

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

Professional Qualifications Bill

1. This supplementary legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Professional Qualifications Bill (“the Bill”) was introduced into Parliament (the House of Lords) on 12 May 2021. I laid a Legislative Consent Memorandum on 17 June and a supplementary Legislative Consent Memorandum (Memorandum No 2) on 6 December. Legislative Consent Motion debates were held on 5 October and 15 February 2022, in both cases the Senedd withheld its consent to provision falling within the legislative competence of the Senedd being included in the Bill.
3. On 22 February the UK Government tabled two amendments for consideration at House of Commons Report stage. These amendments make provisions falling within the legislative competence of the Senedd. The amendments raise a number of complex constitutional issues the analysis of which has resulted in a delay to laying this Supplementary Legislative Consent Memorandum. These amendments were agreed at House of Commons Report Stage on 14 March, and can be found at: [Amendments](#)
4. Consideration of the Bill by the House of Commons took place on 18 November 2021. The Bill, as amended during House of Commons Committee Stage, can be found at: [Professional Qualifications Bill](#).

Policy Objective(s)

5. The UK Government’s stated policy objectives of the Bill are set out in the Policy Statement which can be found at: <https://www.gov.uk/government/publications/recognition-of-professional-qualifications-and-regulation-of-professions-policy-statement>
6. In summary, the UK Government is proposing a new framework for the recognition of professional qualifications and regulation of professions. The Bill is intended to revoke and replace the current system for the recognition of professional qualifications that derived from the UK’s membership of the EU. The Bill creates a framework to enable the recognition of professional qualifications from overseas professions in the UK.

Summary of the Bill

7. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy (BEIS).

8. The Bill as introduced contains provisions to:

- a. End the interim system for professional qualifications that derives from the UK's membership of the EU (Clauses 5 and 6)
- b. Create a framework for the recognition of professional qualifications and experience from overseas by professions in the UK, or a part of the UK, to meet the needs and demands for the services provided by those professions. (Clauses 1 and 2)
- c. Enable Government to implement international agreements or parts of international agreements that the UK strikes with partners so far as they relate to the recognition of professional qualifications. (Clause 3)
- d. Enable Government to provide regulators with a consistent set of powers to enter into agreements with regulators overseas to recognise professional qualifications. (Clause 4)
- e. Maintain a designated 'Assistance Centre' with which regulators must cooperate, to provide advice and guidance to the public.(Clause 7)
- f. Require regulators in the UK to provide certain information to overseas regulators where an individual is or has been entitled to practise that profession in the UK, or a part of the UK, and is seeking entitlement to practise overseas.(Clause 10)
- g. Require regulators of professions in all parts of the UK to publish information on the entry and practice requirements of their profession. (Clause 8)
- h. Require regulators in the UK to, where requested, provide certain information to counterpart regulators in other parts of the UK. (Clause 9)
- i. Amend the Architects Act 1997 to allow a new recognition system for architects, alongside adjustments to the administration of the Architects Registration Board to support efficiency.(Clause 11)

Update on the position since the publication of the second Legislative Consent Memorandum

9. I laid Memorandum No 2 on 6 December 2021, following the tabling of three amendments on 2 November by the UK Government falling within the legislative competence of the Senedd. Memorandum No 2 confirmed I remained concerned about the concurrent powers in the Bill, and that I was not in a position to recommend the Senedd gives its consent unless the Bill was substantially amended to address those concerns.

10. I continue to be concerned about the continued inclusion of concurrent regulation making powers in the Bill, for the reasons set out in paragraphs 32 to 37 of the initial Legislative Consent Memorandum laid on 17 June 2021.

How this supplementary memorandum differs from the Memorandum No 2.

11. The UK Government has made an amendment to insert a new clause to the Bill, and an amendment to insert an additional sub-clause, as agreed at the House of Commons Report Stage on 14 March. This Supplementary Legislative Consent Memorandum sets out my position on these amendments.

Amendments since the publication of the first and second Legislative Consent Memoranda, for which consent is now being sought

New Clause – “Consultation with devolved authorities”

12. The amendment requires the Secretary of state or Lord Chancellor to consult with devolved authorities before making regulations under the Bill that contain provision which could be made under the Bill by the devolved authorities. The amendment also requires the UK Government to publish a report on the consultation before making the regulations. The report must include a description of the process undertaken to comply with the duty to consult, including a description of any agreement, objection or other views expressed as part of that process and an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State/Lord Chancellor propose to make the regulations despite an objection, an explanation of the reasons for doing so).

Welsh Government Position

13. The amendment requires the Secretary of State or Lord Chancellor to consult with Welsh Ministers before making regulations under the Bill that contain provision which could be made under the Bill by the Welsh Ministers themselves and to publish a report on the consultation.
14. The ‘consult plus’ amendment does not adequately protect the devolution settlement, as the Secretary of State/Lord Chancellor are able to disregard any opposition raised by the Welsh Ministers during any such consultation, and ultimately legislate as the UK Government sees fit.

Recommendation

15. I am opposed to this new clause as, despite my ongoing opposition, the UK Government has refused to make an amendment to require the Secretary of State and Lord Chancellor to obtain the consent of the Welsh Ministers before making any legislation in areas which have been devolved to Wales.

I therefore recommend the legislative consent of the Senedd for this new clause, which relates to the requirement of the Secretary of State or Lord Chancellor to consult when using concurrent regulation making powers under clauses 1, 3 and 4 of the Bill, is withheld.

Sub-clause 16 (7):

16. The amendment is a specific carve out from the Minister of the Crown consent requirements in paragraph 11 of Schedule 7B to the Government of Wales Act 2006 (GoWA).

Welsh Government Position

17. The amendment to provide for a specific carve out from the Minister of the Crown consent requirements in paragraph 11 of Schedule 7B to GoWA means that the Secretary of State's consent is not needed for Senedd Cymru to be able to remove the 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.
18. A 'carve out' provision has been used to address concerns over the restrictions in Schedule 7B of GoWA in a number of UK Parliament Acts, beginning with the European Union (Withdrawal) Act 2018
19. The addition of the carve out provision in this Bill is welcome, although it should have appeared on the face of the Bill in the initial stages of its passage through the UK Parliament. The inclusion of this provision in the Bill addresses our concerns about the Secretary of State being able to make regulations under the Bill in relation to those professions whose regulation is devolved and which are regulated separately in Wales. However, it would still require a Senedd Bill to remove the Secretary of State powers.
20. The extent of the concurrent powers within this Bill, and the intention of the UK Government to disregard the Sewel Convention and proceed with the Bill despite not securing legislative consent from any of the Devolved Governments, remain a serious concern.

Recommendation

21. I have made it clear to the UK Government that this Bill must be amended to require the UK Government to secure the consent of Devolved Governments before making regulations in devolved areas.

Despite securing this welcome amendment to the Bill, it does not go far enough to satisfy my significant concerns on the extent of the concurrent powers contained in the Bill. Therefore, I recommend the position should remain that the legislative consent of the Senedd for clause 16, as amended, is withheld.

Financial implications

22. The Bill primarily enables other legislation to be made, and therefore does not by itself trigger significant financial implications for Welsh Government.

Conclusion

23. As set out above, the legislative consent of the Senedd is required for the new clause and sub-clause 16 (7) of the Bill.

24. I cannot recommend the Senedd gives its consent to these provisions being included in the Bill on the basis of the amendments brought forward to date. We will continue to monitor the Bill's developments and update the Senedd as appropriate.

Jeremy Miles MS
Minister for Education and the Welsh Language
16 March 2022

Annex 1 – Government Amendments tabled on 22 February 2022 for consideration at House of Commons Report Stage on 14 March.

New Clause – “Consultation with devolved authorities”

(1) *Before making regulations under this Act, the Secretary of State or the Lord Chancellor must consult—*

(a) the Welsh Ministers, to the extent that the regulations contain provision which could also be made by the Welsh Ministers by virtue of section 16(2) (ignoring any requirement for the consent of a Minister of the Crown under section 16(5));

(b) the Scottish Ministers, to the extent that the regulations contain provision which could also be made by the Scottish Ministers by virtue of section 16(3);

(c) a Northern Ireland department, to the extent that the regulations contain provision which could also be made by a Northern Ireland department by virtue of section 16(4).

(2) *The Northern Ireland department which is to be consulted in accordance with subsection (1)(c) is such Northern Ireland department as the Secretary of State or (as the case may be) the Lord Chancellor considers appropriate having regard to the provision which is to be contained in the regulations concerned.*

(3) *Before making regulations under this Act in relation to which the Secretary of State or the Lord Chancellor has consulted a devolved authority (or more than one devolved authority) in accordance with subsection (1), the Secretary of State or (as the case may be) the Lord Chancellor must publish a report on the consultation.*

(4) *But the Secretary of State or (as the case may be) the Lord Chancellor may not*

publish the report unless either—

(a) the devolved authority concerned (or, if more than one, each of them) has agreed to the description included in the report for the purposes of subsection (5)(a), or

(b) there is no such agreement but the period of 30 days, beginning with the day on which a draft of the report was first sent to the devolved authority concerned (or, if more than one, the last of them), has expired.

(5) *The report on the consultation must include—*

(a) a description of—

(i) the process undertaken in order to comply with subsection (1), and

(ii) any agreement, objection or other views expressed as part of that process by the devolved authority (or devolved authorities) concerned, and

(b) an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State or (as the case may be) the Lord Chancellor proposes to make the

regulations despite an objection, an explanation of the reasons for doing so).

(6) The duty to consult in subsection (1) does not apply in relation to any revision of the regulations which arises from the consultation; and, for the purposes of subsection (4)(b), the draft report need not be identical to the published report for the period of 30 days to begin.

(7) In this section “devolved authority” means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department.”

Sub-clause 16 (7):

(7) In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—
(a) omit the “or” at the end of paragraph (vi), and
(b) after paragraph (vii) insert “; or
(viii) the Professional Qualifications Act 2022”.