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Delegated Powers and Law Reform Committee

Legislative Consent Memorandum: delegated powers relevant to the Professional Qualifications Bill



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Delegated Powers and Law Reform Committee

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

(a) any—

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

(ii) [deleted]

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

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

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

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

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

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

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

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

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



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Committee Membership



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Introduction

1. This report considers the delegated powers that are relevant to Scotland in the latest version of the [Professional Qualifications Bill](#) (UK Parliament Legislation).
2. The Professional Qualifications Bill ("the Bill") was introduced in the House of Lords on 12 May 2021. The Scottish Government lodged the [original LCM](#) for the Bill on 12 July 2021. The Committee reported on the delegated powers relevant to Scotland on [23 September 2021](#).
3. Amendments to the Bill were agreed on 9 November 2021 and on 27 January 2022, the Scottish Government lodged a [Supplementary LCM](#) for the Bill.
4. The lead committee in respect of this Supplementary LCM is the Economy and Fair Work Committee.

Brief outline of the Bill

5. The Bill relates to the recognition of professional qualifications and the regulation of professions after the UK's withdrawal from the EU.
6. The UK Government's [Explanatory Notes](#) describe the Bill, in overview, as creating a new framework for the recognition of professional qualifications and experience gained overseas; taking steps to reform regulators' practices; and revoking and replacing the interim system for professional qualifications that derives from the UK's membership of the EU.
7. The Bill confers powers on the "Appropriate National Authority" to make subordinate legislation. Where powers in the Bill are delegated to the Appropriate National Authority, these may be exercised by UK Ministers or Scottish Ministers where the regulations contain only provision which would be within the legislative competence of the Scottish Parliament. As a result, UK Ministers could make provision through regulations in relation to matters falling within devolved competence.
8. The Bill does not require UK Ministers to obtain Scottish Ministers' consent before exercising these powers; a key point noted in the Committee's report of 23 September 2021.

Committee consideration of original LCM

9. The Committee considered the original LCM at its meeting on 21 September 2021. It reported on the delegated powers relevant to Scotland on [23 September 2021](#). The Committee recommended maintaining the approach adopted in Session 5 with regards its position on the scrutiny of powers conferred on UK Ministers in devolved areas; paragraph 50 of the Committee's report sets out these points of principles in full.
10. In its report, the Committee noted it was content with the appropriateness of the powers in principle and the proposed procedure with regards to the majority of the delegated powers. However, the committee raised particular points in relation to the appropriateness of the some of the key powers, under clauses 1, 3 and 4 of the Bill.

Delegated powers conferred on the Appropriate National Authority

11. There are three amendments to the Bill referred to in the Supplementary LCM as Amendments 1, 12 and 13.

Amendment 1

Provision

12. Amendment 1 makes two relatively minor modifications to Clause 1 of the Bill, the power to provide for individuals to be treated as having UK qualifications. The purpose of this power is to establish a means by which professional qualifications that are gained overseas can be recognised in the UK (or part of the UK). The power is, by regulations, to make provision for individuals with overseas qualifications who meet certain conditions to be treated as if they have the relevant UK qualification for the purpose of determining whether they are entitled to practise that profession in the UK or any part of it.
13. The first modification relates to the additional conditions that may be specified in regulations made under this power. The second relates to determinations by a regulator of whether an overseas-qualified individual has skills equivalent to the UK qualification. The amendment therefore provides that such determinations may be made either on the basis of those overseas qualifications alone, or on such other basis as the regulator considers appropriate (i.e taking into account also the results of a test or assessment). The Supplementary LCM notes that the intention of the latter modification is to ensure that regulators' domestic standards are maintained, for example where the only route to registration is through a particular qualification.

Committee consideration

14. The Committee previously reported that it considered that insufficient justification had been provided for why all provision that can be made under clause 1 is suitable for secondary, rather than primary, legislation. It also considered that, in the absence of further specification in the Bill of how the power can be used, the power is too wide.

15. **The Committee notes the amendments made to Clause 1 of the Bill, however these do not address the Committee's concerns regarding the appropriateness of secondary legislation and the breadth of the power**

Amendments 12 and 13

Amendments affecting the operation of powers in Clauses 1, 3 and 4

Provision

16. Amendments 12 and 13 have the effect of adding two further Clauses, 14 and 15, to the Bill. The purpose of these provisions is to protect the autonomy of regulators,

and to require that regulators are consulted before new regulations are made that are likely to affect them. The lack of a requirement to consult with regulators was a matter of concern noted by the committee in its report on the initial LCM and which the Economy and Fair Work Committee pursued with the Scottish Government in its report of [22 November 2021](#).

17. The new Clause 15 in the Bill places a duty on the “Appropriate National Authority” to consult regulators of a regulated profession before making regulations under clause 1, 3 or 4 of the Bill. 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.
18. In relation to the terms of Clause 3(1), this relates to the implementation of international recognition agreements and confers powers on the Appropriate National Authority to make regulations which make such provision as the authority considers appropriate for the purpose of, or in connection with, implementing any international recognition agreement to which the UK is a party.

Committee consideration

19. In its previous report, the Committee considered that, in the absence of further specification, it was not appropriate to delegate the general power in Clause 3(1), particularly as the implementation of international agreements by primary legislation affords a much greater level of scrutiny. The Committee also recommended that the lead committee pursue with the Scottish Government whether a statutory requirement to consult the affected regulator(s) before exercising the power should be included in this clause.
20. Clause 4 of the Bill provides for the authorisation to enter into regulator recognition agreements. Clause 4(1) confers powers on the Appropriate National Authority to make provision by regulations, as the authority considers appropriate, for the purpose of, or in connection with, authorising a regulator of a regulated profession to enter into regulator recognition agreements.
21. Whilst the Committee previously reported it was content with this power in principle, and the proposed procedure, the Committee considered that a statutory requirement to consult the affected regulator before exercising this power would be appropriate.

22. **The Committee welcomes amendments 1, 12 and 13 which address issues on regulatory autonomy and regulator consultation. However, the Committee reiterates its concerns that the Bill, in its current form, allows the UK Government to legislate in devolved areas without the consent of the Scottish Ministers.**
23. **The Committee notes that its concerns about the appropriateness of the delegation of the powers in Clauses 1 and 3 have not been addressed and reiterates these concerns.**
24. **Finally, the Committee expresses concern about the tight timescale afforded to the Committee for considering the Supplementary LCM.**

