent individuals who are unfit to practise the profession from doing so. Subsection (4) defines what is included as being “unfit to practise” within the meaning of this clause. This means that under regulations made under clauses 1,3 and 4 of the Bill, regulators will retain the ability to make the ultimate decision about whether individuals can practise a profession.

99 Subsection (3) stipulates that the regulations will not have a material adverse effect on any regulated profession in terms of the knowledge and skills of the individuals practising it. This means that before an “appropriate national authority” makes regulations with respect to a profession under these clauses, it must ensure that those regulations would not have a negative impact

on the knowledge, skills or experience of individuals who practise that profession.

100 Subsection (4) defines that being “unfit to practise” a profession, as used in subsection (2), includes being unfit to practise the profession due to an individual’s character, lack of knowledge, skills or experience, or otherwise.

101 Subsection (5) defines that “practising a profession”, as used in this clause, includes undertaking activities that comprise the practise of the profession or using a title associated with the practise of the profession.

Clause 15: Consultation with regulators

102 This clause places a duty on the “appropriate national authority” to consult regulators of a regulated profession before making regulations under clause 1, 3 or 4. Specifically, the authority must consult those regulators that it considers are likely to be affected by the regulations or those it is otherwise appropriate to consult. This is so that regulators who would likely have duties placed on them have the opportunity to engage with and shape the regulations at a formative stage, and bring their expertise to bear in doing so. Any consultation under this clause for making regulations under clause 1, would also address whether the condition in

clause 2 had been met.

Clause 16: Authority by whom regulations may be made

103 This clause defines the "appropriate national authority" by which regulations may be made under this Bill as the Secretary of State, the Lord Chancellor or, where a provision falls within devolved competence, Welsh Ministers, Scottish Ministers or Northern Ireland Departments, as stipulated in subsections (2) to (4). This is because some professions are regulated on a devolved, rather than a UK- or Great Britain-wide, basis. The Bill reflects this regulatory landscape by enabling devolved administrations to make regulations under this Bill as they see fit for such devolved professions.

Clause 17: Parliamentary procedure

104 This clause sets out the parliamentary procedure for how regulations under this Bill should be made, including the situations in which legislation must be made either through the affirmative or negative resolution procedure, and what this means for such regulation to be passed through the relevant legislatures of the UK, Wales, Scotland or Northern Ireland. These are set out in subsections (1) - (7) and (9). This clause does not apply to regulations made under clause 20.

105 Subsection (8) provides for the ability to

pass regulations under this Act that are subject to the negative resolution procedure via the affirmative resolution procedure should there be such a need.

Clause 18: Interpretation

106 This clause provides the information on how terms should be interpreted in the Bill.

Clause 19: Extent

107 This clause specifies that the Bill extends to England, Wales, Scotland and Northern Ireland.

Clause 20: Commencement

108 See paragraphs 110-111 below.

Clause 21: Short title

109 This clause contains the short title by which the Bill may be cited.

Commencement

110 Clause 20 makes provision about when the provisions of this Bill will come into force.

111 The powers and the final provisions in the Bill will come into force on the day of Royal Assent. Clause 11(1), (2) and (3) will come into force at the end of the period of 3 months beginning with the day of Royal Assent. Clause 8 (where not already in force) will come into force at the end of the period of 6 months beginning with the day of Royal Assent. The remainder of the Bill will come into force on a day appointed by regulations made by the Secretary of State.

Financial implications of the Bill

112 The Bill primarily enables other legislation to be made, and therefore does not by itself trigger significant financial implications. The costs for regulators from several of the Bill provisions, such as those incurred by creating new routes in response to unmet demand (clause 1 and 2) and agreeing new arrangements bilaterally (clauses 3 and 4), will only arise if and when enacted by regulations. The exceptions are the clauses relating to ending standstill (clauses 5 and 6) and transparency (clause 8), which are assumed to

apply to all regulators. As set out in the Impact Assessment: Supplementary Note, the Department for Business, Energy and Industrial Strategy (BEIS) estimates a total cost of around £20.08m over the Bill's ten-year appraisal period. The Impact Assessment and Impact Assessment: Supplementary Note (see paragraph 113 below) includes details of the costs and benefits of each clause.

113 The funding model for regulators varies, some regulators may receive funding from government, though BEIS understands most regulators raise their funds from fees paid by professionals. For further discussion of the estimated costs to regulators, please see the Impact Assessment and Impact Assessment: Supplementary Note.

Parliamentary approval for financial costs or for charges imposed

114 A money resolution is required for the bill. A money resolution is required where a bill authorises new charges on the public revenue - broadly speaking, new public expenditure.

115 There may be new public expenditure by the Secretary of State or the Lord Chancellor under various provisions of the bill. For instance, the Secretary of State or the Lord Chancellor may incur expenditure in preparing

regulations under the bill and in exercising functions under the bill in their capacity as regulator of certain regulated professions. The Secretary of State will incur expenditure in making and funding the arrangements with the assistance centre under clause 7 and in providing funding to other regulators for the purpose of enabling them to discharge their functions under the bill.

116 A ways and means resolution is not required for the bill. A ways and means resolution is required where a bill authorises new charges on the people - broadly speaking, new taxation or other similar charges.

117 Clauses 1, 3 and 10 confer powers to make regulations under which fees may be payable but the fees will not be akin to taxation in their effects and characteristics. Rather, the fees will be for meeting the administrative costs of regulators in rendering services (such as processing applications or providing information) and will be set at a level intended only to enable the recovery of the costs of providing those services.

Compatibility with the European Convention on Human Rights

118 The Government considers that the Bill is compatible with the European Convention on Human Rights (ECHR). Accordingly, Kwasi Kwarteng, Secretary of State for Business, Energy and Industrial Strategy, has signed a statement under section 19(1)(a) of the Human Rights Act 1998 to this effect. The ECHR rights which are considered to be relevant to the Bill are Article 1 of Protocol 1 ("A1P1") (right to property) and Article 8 (right to respect for private and family life, home and correspondence), each of which is addressed below. BEIS considers that the clauses of this Bill which are not mentioned below do not give rise to any issues under the ECHR.

119 **Removing the existing system (clause 5)** – the 2015 Regulations are revoked by clause 5(1) of the Bill. It is BEIS's intention that the commencement regulations for this will include savings and transitional provisions relating both to qualifications that have already been recognised and to applications that are already in progress but not yet complete. The effect of these provisions will be that the revocation of the 2015 Regulations does not affect the status of qualifications that have already been recognised, and that applications can be completed. Where parts of the existing

system are reflected in other, sector-specific legislation that may be repealed by other Government Departments or the Devolved Administrations using clause 6, then the ability to provide similar savings and transitional provisions is found in the general clause on regulations, clause 13.

120 As a result of the savings and transitional provisions in the Bill, nothing in the Bill prevents, qualifies or otherwise impacts the ability of those with existing recognised qualifications from continuing their areas of practice in the UK and so does not interfere with professionals' A1P1 rights.

121 **New international recognition framework (clauses 1 and 2)** – Article 8 protections can apply to professional activities, including the restriction of access to the same (for example by restricting access to membership of a profession – paragraphs 80 to 82 of the European Court of Human Rights guidance on Article 8). However, as these provisions do not impose restrictions on access, but rather seek to broaden access, it is not believed to be likely to give rise to any issues in either case. The approach (where put in place through regulations) will be on offer to nationals of all countries. As a result, it is not anticipated that this broadening will be done in

a way which favours a particular class of applicant e.g. on nationality grounds; the system will be expanded so that EEA and Switzerland professionals do not have preferential treatment.

122 Duty for UK regulators to provide specified information to overseas regulators when requested (clause 10) - the provision of information under this duty can only be made with the consent of the individual in question. Insofar as this might engage Article 8's right to privacy, the power is limited by clause 10(7) such that no disclosure of information is required that would contravene the data protection legislation (as defined in section 3(9) of the Data Protection Act 2018). Any potential infringement of Article 8 rights is therefore subject to the safeguards of the data protection legislation.

123 Duty for UK regulators to provide specified information to regulators in other parts of the UK when requested (clause 9) – If an individual qualified to practise in one part of the UK is seeking to practise in another part of the UK, then the respective regulators are able to request and share information, relating to that entitlement to practise. This data sharing may be triggered by the individual requesting that this information be shared, or

by the regulator requesting this information. Accordingly, this duty may include the release of personal data without consent (for example, when a regulator, rather than the individual, requests information from its counterpart regulator), and the collection and storage of personal data, which could amount to interferences with an individual's right to respect for his or her privacy. Disclosing this information is required to ensure public safety and for public health (particularly with healthcare professionals), which are legitimate aims to justify infringing the right to privacy within Article 8. This disclosure is also proportionate to the purpose for which the information is disclosed in that it is limited to disclosure to the corresponding regulator in the other part of the UK and limited to information required for the purpose of determining whether an individual is able to enter and practise in a particular profession. Thus, the information shared will be used for the same purposes for which the information was originally disclosed to a regulator by that individual.

124 Assistance centre (clause 7) - The purpose of the assistance centre is to provide advice and assistance to individuals who wish to gain recognition in, and practise in, a regulated profession in the UK, UK

professionals wishing to have their qualifications and experience recognised overseas and to other interested parties (such as employers, regulators, students). It will also support overseas-qualified professionals wishing to practise in the UK. It does this by providing a signposting and enquiry service, to help professionals identify the relevant UK or overseas regulator to get their qualifications recognised. The clause allows the Secretary of State to request information from the assistance centre, regarding the discharge of its functions. Insofar as this might engage Article 8's right to privacy, the power is limited by clause 7(5) such that no disclosure of information is required that would contravene the data protection legislation (as defined in section 3(9) of the Data Protection Act 2018). Any potential infringement of Article 8 rights is therefore subject to the safeguards of the data protection legislation. To the extent that any information shared under this provision still represented a possible infringement of Article 8, it would be in pursuit of a legitimate aim. Ensuring the standards for recognition of appropriate qualifications and experience of registered professions is important both for public safety and also for public health (particularly with healthcare professionals). Ensuring that appropriate qualifications are

held by regulated professionals is also important for the UK's labour market, and hence its economic wellbeing.

Related documents

125 The following documents are relevant to the [Bill/Act] and can be read at the stated locations:

- Recognition of professional qualifications and regulation of professions: call for evidence – <https://www.gov.uk/government/consultations/recognition-of-professional-qualifications-and-regulation-of-professions-call-for-evidence>
- Summary of responses to the Call for Evidence into the recognition of professional qualifications and the regulation of professions - <https://www.gov.uk/government/consultations/recognition-of-professional-qualifications-and-regulation-of-professions-call-for-evidence>
- The recognition of professional qualifications and regulation of professions: policy statement <https://www.gov.uk/government/publications/recognition-of-professional-qualifications-and-regulation-of->

[professions-policy-statement](#)

- The Professional Qualifications Bill Impact Assessment and supplementary note – these documents can be found on the Professional Qualifications Bill's Parliamentary webpage:
<https://bills.parliament.uk/bills/2865/publications>
- UK regulated professions and their regulators – a page providing details of professions regulated by law in the UK, and in parts of the UK, and their associated regulators, as defined in the Professional Qualifications Bill.:
<https://www.gov.uk/government/publications/professions-regulated-by-law-in-the-uk-and-their-regulators/uk-regulated-professions-and-their-regulators>
- Professional Qualifications Bill 2021: Factsheets:
<https://www.gov.uk/government/publications/professional-qualifications-bill-2021-factsheets>

Annex- Territorial extent and application in the United Kingdom

126 The Bill will apply and extend to the whole of the United Kingdom.

127 The devolution settlements make provision for the regulation of certain professions to be reserved to Westminster, though not all:

a. Northern Ireland: In relation to legislative competence, there are no reserved or excepted matters that deal directly with the regulation of the professions. The regulation of the profession may be an excepted or reserved matter if the subject matter of the profession is an excepted or reserved matter (for example, intellectual property is a reserved matter and so the regulation of patent agents may be a reserved matter). See sections 6 and 8 of the Northern Ireland Act 1998 and Schedules 2 and 3 to that Act.

b. Scotland: In relation to legislative competence, the regulation of the professions listed under Head G of Schedule 5 to the Scotland Act 1998 is reserved to the UK (architects, most health professions including veterinary surgeons (but not social workers), and auditors). In addition, the regulation of the profession

may be reserved if the subject matter of the profession is a reserved matter (eg intellectual property) (see s.29 Scotland Act 1998).

c. Wales: In relation to legislative competence, the regulation of professions listed under Head G of Schedule 7A of the Government of Wales Act 2006 is reserved to the UK (architects, most health professions (but not social work and social care), veterinary surgeons and auditors.) In addition, the legal professions are a reserved matter under Head L of Schedule 7. As with the Northern Ireland Act 1998 and the Scotland Act 1998, the regulation of the profession may be reserved where the subject matter of the profession is a reserved matter (see s.108A Government of Wales Act 2006).

128 The Bill is not limited to particular professions. It therefore contains provisions regarding devolved matters in Scotland and Wales and transferred matters in Northern Ireland. The Territorial Offices are aware and agree with this analysis.

129 Legislative Consent Motions (LCMs) will be sought from each of the devolved legislatures.

Provision	England	Wales		Scotland		Northern Ireland	
	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Legislative Consent Motion process engaged?	Extends and applies to Scotland?	Legislative Consent Motion process engaged?	Extends and applies to Northern Ireland?	Legislative Consent Motion process engaged?
Clause 1	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 2	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 3	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 4	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 5	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 6	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 7	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 8	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 9	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 10	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Clause 11	Yes	Yes	No	Yes	No	Yes	No

PROFESSIONAL QUALIFICATIONS BILL [HC]

EXPLANATORY NOTES

These Explanatory Notes relate to the Professional Qualifications Bill [HL] as brought from the House of Lords on [18 November 2021](#) (Bill [194](#)).

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