

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

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. On 2 November 2021 the UK Government tabled three amendments for consideration at House of Lords Report stage. These amendments make provisions falling within the legislative competence of the Senedd. These amendments were agreed at Lords Report stage on 9 November 2021.
3. Consideration of the Bill by the House of Commons commenced on 18 November 2021. The Bill, as amended during House of Lords Report Stage, can be found at: <https://bills.parliament.uk/bills/2865>.

Policy Objective(s)

4. 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>
5. 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 or part of the UK.

Summary of the Bill

6. The Bill is sponsored by the Department for Business, Energy and Industrial Strategy (BEIS).
7. 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 first Legislative Consent Memorandum

- 8. I laid a Legislative Consent Memorandum on 17 June 2021, based on the Bill as introduced into Parliament. The Memorandum confirmed that the Welsh Government is not opposed to the principle of recognising international qualifications and experience gained overseas, but considers that 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. The Memorandum set out details of the Welsh Government's significant concerns with the Bill as introduced and concluded that the Welsh Government would not be in a position to recommend that the Senedd gives its consent unless the Bill was substantially amended to address those concerns.
- 9. 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 36 of the initial Memorandum.
- 10. However, my previous concerns about the inclusion of what is now clause 16(5) of the Bill (formerly clause 14(5)) have now been addressed by the UK Government. 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.

How this supplementary memorandum differs from the first memorandum.

11. The UK Government has made amendments to Clause 1 of the Bill as introduced and inserted additional clauses 14 and 15, as agreed at the House of Lords Report Stage on 9 November. This Supplementary Legislative Consent Memorandum sets out my position on these amendments.

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

12. Sub-clause 1(4):

(4) For the purposes of subsections (1) to (3)—

(a) a condition may be specified under subsection (1) whether or not it is connected to the specified UK qualification or specified UK experience concerned, and

(b) a determination mentioned in subsection (2)(b) or (3)(b)(i) may be made—

(i) on the basis only of the overseas qualifications or overseas experience concerned, or

(ii) on such other basis as the specified regulator considers appropriate (such as on the basis of the overseas qualifications or overseas experience concerned together with the results of any test or other assessment given by any person).

13. Welsh Government Position

Clause 1 provides a power for the “appropriate national authority” to provide by regulations which professional qualifications or other experience obtained outside the UK may be recognised within the UK. Regulations may only make provision for individuals who satisfy the criteria specified in this clause, namely that they have received overseas qualifications or experience (sub-clauses (2)(a) and (3)(a)); and that a regulator has determined their qualifications or experience is substantially the same as that required by the regulator or, if not, that they have taken such other experience or qualifications as necessary (sub-clauses (2)(b) and (3)(b)(i)).

The amendment to this clause makes provision of a kind that the Senedd could legislate for in respect of devolved areas, and therefore this clause remains within the legislative competence of Senedd Cymru. The amendment makes further provision about the additional conditions that may be specified in regulations made under subsection (1) of the clause and makes provision about the basis on which a determination mentioned in subsection (2)(b) or (3)(b)(i) of the clause may be made.

14. Recommendation

I remain opposed to clause 1 of the Bill as, despite my ongoing opposition, the UK Government has refused 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. 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.

I therefore recommend that the legislative consent of the Senedd for clause 1, as amended, is withheld.

15. Clause 14 - Protection of regulator autonomy

(1) The appropriate national authority may make regulations under section 1, 3 or 4 only if satisfied that the conditions in subsections (2) and (3) are met.

(2) The condition in this subsection is that the regulations do not remove the ability of any regulator of a regulated profession to prevent individuals who are unfit to practise the profession from doing so.

(3) The condition in this subsection is that 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.

(4) The reference in subsection (2) to individuals who are unfit to practise the profession is a reference to individuals who are unfit to practise the profession by reason of their character, a lack of knowledge, skills or experience or otherwise.

(5) A reference in this section to practising a profession includes a reference to undertaking activities that comprise the practise of the profession or using a title associated with the practise of the profession.

16. Welsh Government Position

This new clause makes provision of a kind that the Senedd could legislate for in respect of devolved areas, and therefore this clause remains within the legislative competence of Senedd Cymru.

This clause prevents the appropriate national authority making regulations under section 1, 3 or 4 of the Bill unless satisfied that the conditions in subsections (2) and (3) of new clause 14 are met. This clause has been added to provide assurance to regulators that the appropriate national authority may legislate only where doing so would not adversely affect regulatory autonomy.

Whilst the amendment may offer some comfort to regulators, the difficulty remains that it is for the appropriate national authority alone to determine whether or not it is satisfied that either of these conditions are met, and that this is not for each individual regulator to determine.

This amendment applies equally to each of the appropriate national authorities, including the Welsh Ministers where applicable. This means that where the Secretary of State or Lord Chancellor are acting as the authority, they have the power to determine that the additional conditions are met, even when regulating in devolved areas which are contrary to the policy aims of Welsh regulators or the Welsh Ministers.

17. Recommendation

As I remain opposed to the concurrent powers in the Bill, I recommend that the legislative consent of the Senedd for this clause 14, which relates to the concurrent regulation making powers under clauses 1, 3 and 4 of the Bill, is withheld.

18. Clause 15 - Consultation with regulators

Before making regulations under section 1, 3 or 4, the appropriate national authority must consult a regulator of a regulated profession if the authority considers that—

(a) the regulator is likely to be affected by the regulations, or

(b) it is otherwise appropriate to consult the regulator.

19. Welsh Government Position

This new clause makes provision of a kind that the Senedd could legislate for in respect of devolved areas, and therefore this clause is within the legislative competence of Senedd Cymru.

This clause requires the appropriate national authority to consult a regulator of a regulated profession before making regulations under clause 1, 3 or 4 if the authority considers that the regulator is likely to be affected by the regulations or it is otherwise appropriate to consult the regulator. 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.

This amendment applies equally to each of the appropriate national authorities, including the Welsh Ministers where applicable. However, the amendment does not prevent the Secretary of State or Lord Chancellor, when acting as the authority, from making regulations in devolved areas which are contrary to the policy aims of Welsh regulators or the Welsh Ministers.

20. Recommendation

Again, as I remain opposed to the concurrent powers in the Bill, I recommend that the legislative consent of the Senedd for this clause 15, which relates to the exercise of the concurrent regulation making powers under clauses 1, 3 and 4 of the Bill, is withheld.

Financial implications

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.

Conclusion

24. As set out above, the legislative consent of the Senedd is required for clauses 1, 14 and 15 of the Professional Qualifications Bill. 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.
25. 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
6 December 2021