

The Rt Hon Michael Gove MP
Secretary of State for Levelling Up, Housing and
Communities and Minister for Intergovernmental
Relations

28 January 2022

Dear Michael

The Welsh Government's Legislative Consent Memoranda for UK Bills

By way of introduction, I chair the Senedd's Legislation, Justice and Constitution Committee. In addition to considering all primary and subordinate legislation laid before the Senedd, our broad remit places a responsibility on us to consider matters relating to devolution, the constitution, justice and external affairs.

A specific responsibility is to consider all Welsh Government legislative consent memoranda laid before the Senedd in relation to UK Bills being considered by the UK Parliament. In your role as Minister for Intergovernmental Relations you may be well aware that the number of UK Bills that are subject to consent memoranda has increased significantly in recent times when compared with previous Senedd terms.

To date in this Sixth Senedd, which you will know began last May, the Welsh Government has laid legislative consent memoranda in respect of 17 UK Bills. Today, we have laid before the Senedd our twentieth report on these matters, in respect of the Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Professional Qualifications Bill. It follows an earlier report on the Bill published in September 2021.

While our consideration of each legislative consent memorandum focuses on specific issues, the quantity of consent memoranda we have reported on within such a relatively short space of time has brought sharply into focus a number of key constitutional matters.

Our two reports on the legislative consent memoranda on the Professional Qualifications Bill highlight a range of issues. I would like to draw your attention to three of these issues, two of which we have found to be common across our scrutiny of consent memoranda for other UK Bills. So while this letter focuses on our consideration of the Professional Qualifications Bill as a key example, the matters we draw to your attention are not limited to this one Bill.

On that basis, we would therefore welcome your views on the following matters, given your responsibilities in the UK Government on matters relating to intergovernmental relations.

First, we are increasingly concerned by the number of UK Bills that include concurrent regulation-making powers – powers that may be exercised by either the Welsh Ministers or the Secretary of State in devolved

areas – and the implications this has on government accountability to, and scrutiny by, the relevant legislatures, and on the devolution settlement itself.

A UK Government Minister exercising such powers for Wales in a devolved area, without a role for the legislature (or, in certain circumstances, government) in Wales, is an unnecessary and unwelcome delegation of power, and blurs an already confused picture of government accountability.

The Minister for Education and Welsh Language, Jeremy Miles MS, informed us that “the UK Government has refused to remove the concurrent powers given to the Secretary of State and Lord Chancellor” which appear in clause 1 of the Professional Qualifications Bill. While we disagree with the Minister’s preferred mechanism for attempting to resolve this impasse – by requesting that the Bill be amended to provide the Welsh Ministers and not the Senedd with a role in consenting to such regulations before they may be made – we do acknowledge that the Minister has made attempts to work across the intergovernmental divide.

We share the Minister’s concerns regarding the inclusion of concurrent powers in the Bill. Our concerns apply equally to the presence of all such concurrent powers in UK Bills.

Secondly, the Professional Qualifications Bill is, unfortunately, just one of a number of Bills that as currently drafted would permit – through a combination of concurrent functions and Henry VIII powers – the Secretary of State or the Lord Chancellor to amend not only Senedd Acts but, of even greater concern, the *Government of Wales Act 2006*. We do not consider this to be acceptable.

We are aware that the Minister has written to Lord Grimstone and sought an amendment to the Professional Qualifications Bill to the effect that the powers in the Bill cannot be used by UK Ministers to make regulations that amend the 2006 Act. We strongly support this position.

This is not the only UK Bill introduced into the UK Parliament that would permit such regulations to be made. On occasion, the Welsh Government has been successful in negotiating amendments as described above. We believe that such regulation-making powers should not become an automatic feature when Bills are drafted by the UK Government.

I would also like to draw your attention to a third issue, that is specific to clause 16 of the Professional Qualifications Bill, which the Minister described to us as including a “restriction unique to the Welsh Ministers powers”.

The Minister has recently informed us that his own concerns with this clause have been addressed. However, in the absence of further information or evidence of changes to the face of the Bill, it remains our view that the clause as drafted will mean that the Welsh Ministers will require Minister of the Crown consent for any regulations containing provisions which, if contained in an Act of the Senedd, would require Minister of the Crown consent. Under Schedule 7B to the 2006 Act, once a regulation-making power has been given via an Act of the Senedd with Minister of the Crown consent, that power can be exercised by the Welsh Ministers without the limitation of again seeking Minister of the Crown consent to the content of the regulations. Therefore, in our view, clause 16(5) Professional Qualifications Bill is an unusual and unwelcome power to be included in a Bill.

I look forward to receiving a response from you at the earliest opportunity which addresses the points described above.

We recognise that in future these matters may be resolved in line with the final package of reforms announced following the [Review of Intergovernmental Relations](#). As regards that Review, given your Ministerial responsibility in these areas, you would be welcome to attend a future meeting to discuss such matters further

and/or any other matter relevant to our respective responsibilities. We would see such a meeting as part of an ongoing constructive dialogue between the various bodies within the UK's constitutional framework.

I am copying this letter to The Lord Grimstone of Boscobel Kt; Kwasi Kwarteng MP, the Secretary of State for Business, Energy and Industrial Strategy; the Rt Hon Simon Hart MP, the Secretary of State for Wales; and the Minister for Education and Welsh Language. I am also copying the letter to the Chairs of the House of Lords Constitution Committee, the House of Lords Delegated Powers and Regulatory Reform Committee, and the House of Commons Public Administration and Constitutional Affairs Committee.

Yours sincerely,

Huw Irranca-Davies

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Chair

