

**Jeremy Miles AS/MS**  
Gweinidog y Gymraeg ac Addysg  
Minister for Education and Welsh Language



Llywodraeth Cymru  
Welsh Government

10 September 2021

Dear Huw,

Thank you for your letter of 12 August regarding the Legislative Consent Memorandum on the Professional Qualifications Bill.

I attach a response to the questions you have raised.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'J' followed by a wavy line and a short horizontal stroke.

**Jeremy Miles AS/MS**  
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Minister for Education and Welsh Language

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

1. *The Bill was introduced into the House of Lords on 12 May 2021. The Legislative Consent Memorandum was not laid until 17 June 2021, approximately 5 weeks later. Standing Order 29.2(i) requires a Legislative Consent Memorandum such as this to be laid normally no later than two weeks after the introduction of the Bill. Can you provide reasons for the delay on this occasion?*

In the Welsh Government's view, the Standing Order deadline is potentially achievable for Bills on which the two governments have worked closely together and are in agreement; the "normally" qualification recognises the realities of what is a highly variable process. In this case, the Bill is not one on which the UK Government had been working with us throughout in a meaningful way (see below); and production of the Legislative Consent Memorandum was hampered both by the complexity of the issues at play in the Bill as well as by machinery of government delays following the Senedd election on 6 May 2021.

2. *At paragraph 30 of the Memorandum you state that "The Welsh Government is unconvinced that the majority of the measures contained in this Bill are necessary."*

- a. What was the Welsh Government's role during the development of the Bill?*
- b. When did you become involved in the development of the Bill?*
- c. How would you describe intergovernmental relations on the development of this Bill?*
- d. Why is the Welsh Government unconvinced that "the majority" of the measures contained in the Bill are necessary?*
- e. Which provisions does the Welsh Government consider are necessary and why?*

The Welsh Government's role has been to ensure that the Welsh Government's and key stakeholder's concerns with the Bill are raised formally with the UK Government at official and Ministerial levels. The Welsh Government has also worked to ensure there is recognition and agreement on the professions for which regulations are devolved, as well as devolved regulators, that are impacted by the Bill.

The UK Government started engagement on this Bill during late January and early February 2021, and progressed with detailed development of the Bill during the Senedd pre-election period. I have committed to working constructively and positively with UK Government Ministers and officials to develop mutually acceptable amendments to the Bill, but unfortunately this is now in the context of inadequate engagement ahead of introduction.

The Welsh Government is not convinced that the Bill is necessary. The Welsh Ministers and devolved regulators already have the powers needed to deliver current and future policy and regulations within areas of devolved competence, including powers to recognise all overseas qualifications on a case by case basis.

We do acknowledge that some of the provisions of the Bill may be necessary. Clause 5 of the Bill contains a power for the "appropriate national authority" to modify legislation as a consequence of the revocation of the European Union (Recognition of Professional Qualifications) Regulations 2015. This power will enable the Welsh Ministers to make amendments to Welsh legislation where these are considered to be appropriate as a consequence of the revocation of the 2015 regulations.

3. *At paragraph 41 of the Memorandum you state that “the Welsh Government will not be in a position to recommend that consent be given unless the Bill is substantially amended to address our significant concerns.”*

*What specific amendments to the Bill have you requested?*

*What is the current status of your discussions with the UK Government regarding the changes you will need to see made to the Bill before you would recommend that consent is given?*

*If no specific amendments have been requested, what changes would you need to see made to the Bill in order to address your concerns?*

I wrote to UK Government Minister Lord Grimstone on 18 June to express my concerns with the Bill, and highlighted my concerns on the inclusion of concurrent powers. The Counsel General and Minister for the Constitution has also written to Baroness Bloomfield on concerns with the concurrent powers.

I am pressing for an amendment to the Bill which would ensure that the powers of the Secretary of State and Lord Chancellor could not be exercised in areas devolved to Wales without obtaining the consent of the Welsh Ministers. I am also pressing for an amendment which would provide for a specific carve out from the requirements of Schedule 7B. I made Lord Grimstone aware of this in a meeting I had with him on 19 July.

4. *At paragraphs 32 to 35 of the Memorandum you set out how, without the consent of the Senedd or the Welsh Ministers, the Secretary of State or Lord Chancellor would be able to exercise regulation-making powers to amend primary legislation, including Senedd Acts. Can you confirm whether it is your understanding that the powers in the Bill would enable the Secretary of State or Lord Chancellor to amend the Government of Wales Act 2006 (the 2006 Act)?*

The Secretary of State and Lord Chancellor have powers under the Bill to make regulations which can amend primary legislation (see clause 13(1) and the definitions of “legislation” and “modify” in clause 16(1)). There is no restriction on these powers so it is our view that they could indeed be used to amend the Government of Wales Act 2006.

5. *At paragraph 35 you note that the UK Government has stated that “it does not intend to use concurrent powers in the areas of devolved competence without the agreement of the relevant [Devolved Administrations]”.*

*Where and when did the UK Government make this statement?*

*Have any discussions taken place as to the inclusion of this commitment on the face of the Bill?*

Lord Grimstone wrote to Ken Skates MS in his capacity as then Minister for Economy, Transport and North Wales on 11 May and stated that the UK Government does not intend to use the concurrent powers in the areas of devolved competence without the agreement of the relevant Devolved Governments.

In my letter to Lord Grimstone on 18 June, I noted that this commitment does not feature in the Bill, and as such is only binding for as long as the current UK Government decides to abide by it.

6. *At paragraphs 36 and 37 of the Memorandum you set out how the Bill includes a “restriction unique to the Welsh Minister’s powers”, whereby the restrictions imposed by paragraphs 8 to 11 of Schedule 7B to the 2006 Act are effectively imported into the regulation-making process. What specific discussions have you had with the UK Government about this restriction on the exercise of regulation-making powers conferred on the Welsh Ministers?*

*What explanation have you received as to why this particular “unique” restriction is imposed on the Welsh Minister’s powers?*

*The provision in question, clause 14(5) of the Bill, states that the Welsh Ministers may not make any provision using their regulation making powers in the Bill without the consent of a Minister of the Crown, where such provision would, if made in an Act of the Senedd, require Minister of the Crown consent. Is there anything outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue in this regard?*

The Counsel General has had correspondence about this restriction with Baroness Bloomfield, UK Government Minister.

The explanation received was as follows:

*Paragraph 12 of Schedule 7B to the Government of Wales Act 2006 Act (GoWA) provides that where an enactment (in this case the Bill) refers to provisions within the legislative competence of the Senedd, this does not include provision which could only be made by an Act of the Senedd with the consent of a UK Minister (under paragraphs 8, 10 or 11 or otherwise). This means that Welsh Ministers cannot make regulations which impose, confer or otherwise modify the functions of a reserved authority, unless there is specific provision to the contrary. This would therefore have been the default position in relation to powers conferred on Welsh Ministers by the Bill.*

*The words in parenthesis at the end of clause 14(2) of the Bill (“(ignoring any requirement for the consent of a Minister of the Crown)”), however, set aside the default position established by paragraph 12 of GoWA. The effect is that Welsh Ministers may make regulations using powers in the Bill that are in line with the legislative competence of the Senedd, even if the consent of a Minister of the Crown is required. Together, 14(2) and 14(5) place the regulation-making powers of Welsh Ministers on a footing that mirrors that of the legislative competence of the Senedd – maintaining the position in the Welsh devolution settlement.*

In answer to your question about the effect of clause 14(5), the only restriction is on the Welsh Ministers’ powers to make regulations which impose, confer or otherwise modify the functions of a reserved authority. There is nothing outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue.

7. *At paragraph 38 you outline a range of policy concerns arising from the Bill. One concern relates to scope and you state that “the definition used in the Bill fails to clearly define scope” and you are unclear whether further education is in the scope of the Bill. Which definition are you referring to?*

*What are the implications for the Welsh Government if further education is within the scope of the Bill?*

*If this issue is not resolved, how will this impact on whether or not you recommend consent?*

This refers to definitions in Clause 16 of the Bill which have to be considered when assessing whether a profession is regulated, and whether a body is a regulator, for the purposes of the Bill. We understand that the UK Government will shortly be issuing guidance on the interpretation of these definitions.

The Welsh Government is of the opinion that the Further Education sector in Wales is in scope of the Bill. Plainly this would be problematic if the UK Government were to exercise its powers to make changes to regulations in Wales which were not consistent with our policy. The decision on recommending consent will depend on an amendment to the Bill which would ensure that the powers of the Secretary of State and Lord Chancellor could not be exercised in areas devolved to Wales without obtaining the consent of the Welsh Ministers.

8. *Another concern outlined in paragraph 38 relates to how the Bill links professional qualifications and trade policy which you state “reduces Welsh Minister’s powers further since decisions could be badged as ‘trade’ rather than ‘professional qualification’ decisions and imposed on Wales in contravention of the Sewel Convention”. You further state “Whilst assurances from UK Government Ministers and published guidance state this is not the intention, this is a clear risk due to the drafting of this Bill.”*

*Where and when did the UK Government provide the assurances you refer to in the Memorandum?*

*In what published guidance does it state that it is not the UK Government’s intention to badge relevant decisions as trade-related rather than relating to professional qualifications? What discussions has the Welsh Government had with the UK Government regarding the inclusion of provisions on the face of the Bill to give effect to the “assurances” ?*

The assurances referred to are those in the letter to Ken Skates MS referenced in the response to question 5 above.

The guidance is the “Arrangements to facilitate the recognition of professional qualification: guidance for regulatory and professional bodies” published in May 2021 by the Department for Business, Energy and Industrial Strategy.

The guidance states:-

*“Where professions are regulated separately in the individual nations of the UK, there are additional factors which may be considered for recognition arrangements for those professions, subject to the right of each devolved government to regulate professions within their devolved competence as they see fit. In some cases, there are differences in the way in which professions are regulated across the UK, and as a result regulatory bodies in different parts of the UK will need to consider how to pursue consistent access for international professionals in all parts of the UK internal market”*

There is a risk that the drafting of the concurrent functions in the Bill would enable the UK Government to override “the right of each devolved government to regulate professions within their devolved competence as they see fit”.

9. *As regards financial concerns you state in paragraph 38 that there will be an “impact on Welsh Government budget considerations” and that the situation “could ultimately impact on costs for the Welsh Government”. Please can you explain how the Welsh Government could be impacted financially and how the costs relate to those identified for devolved regulators (as identified in paragraph 39)?*

If the provisions in the Bill mean that regulators have to commit additional spend to comply, the costs for that spend will ultimately be the responsibility of the Welsh Government through the funding arrangements in place with the devolved regulators.