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Llywodraeth Cymru
Welsh Government

Paul Davies MS
Chair, Economy, Trade, and Rural Affairs Committee
Senedd Cymru
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6th December 2021

Dear Paul

I am writing to inform the Committee that the Professional Qualifications Bill (the Bill) has now progressed through the House of Lords Report stage. Amendments tabled by the UK Government and agreed at Report Stage make provision falling within the legislative competence of the Senedd, and I have today laid a Supplementary Legislative Consent Memorandum (Memorandum No.2) before the Senedd.

House of Lords Report Stage

The UK Government tabled three amendments on 2 November for consideration at Lords Report Stage which took place on 9 November, where these amendments were agreed. The UK Government has made amendments to Clause 1 of the Bill and inserted additional clauses 14 and 15, as agreed at Lords Report Stage. All three clauses make provision of a kind that the Senedd could legislate for in respect of devolved areas, and remains within the legislative competence of the Senedd.

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

The clause provides a power for the “appropriate national authority” to provide by regulations which professional qualifications or other experience obtained outside the UK may be recognised within the UK. Regulations may only make provision for individuals who satisfy the criteria specified in this clause, namely that they have received overseas qualifications or experience; and that a regulator has determined their qualifications or experience is substantially the same as that required by the regulator or, if not, that they have taken such other experience or qualifications as necessary. The amendment to this clause makes further provision about the additional conditions that may be specified in regulations.

Clause 14 - Protection of regulator autonomy

This new clause prevents the appropriate national authority making regulations under section 1, 3 or 4 of the Bill unless satisfied that the conditions in subsections (2) and (3) of new clause 14 are met. This clause has been added to provide assurance to regulators

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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.

that the appropriate national authority may legislate only where doing so would not adversely affect regulatory autonomy.

Whilst the amendment may offer some comfort to regulators, the difficulty remains that it is for the appropriate national authority alone to determine whether or not it is satisfied that either of these conditions are met, and that this is not for each individual regulator to determine.

This amendment applies equally to each of the appropriate national authorities, including the Welsh Ministers where applicable. This means that where the Secretary of State or Lord Chancellor are acting as the authority, they have the power to determine that the additional conditions are met, even when regulating in devolved areas which are contrary to the policy aims of Welsh regulators or the Welsh Ministers.

Clause 15 – Consultation with regulators

This new clause requires the appropriate national authority to consult a regulator of a regulated profession before making regulations under clause 1, 3 or 4 if the authority considers that the regulator is likely to be affected by the regulations or it is otherwise appropriate to consult the regulator. Whilst some regulators may welcome this concession, it does not go so far as to prevent the appropriate national authority from making regulations which the regulators have opposed during such consultation.

Similar to Clause 14, this amendment applies equally to each of the appropriate national authorities, including the Welsh Ministers where applicable. However, the amendment does not prevent the Secretary of State or Lord Chancellor, when acting as the authority, from making regulations in devolved areas which are contrary to the policy aims of Welsh regulators or the Welsh Ministers.

Welsh Government position

While I welcome the engagement of the UK Government to date in respect of the need to make changes to the Bill as it stands, I consider that further amendments are needed to address my concerns in respect of the concurrent powers in the Bill and I therefore I cannot recommend the Senedd gives its consent to these provisions being included in the Bill.

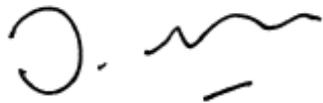
Legislative Consent Memorandum

As you are aware, Standing Orders require a Legislative Consent Memorandum to be laid “normally” within two weeks of the tabling of UK Government amendments, in this case by 16 November. The amendments raise a number of complex constitutional issues the analysis of which has resulted in a delay to laying.

Should there be any further amendments be tabled or agreed during the passage of the Bill through the House of Commons which require the legislative consent of the Senedd, a further Supplementary Legislative Consent Memorandum may be required and I will write to the Committee and Members of the Senedd prior to the plenary debate.

I have written in similar terms to Huw Irranca Davies MS, Chair of the Legislation, Justice and Constitution Committee and have copied this letter to all Members of the Senedd.

Yours sincerely,

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

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Minister for Education and Welsh Language