

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



Llywodraeth Cymru  
Welsh Government

Huw Irranca Davies MS  
Chair  
Legislation, Justice and Constitution Committee  
SeneddLJC@senedd.wales

6 October 2021

Dear Huw,

Thank you for the Committee report on Legislative Consent Memorandum on the Professional Qualifications Bill, laid on 30 September.

I thank the Committee for their detailed observations and note the conclusions are supportive of my concerns on the Bill.

I am pleased to provide additional information as requested below.

Yours sincerely,

A handwritten signature in black ink, consisting of a large initial 'J' followed by a series of wavy lines and a short horizontal stroke at the end.

**Jeremy Miles AS/MS**

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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.

## Recommendations

**Recommendation 1.** In the interests of transparency, the Welsh Government should inform the Senedd's Business Committee of its reasoned position on how and when it considers it would be able to lay a Memorandum within two weeks of a Bill's introduction to the UK Parliament and the circumstances in which it would not be able to meet this timeframe.

*Response - Accept. The Business Committee is reviewing the process for Legislative Consent Memorandums and we will make our position on the two-week deadline clear as part of this review.*

**Recommendation 2.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, confirm which provisions in the Bill the Welsh Government considers are necessary.

*Response - Accept*

*In addition to the response given to the Chair of the Committee in your letter of 10 September, the following clauses may be considered necessary.*

*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. Such powers may be useful to the Welsh Ministers. However, our concern remains that the decision as to whether any regulator of a profession devolved to Wales should be given an authorisation to enter into recognition agreements should be a matter for the Senedd, and not the Secretary of State or Lord Chancellor.*

*Clause 6(1) gives the appropriate national authority the power to make regulations modifying retained EU recognition law so that it ceases to have effect. This power will enable the Welsh Ministers to revoke legislation which deals with professions outside the scope of the 2015 Regulations, but which are still part of the broader EU-derived qualification recognition framework, and which may include qualification recognition measures which offer preferential treatment to EEA and Swiss qualifications as compared to qualifications from the rest of the world.*

**Recommendation 3.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, further explain why he is seeking an amendment to the Bill to add a consent provision to the concurrent powers, when Welsh Government guidance says that new concurrent functions should only be created in very exceptional circumstances.

*Response - Accept. Our starting point is that concurrent functions should not be created. However, if the UK Government is determined, as it appears to be in this case, to create them, then at the very least we would expect a consent provision. We are also seeking a carve out from the requirements in Schedule 7B of the Government of Wales Act 2006, as it*

*is not considered appropriate for the Welsh Government to have to seek Minister of the Crown consent if a future Senedd Bill sought to remove or modify the powers of the Welsh Ministers in the Professional Qualifications Act, where those powers are exercised concurrently with the Secretary of State or Lord Chancellor.*

**Recommendation 4.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, justify why concurrent powers are appropriate for this Bill, when, if exercised by UK Ministers with the consent of the Welsh Ministers, it would not give the Senedd the opportunity to scrutinise the regulation of professional qualifications which are devolved, such as those relating to higher education policy in Wales.

*Response - Accept. Our starting point is that concurrent functions are not appropriate for this Bill.*

**Recommendation 5.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, update the Committee and the Senedd on the latest position regarding the amendments to the Bill that have been sought, and the consequential effect on the Minister's recommendation as to whether consent should be given by the Senedd to the relevant provisions in the Bill.

*Response – Accept.*

*Officials continue to explore whether the current drafting of the Bill, including the concurrent powers, can be amended to ensure that only the Welsh Ministers have the power to legislate in areas of devolved competency, and respect the devolution settlement.*

*It continues to be made clear to the UK Government that anything less than a requirement to obtain the consent of the Welsh Ministers before making regulations in devolved areas is unacceptable.*

*As currently drafted, the Bill gives the present and any future UK Government the power to legislate in areas which are devolved to Wales without obtaining the consent of the Welsh Ministers. The LCM states that the Welsh Government cannot recommend to the Senedd that consent is given to the Bill due to our ongoing concerns regarding these concurrent powers. The LCM indicates that if satisfactory amendments are made to the Bill, the Welsh Government may be able to recommend that the Senedd consents to the Bill.*

**Recommendation 6.** The Minister should seek an amendment to the Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the Government of Wales Act 2006.

*Response – Accept. We will seek such an amendment.*

**Recommendation 7.** The Minister should seek an amendment to the effect that clause 14(5) is removed from the Bill.

*Response - Accept. The Counsel General and Minister for the Constitution has exchanged correspondence with Baroness Bloomfield on this issue, and continues to outline his concerns with the approach taken in respect of this specific clause.*

**Recommendation 8.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, confirm whether the guidance on the interpretation of the definitions in clause 16 of the Bill has been issued by the UK Government and confirm whether he has any continuing concerns with the scope of the Bill or concerns with the guidance.

*Response - Accept. Further guidance on the interpretation of the definitions in clause 16 has been sent to my officials by the UK Government, and whilst this has been helpful, it has not provided the clarity we seek on whether certain professions, for example Further Education teachers, are within scope of the Bill.*

**Recommendation 9.** Where UK Bills that are the subject of Welsh Government legislative consent memoranda interconnect with domestic and/or international arrangements, the Welsh Government should make this clear and provide details in the relevant memorandum

*Accept. We will make this clear in future memorandums.*