

Report on the Supplementary Legislative Consent Memorandum (No. 2) for the Professional Qualifications Bill

February 2022

Introduction

1. The Welsh Government laid a [Legislative Consent Memorandum \(LCM\)](#) (PDF 155KB) on the Professional Qualifications Bill before the Senedd on 17 June 2021. The Economy, Trade and Rural Affairs Committee considered that original LCM at its meeting on [16 September 2021](#) and laid its [report](#) (PDF 120KB) on 28 September 2021. The Legislative Consent Motion for the Bill was debated in Plenary on 5 October 2021 and was not agreed.

2. The [Supplementary Legislative Consent Memorandum \(Memorandum No.2\)](#) (SLCM) (PDF 130KB), which is the subject of this report, was then laid on 6 December 2021. The [Business Committee](#) referred the SLCM to the [Economy, Trade and Rural Affairs Committee](#) and the [Legislation, Justice and Constitution Committee](#) on 7 December 2021, with a [reporting deadline of 10 February 2022](#) (PDF 39.5KB).

Background

3. The Professional Qualifications Bill was introduced to the House of Lords on 12 May 2021. It is sponsored by the Department for Business, Energy and Industrial Strategy (BEIS). The Bill's provisions would end the UK's post-Brexit interim system for recognition of professional qualifications. Those interim arrangements were derived from EU retained legislation.

4. The Bill establishes a new framework for the UK to recognise the professional qualifications and experience of individuals who qualified in other countries. This enables them to work in the



UK without having to requalify and reduces the administrative processes involved in doing so. The Bill also takes steps to reform regulator practices. The Bill applies to around 160 regulated professions in the UK across more than 50 regulators: examples include nurses, doctors, dentists, vets, teachers and social workers.

5. An overview of the Bill as introduced can be found in the Committee's report on the earlier LCM. That LCM stated that it is proposed that the new framework will:

"...set high level expectations within which regulators will retain autonomy to work in the interests of their professions and devolved administrations", and that it "will equip the UK Government, devolved administrations and regulators with the tools to put in place recognition routes that meet the demands of individual professions in different parts of the UK. This will include the ability to attract highly skilled talent from around the world to practice in the UK and to pursue reciprocal arrangements with counterparts from other countries."

Welsh Government position on the Bill as amended - policy concerns

6. The Committee's report on the original LCM noted the Welsh Government's wide range of policy concerns arising from this Bill "pertaining to a failure to clearly define scope, proportionality, duplication and additional burdens put on devolved regulators."

7. The Committee's report asked Welsh Government for more information on the Bill's implications in Wales, including: impact on regulated professions; ability to assess demand for certain professions; the scope and application of the Bill, e.g. to further education; discussions with the UK Government and with regulators; and implications for how the framework interacts with other post-Brexit arrangements, such as the UK Internal Market Act 2020, the new immigration system and future international agreements.

8. The Minister for Education and Welsh Language responded to the Committee on 4 October 2021, and wrote to the Committee again on 6 December 2021 when the SLCM was laid.

9. The SLCM and Ministerial correspondence describes continued uncertainty surrounding the Bill's scope, and impact on devolved regulators and professions. The Minister's earlier letter of 4 October highlighted concerns raised by the devolved regulators, Education Workforce Council and Social Care Wales, which question whether the legislation is necessary and have expressed concerns around what might happen if the UK Government legislates in areas within their responsibilities and remits.

10. With regard to the possible future impact on Welsh regulators, the Minister's letter to the Committee of 4 October stated that:

"Both the Education Workforce Council (EWC) and Social Care Wales (SCW) already have powers enshrined by Welsh Ministers in Welsh legislation to recognise international qualifications and determine whether they are equivalent to UK qualifications, and to enter into regulator recognition agreements, so would not need to use the power provided through this Bill.

"However, the same may not be true for professions which are devolved but not currently subject to any existing Welsh regulation, and it is unclear quite what the impact would be on these professions.

"The impact on regulators of the requirement to cooperate with the assistance centre remains uncertain as there is not sufficient detail in the Bill, nor in any guidance released to date, to be able to properly quantify impact.

"In relation to the range of teaching and social care professions that are regulated by EWC and SCW, there could be significant impact depending on how UK Government ministers utilise the powers under the Bill as currently drafted. Although we have had assurance that the UK Government does not intend to use the concurrent powers in the areas of devolved competence without the agreement of the relevant Devolved Governments, this commitment does not feature in the Bill, and as such offers comfort only for as long as the current UK Government decides to abide by it. It remains a significant cause for concern that the powers in the Bill could be used to overturn Welsh Government policy and primary legislation made by the Senedd in a devolved area."

11. Amendments made to the Bill which are the subject of this SLCM appear not to address the Welsh Government's concerns identified in its original LCM, such as how the Bill "strays into areas that are usually excluded from free trade agreements and associated negotiations - e.g. state funded education". The Minister's letter of 4 October concluded that:

"The Welsh Government is deeply concerned that this Bill could be used to facilitate trade deals that in future could encompass a range of professions, undermining the role of our workforce regulators, the standards we set for these professions, and undermining qualification and registration requirements because of the desire to secure trade deals."

12. The Minister's response to the Committee described possible effects of other post-Brexit domestic arrangements on the operation of the Bill, including the UK's new immigration system and professional recognition provisions contained in the UK Internal Market Act 2020. The Welsh Government advises that meeting the requirements of the UK's new immigration system is "likely to be a more significant factor" than the recognition of professional qualifications for both teachers and the social care workforce. The Minister's letter of 4 October pointed to additional application and visa costs which may impact on ease of entry for international teachers, and that only certain teaching subjects (e.g. physics, mathematics) are on the Shortage Occupation List.

13. In his most recent correspondence with the Committee regarding the SLCM, the Minister does not provide an update on his policy concerns as detailed in the original LCM or his letter of 4 October, but states that:

"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."

14. The Minister has also noted that further SLCMs may be necessary, and that he will write to Members should that be the case.

Provisions for which consent is sought

15. The Delegated Powers Memorandum for the Bill acknowledges that

*The **regulation of professions** and therefore the recognition of overseas professionals is a mixture of reserved and devolved competence, dependent on the profession.*

16. The Senedd is competent to legislate in relation to the regulation of professions unless the regulation of a profession is a reserved matter or relates to a reserved matter. The regulation of the professions of architect, auditor, veterinary surgeon, and the health and legal professions are specifically reserved.

17. The Supplementary LCM relates to UK Government amendments agreed at the House of Lords report stage on 9 November 2021. Clause 1 has been amended, and additional clauses 14 and 15 added. As stated in the Minister's letter of 6 December, all three clauses make provision of a kind that the Senedd could legislate for in respect of devolved areas, and remain within the legislative competence of the Senedd.

Clause 1(4)

18. Clause 1 provides a power for the “appropriate national authority” (defined in clause 16 of the Bill as amended as the Secretary of State (or the Lord Chancellor), Scottish Ministers, Welsh Ministers or Northern Ireland Departments, depending on whether a regulated profession falls within devolved competence). The power is to make regulations that require specified regulators to consider and assess whether qualifications and experience gained outside of the UK should be treated as if they were a specified UK qualification for the purposes of making a decision on whether an individual is entitled to practise a regulated profession.

19. Clause 1(4) is a new subclause which has a twofold effect:

- firstly, it relates to the power in clause 1(1) to specify conditions, in addition to those on the face of the Bill in clauses 1(2) and 1(3), which must be met for individuals to be treated as if they have a specified UK qualification or experience. Clause 1(4)(a) states that such conditions do not have to be connected to the UK qualification or experience in question; and
- secondly, it relates to the conditions which are on the face of the Bill in clauses 1(2) and 1(3), and states that where a regulator makes a determination that a person does or does not have, as the case may be, substantially the same knowledge or experience as the UK qualification or experience demands, such determination can only be made on the basis of the overseas qualification or experience obtained or on such other basis as the regulator considers appropriate.

20. The SLCM states that the Welsh Government remains opposed to clause 1 as a whole as the UK Government refuses to remove the concurrent powers given to the Secretary of State and Lord Chancellor in this clause to regulate in relation to Wales in areas which are devolved. It goes on to say:

“In an effort to be constructive, officials have indicated to the UK Government on several occasions that I may be prepared to recommend consent for this Bill, including clause 1, if an amendment is made 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. However, the UK Government has not been prepared to make any such amendment.”

Clause 14 - Protection of regulator autonomy

21. This new clause provides that before regulations are made under clauses 1, 3 or 4 of the Bill, the following conditions must be met:

- the regulations must not remove the ability of any regulator of a regulated profession to prevent individuals who are unfit to practise the profession from doing so; and
- the regulations will not have a material adverse effect on any regulated profession in terms of the knowledge, skills or experience of the individuals practising it.

22. The SLCM states that this clause has been added to provide assurances to regulators that the appropriate national authority may legislate only where doing so would not adversely affect regulatory autonomy. The clause will apply to the Welsh Ministers whenever they make regulations under clauses 1, 3 or 4 of the Bill. The Minister's letter of 6 December notes that:

"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."

Clause 15 - Consultation with regulators

23. This new clause provides that before regulations are made under clauses 1, 3 or 4 of the Bill, any regulator who is likely to be affected by the regulations must be consulted, or consultation must take place with a regulator if it is otherwise appropriate to do so.

24. With regard to clauses 14 and 15, the Welsh Government emphasises that the clauses apply equally to each of the national authorities, including the Welsh Ministers where appropriate, but that they do not prevent the Secretary of State or the Lord Chancellor from making regulations in devolved areas which are contrary to the policy aims of the Welsh Ministers:

"As the Welsh Government is opposed to the use of concurrent powers in the Bill, it does not recommend that the Senedd give its consent to clauses 1, 14 or 15 of the Bill."

Clause 16(5) - Update on aligning legislative and executive competence

25. The SLCM also provides an update on previous concerns relating to Welsh Government executive competence as an "appropriate national authority", that have been addressed by UK Government in relation to what is now clause 16(5) of the Bill (formerly clause 14(5)). Paragraph 10 of the SLCM states:

"...The UK Government has made it clear that the effect of clause 16(5) is to extend the Welsh Ministers' executive competence as far as the Senedd's legislative competence, including the ability to make regulations which modify the functions of reserved authorities with UK Government consent, but no further. We accept this position, and also accept that clause 16(2) and clause 16(5) together have the effect of aligning legislative and executive competence in this way."

26. However, no further information is provided as to the nature of the assurances given, and they are not reflected on the face of the Bill.

Financial Implications

27. The Committee's report on the original LCM noted Welsh Government concerns that the Bill will impose an additional administrative and financial burden on Welsh devolved regulators that will impact on Welsh Government budget considerations.

28. The LCM stated: *"UK Government has specifically stated that the financial impacts are minimal and it is not willing to cover any costs arising from the content of this Bill."* It went on *"BEIS estimates a total cost across the UK of around £90,000 in transitional costs which could apply across affected regulators."* The original LCM also stated that *"due to the small number of overseas applicants applying to work in Wales, our devolved regulators could be compelled by this Bill to put in place onerous processes with no direct benefit. Both these issues could ultimately impact on costs for the Welsh Government."*

29. It appears that concerns about the possible financial implications remain strong, including costs arising "indirectly" from the Bill. Paragraphs 21 to 23 of the Supplementary LCM states that:

"21. It remains the position that clauses 1, 14 and 15 could have financial implications for regulators if and when the provisions in the Bill are enacted by regulations."

"22. There are financial implications arising indirectly from this Bill. If the provisions in the Bill mean that regulators have to commit additional spend to comply, the costs for that spend will ultimately be the responsibility of the Welsh Government through the funding arrangements in place with the devolved regulators. The extent of these costs is currently unknown."

"23. The UK Government has established a pilot Recognition Arrangements Grant scheme for UK regulatory and professional bodies for professions within the professional and business services sector to support costs of"

acquiring technical support in preparing for or negotiating a recognition arrangement. This scheme will only cover certain costs incurred until 31 March 2022. There is no indication that UK Government will extend this scheme, or provide any other financial assistance to all regulatory bodies to cover anticipated costs of implementing the Bill."

Provisions for Wales in a UK Bill

30. The Welsh Government has previously stated that it is unconvinced that the majority of the measures contained in the Bill are necessary. It has said it is "*not opposed to the principle of recognising international qualifications and experience gained overseas*", but "*considers the concurrent powers contained in the Bill undermine the long-established powers of the Senedd and the Welsh Ministers to regulate in relation to matters within devolved competence*". As noted in paragraph 9 above, regulators have expressed concerns about this aspect of the Bill.

Committee View

31. The Committee agrees that the matters contained within Clause 1(4), Clause 14 and Clause 15 of the Bill fall within any purpose within the legislative competence of the Senedd, and therefore that the consent of the Senedd is required for these clauses.

32. The Committee would welcome further information from Welsh Government as to how the UK Government has made its position clear in relation to clause 16(5) of the Bill (Paragraphs 25-26 above) and asks that copies of any correspondence in relation to this point be provided.

33. The Committee notes from the SLCM and correspondence from the Minister for Education and Welsh Language that, despite engagement between the two governments and amendments to the Bill, concerns remain regarding powers, policy matters, and financial implications. The Committee also notes the Minister's expectation that further SLCMs may follow, and welcomes his intention to keep all Members updated on developments. However, in the interim the Committee would welcome a further update from the Minister regarding the policy concerns as set out in the original LCM and in the Minister's letter of 4 October.

34. In advance of that information being provided, the Committee is not in a position to make a recommendation as to whether or not the Senedd should agree to a Legislative Consent Motion associated with this Supplementary Legislative Consent Memorandum.