

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



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref: MA/JMEWL/0491/22

Huw Irranca-Davies MS  
Chair,  
Legislation, Justice and Constitution Committee  
Senedd Cymru  
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10 February 2022

Dear Huw,

Thank you for your letter of 28 January and for the Committee report on the Supplementary Legislative Consent Memorandum (Memorandum No 2) on the Professional Qualifications Bill.

Once again, I thank the Committee for their detailed observations and for sharing the report. I am pleased to provide additional information as requested below.

I am coping this letter to Paul Davies MS, Chair of the Economy, Trade and Rural Affairs Committee.

Yours sincerely,

**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.

## Recommendations

***Recommendation 1.*** *While we welcome the Minister's action to 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, the Minister should, at the earliest opportunity and in advance of the Senedd's debate on a relevant consent motion, provide an update on any relevant action by, or discussions with, the UK Government on this specific matter.*

### *Response – Accept*

On 12 October 2021 the UK Government made an offer to table an amendment to the Bill which would require the Secretary of State or Lord Chancellor to consult with Welsh Ministers before making legislation in areas of devolved responsibility.

I rejected this offer and made it clear that it was inadequate to address our concerns and failed to respect the devolution settlement. The consultation requirement did not give any assurance that the Secretary of State or Lord Chancellor could not or would not use the powers in the Bill to impose regulations on Wales, as the UK Government remained free to disregard any concerns or oppositions raised by the Welsh Ministers during consultation. My response also set out the Committee's concerns in relation to the combination of concurrent powers and Henry VIII powers in the Bill, and I asked the UK Government to table an amendment to ensure that the powers in the Bill could not be used by UK Ministers to make regulations that amend the Government of Wales Act 2006 (GOWA).

On 2 December the UK Government offered to table an amendment to the Bill to provide for a more detailed consultation procedure. However, this amendment again failed to respect the devolution settlement and meet our requirement that the UK Government obtain the consent of Welsh Ministers before making regulations in devolved areas.

On 9 December the UK Government made an offer to table an amendment to the Bill for a specific carve out from the Minister of the Crown consent requirements in paragraph 11 of Schedule 7B to GOWA. The amendment would have meant that the Secretary of State's consent was not needed for Senedd Cymru to be able to remove the concurrent powers that the Secretary of State and Lord Chancellor have under the Bill to make regulations that are within the legislative competence of the Senedd.

However, the UK Government made it clear that this amendment would be tabled only if I agreed to recommend the Senedd consents to the Bill.

Whilst the inclusion of this amendment was welcomed, my response to these offers was that I remained unable to recommend to the Senedd that consent is given to this Bill without a further amendment to require the UK Government to secure the consent of devolved governments before making regulations in devolved areas.

I met with UK Government Minister for Investment, Lord Grimstone, and Minister for Small Business, Consumers & Labour Markets and Minister for London, Paul Scully MP, on 6 January 2022 to further clarify my concerns, and to reiterate my position that the powers in this Bill should align with the devolution settlement. The UK Government subsequently

sought to provide reassurance by setting out some potential situations where they considered it may be appropriate to use the concurrent powers in the Bill to legislate on a UK-wide basis, including in devolved areas, but they failed to provide a detailed, evidence based analysis as to why those powers could not be made subject to a requirement to obtain consent from the Welsh Ministers.

***Recommendation 2.*** *The Minister should, at the earliest opportunity and in advance of the Senedd's debate on a relevant consent motion, provide further information as to how and when the UK Government made its position clear in relation to clause 16(5) (previously clause 14(5)) and provide fuller detail on what the assurances are and how such assurances have assuaged the Minister's previous concerns*

*Response – accept*

In paragraph 6 of my [letter of 10 September 2021](#) to the Committee, I set out the UK Government's explanation of clause 14(5) (now 16(5)).

We were concerned an assumption had been made by the UK Government that UK Bills which confer regulation making powers on the Welsh Ministers should always be drafted in a way which ensures that the legislative competence of the Senedd and the executive competence of the Welsh Ministers align.

On 29 September the UK Government wrote to confirm their position that there are instances where executive and legislative competence do not align.

Whilst I am satisfied with this outcome, my concern overall remains that the concurrent powers in the Bill are unacceptable, for the reasons outlined above.