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Llywodraeth Cymru
Welsh Government

Huw Irranca Davies MS
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Paul Davies MS
Chair, Economy, Trade, and Rural Affairs Committee
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17 March 2022

Dear Huw and Paul

I am writing to inform the Committees that the UK Government tabled two amendments to the Professional Qualifications Bill on 22 February which were agreed at House of Commons Report Stage on 14 March.

The amendments tabled by the UK Government make provision falling within the legislative competence of the Senedd, and yesterday I laid a [Supplementary Legislative Consent Memorandum \(Memorandum No.3\)](#) before the Senedd.

New Clause – Consultation with devolved authorities

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).

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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.

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.

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.

Sub-clause 16 (7)

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 (GOWA).

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.

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 EU (Withdrawal) Act 2018

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.

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.

Welsh Government position

The amendments do not go far enough to satisfy my significant concerns on the extent of the concurrent powers contained in the Bill. Therefore I cannot recommend the Senedd gives its consent to these provisions being included in the Bill.

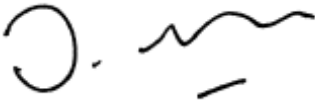
Legislative Consent Memorandum

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 8 March. The amendments raise a number of complex constitutional issues the analysis of which has resulted in a delay to laying.

Although we are continuing to make the views of the Senedd known to the UK Government, there is no further opportunity for the Senedd to hold a further meaningful debate to indicate its view in relation to this Bill and influence the outcome. Therefore, the Business Committee on 15 March agreed not to refer the Supplementary Legislative Consent Memorandum (Memorandum No.3) for scrutiny when laid.

I have copied this letter to all Members of the Senedd.

Yours sincerely,

A handwritten signature in black ink, consisting of a large '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