

LEGISLATIVE CONSENT MEMORANDUM

Professional Qualifications Bill

1. This 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 in the House of Lords on 12 May 2021 and commenced Lords Committee stage on 9 June 2021. The Bill can be found at: <https://bills.parliament.uk/bills/2865>.

Policy Objective(s)

3. The UK Government’s policy objectives 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>
4. In summary, the UK Government is proposing a new framework for the recognition of professional qualifications and regulation of professions.
5. It is proposed that the framework will set high level expectations within which regulators will retain autonomy to work in the interests of their professions and devolved administrations.
6. It is proposed that the new recognition framework 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.
7. The proposals will make sure professions can access the talent they need from all countries and support UK professionals to take advantage of the opportunities of global trade.
8. The proposals are part of the UK Government’s wider ambitions for regulated professions, including to:
 - Ensure that the way we recognise qualifications from other countries is fair, complements the needs of the UK workforce and maintains high levels of quality and consumer protection.
 - Promote a regulatory environment that supports jobs, social mobility and access to professions for individuals from all backgrounds.
 - Ensure the regulation of professions is innovative, adaptive, proportionate; and meets the needs of consumers as well as protects public safety.

- Strengthen the UK's ability to negotiate international trade agreements on recognition of qualifications

Summary of the Bill

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

Provisions in the Bill for which consent is required

11. 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. As the purpose of clauses 1 to 10 is to regulate professions, and in the case of clause 3, involves the implementation of international obligations in respect of devolved professions, it is therefore considered that those clauses make provision for a purpose within the legislative competence of the Senedd and the consent of the Senedd is required under SO 29.1(i). Further analysis of clauses 1 to 10 is set out below:

Clause 1: Power to provide for individuals to be treated as having UK qualifications.

12. This clause confers power on the appropriate national authority (defined in clause 14 as the Secretary of State (or the Lord Chancellor), Scottish Ministers, Welsh Ministers or Northern Ireland Departments), 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. A regulator may cover the whole of the UK or a part of it. 'Regulated profession' refers to a profession where, by reason of legislation, individuals are entitled to practise only if they have specified qualifications or experience (or meet an alternative condition or requirement).

Clause 2: Power conferred by section 1 exercisable only if necessary to meet demand.

12. This clause provides that regulations can be made under clause 1 only if the appropriate national authority is satisfied that it is necessary to do so to meet the demand for the services provided by that profession in the UK, or the part of it to which the regulations relate, without unreasonable delays or charges. This does not apply to regulations made under clause 1 in so far as they are modifying earlier regulations under that clause, as long as they do not also add further professions into those regulations.

Clause 3: Implementation of international recognition agreements.

13. This clause confers the power on the appropriate national authority to make regulations to implement any parts of international agreements that the UK has entered into that relate to the recognition of professional qualifications. Subsection (4) provides that "international recognition agreement", refers only to the portions of international agreements relating to the recognition of overseas qualifications or experience. Regulations made under this Clause may deal with; conferring functions on a person, the sharing of information and provisions to charge fees.

14. Subsection (5) of this clause provides further clarification on the provisions that can be implemented under this power, noting that modifications and amendments to the UK's international agreements (as long as they are made in line with the provisions of the original agreement) can be implemented through this power.

15. This power can be used to implement international agreements in devolved areas relating to the recognition of overseas qualifications or experience.

Clause 4: Authorisation to enter into regulator recognition agreements.

16. This clause enables the appropriate national authority to make regulations to authorise the regulators of regulated professions to enter into regulator recognition agreements. A regulator recognition agreement is an agreement

between a UK regulator and an international counterpart on the recognition of professional qualifications.

Clause 5: Revocation of general EU system of recognition of overseas qualifications

17. This clause revokes the European Union (Recognition of Professional Qualifications) Regulations 2015 (S.I. 2015/2059) which provided a general system of recognition for qualifications from the EEA and Switzerland. Subsection (2) enables the “appropriate national authority” to modify legislation which falls under devolved competence for regulated professions, as a consequence of revoking the 2015 Regulations in subsection (1).

Clause 6: Revocation of other retained EU recognition law

18. This clause gives the “appropriate national authority” the power to make regulations modifying “retained EU recognition law” so that it ceases to have effect. This will enable regulations to be made to revoke legislation for professions outside the scope of the 2015 Regulations, but which are still part of the broader EU-derived qualification recognition framework.

Clause 7: Assistance Centre.

19. Subsection (1) places an obligation on the Secretary of State to ensure there is a designated person (the assistance centre) which provides advice and assistance to individuals who wish to gain recognition in, and practise in, a regulated profession in the UK, and to other persons as the Secretary of State considers appropriate. Subsection (2) places an obligation on regulators of professions in the UK to, when requested, provide the designated assistance centre with information. Subsection (3) places an obligation on the assistance centre to, when requested, provide the Secretary of State with information.

20. Subsections (2) and (3) of this clause place an obligation on regulators of professions in the UK to, when requested, provide the designated assistance centre / SoS with information. To the extent that these requests would relate to the regulation of professions, the Senedd would be competent to make similar provision unless it relates to the regulation of a profession which is a reserved matter or relates to a reserved matter.

Clause 8: Duty of regulator to publish information on requirements to practise.

21. This clause requires regulators to publish information about the requirements they place on individuals to enter or remain in their profession. This is a new transparency duty.

22. The clause sets out the information that regulators must publish. The information must be published on the regulators public website.

Clause 9: Duty of regulator to provide information to regulator in another part of the UK.

23. This Clause places a duty on regulators who operate in one or more of the four UK nations to share information, when requested, with their counterpart in another part of the UK (if such a regulator exists). This information must relate to an individual's entitlement to practise that profession. For example, a regulator in one part of the UK could ask an equivalent regulator in another part of the UK for information relating to an individual's fitness to practise and, where applicable, any instances of professional sanctions. This provision ensures that regulators in all parts of the UK have access to information that helps them fulfil their obligations.

Clause 10: Duty of a regulator to provide information to overseas regulator.

24. This Clause imposes a duty on regulators to assist individuals who are or have been entitled to practise the relevant profession in the UK, by providing information to overseas regulators. This information is to enable those overseas regulators to determine that individual's entitlement to practise in the overseas regulator's country or territory.

Clauses 12 to 19 – Final Provisions

25. These clauses make provision for Crown application, the scope of the regulation making powers, the authority by whom regulations may be made, parliamentary procedure for making regulations, interpretation, extent, commencements and short title.

26. In addition to clauses 1 to 10, a Senedd Act which made provision for those matters which are within the Senedd's legislative competence could make final provisions which would replicate the effect of clauses 12 to 19 in relation to such provision. Consequently, it is considered that the consent of the Senedd is also required for these provisions under SO 29.1(i).

Senedd procedure for making regulations

27. The Bill will confer powers on the Welsh Ministers to make regulations under clauses 1, 3, 4, 5(2), 6, 8(2)(j) and 10(4).

28. The procedure which applies to the making of regulations under the Act is set out in clause 15(1) and (2):

(1) Regulations under this Act are subject to the affirmative resolution procedure where they contain provision amending, repealing or revoking primary legislation or retained direct principal EU legislation.

(2) Otherwise, regulations under this Act are subject to the negative resolution procedure

29. It is only regulations under clause 1, 3, 4, 5(2) and 6 that can amend, repeal or revoke primary legislation or retained direct principal EU legislation

Reasons for making these provisions for Wales in the Professional Qualifications Bill

30. The Welsh Government is unconvinced that the majority of the measures contained in this Bill are necessary. The Welsh Government 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.

Welsh Government position on the Bill as introduced

31. The Welsh Government will not be able to recommend to the Senedd that it gives consent to the Bill as introduced on 12 May 2021. The Welsh Government's objections are categorised as follows:

(i) Creation of concurrent regulation-making powers

32. The way "appropriate national authority" is defined in section 14 of the Bill means that the powers of the Welsh Ministers (along with those of the other devolved governments) are exercisable concurrently by Secretary of State or the Lord Chancellor. This means that the Secretary of State or Lord Chancellor could make provision, through regulations, in relation to matters falling within devolved competence.

33. In addition, clause 13 of the Bill contains provisions which mean that the powers to make regulations conferred by clauses 1 - 6 include the power to modify primary legislation (such as UK Acts of Parliament and Senedd Acts) as well as secondary legislation.

34. The combination of concurrent functions and Henry VIII powers means that the Secretary of State could potentially exercise these regulation-making powers to amend Senedd Acts and regulations made by Welsh Ministers.

35. While the UK Government has stated that it "*does not intend to use the concurrent powers in the areas of devolved competence without the agreement of the relevant DAs*", the provisions in the Bill do not reflect this and the Secretary of State and Lord Chancellor would be able to exercise these powers in devolved areas without requiring any consent from the Welsh Ministers.

(ii) Restrictions on the exercise of the regulation-making powers conferred on the Welsh Ministers

36. Clause 14(5) of the Bill requires the Welsh Ministers, when exercising the regulation making powers in the Bill to obtain the consent of a Minister of the Crown when such regulations would, if made in an Act of the Senedd require Minister of the Crown consent under Schedule 7B to GOWA 2006. This effectively imports the restrictions imposed by paragraphs 8 – 11 of Schedule 7B to GOWA 2006 into the regulation-making process. This is a restriction unique to

the Welsh Ministers powers – Scottish and Northern Irish Ministers are not subject to a corresponding restriction.

37. Practically, this means that the Welsh Ministers would, when making regulations using the powers conferred by this Bill, need to obtain the consent of a Minister of the Crown in certain circumstances, including where (for example) the regulations modified or removed a function exercisable by a reserved authority. Further, the removal of this provision via a future Act of the Senedd would also engage the Minister of the Crown consent requirements.

Policy concerns

38. Apart from the concern on the impact of the concurrent functions on both current and future policy space, there are a range of other policy concerns arising from this Bill pertaining to scope, proportionality, duplication and additional burdens put on devolved regulators.

- **Scope** – the definition used in the Bill fails to clearly define scope. For example UK Government has been unable to advise Welsh officials on whether further education is within scope of this Bill or not.
- In addition the link made by UK Government between the provision of tradable services and the provision of services delivered under governmental authority - e.g. state funded education - means the Bill strays into areas that are usually excluded from free trade agreements and associated negotiations - e.g. state funded education.
- **Linking of professional qualifications to trade policy** – More broadly the link between professional qualifications and trade policy, which is considered reserved by UK Government, whilst acknowledging that devolved governments do have a role in implementation, reduces Welsh Minister's powers further since decisions could be badged as 'trade' rather than 'professional qualification' decisions and imposed on Wales in contravention of the Sewel Convention. Whilst assurances from UK Government Ministers and published guidance state this is not the intention, this is a clear risk due to the drafting of this Bill.
- **Financial and other resource implications** - The financial implication is that the Professional Qualifications Bill will impose an additional administrative and financial burden on Welsh devolved regulators, a financial implication that in both cases will impact on Welsh Government budget considerations. 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. In addition, 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.

Financial implications

39. The Bill primarily enables other legislation to be made, and therefore does not by itself trigger significant financial implications. The costs for regulators from the majority of the Bill provisions will only arise if and when enacted by regulations. The UK Government Impact Assessment includes estimates of potential costs and benefits. BEIS estimates a total cost across the UK of around £90,000 in transitional costs which could apply across affected regulators.
40. There are financial implications arising indirectly from this Bill. The extent of these costs is currently unknown. Until the Bill and associated secondary legislation is implemented the extent of additional financial burden on the devolved regulators will be impossible to ascertain.

Conclusion

41. As set out above, the Senedd's consent is required for clauses 1 to 10 and 12 to 19 of the Professional Qualifications Bill. But the Welsh Government will not be in a position to recommend that consent be given unless the Bill is substantially amended to address our significant concerns.

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17 June 2021