

Report on the Legislative Consent Memorandum for the Professional Qualifications Bill

September 2021

Introduction

1. The Welsh Government laid a [Legislative Consent Memorandum \(LCM\)](#) (PDF 155KB) on the Bill before the Senedd on 17 June 2021. The [Business Committee](#) referred the LCM to the [Economy, Trade and Rural Affairs Committee](#) and the [Legislation, Justice and Constitution Committee](#), with a [reporting deadline of 30 September 2021](#). (PDF 42KB). The Economy, Trade and Rural Affairs Committee (ETRA) considered the LCM at its meeting on [16 September 2021](#).

Background

2. The Professional Qualifications Bill was introduced to the House of Lords on 12 May 2021 and is at report stage. It is sponsored by the Department for Business, Energy and Industrial Strategy (BEIS). In accordance with Standing Order 29.2(i) Welsh Government is required to lay an LCM “normally no more than 2 weeks after introduction”. On this occasion the LCM was laid 5 weeks after introduction, on 17 June. ETRA’s first meeting was on 15 July, followed by summer recess, with 16 September being the first opportunity for the Committee to formally consider the LCM.

3. The Bill’s provisions would end the UK’s post-Brexit interim system for professional qualifications that derives from the UK’s membership of the EU. The system of automatic ‘mutual recognition’ of professional qualifications (or “MRPQ”) no longer applies to the UK since its withdrawal from the EU. Since then the UK has used interim arrangements derived from EU retained legislation. People from the UK wishing to work in the EU must meet the qualification requirements of the EU Member State where they want to work.



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 of regulated professional roles include nurses, doctors, dentists, vets, teachers and social workers.

5. The Legislative Consent Memorandum for the Bill states that 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”, 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.”

Overview of the Bill

6. The Bill consists of 19 clauses. The LCM laid by Welsh Government sets out further detail on all clauses of the Bill. In summary, in addition to creating a new framework for recognising professional qualifications, the Bill enables the UK Government to implement international agreements or parts of international agreements that the UK agrees with other countries or organisations insofar as they relate to the recognition of professional qualifications.

7. The Bill also enables the UK Government to provide UK regulators with powers to enter into agreements with overseas regulators to recognise professional qualifications.

8. There is provision in the Bill to maintain a designated ‘Assistance Centre’ with which regulators must cooperate, to provide advice and guidance to the public. The Bill’s provisions also 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. Regulators of professions in all parts of the UK will also be required to publish information on the entry and practice requirements of their profession, and where requested, to provide certain information to counterpart regulators in other parts of the UK.

9. The Bill also seeks to 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.

Provisions for which consent is sought

10. 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.

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. The regulation of the professions of architect, auditor, veterinary surgeon, and the health and legal professions are specifically reserved.

12. 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).

13. Welsh Government's Legislative Consent Memorandum for the Bill states that Senedd consent is required for Clauses 1-10 and 12-19 of the Bill, whereas the UK Government has indicated in the Bill's Explanatory Notes that it is only seeking consent for Clauses 1-10.

14. Clauses 12-19 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. The LCM laid by Welsh Government states:

"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)."

15. It should be noted that clause 12 of the Bill states that the Bill binds the Crown. The Crown is a reserved matter under Schedule 7A of the Government of Wales Act 2006. However, this reservation does not mean that it is outside of the Senedd's legislative competence to bind the Crown to an Act of Senedd Cymru.¹

¹ See section 80 of the Land Transaction and Anti-avoidance of Devolved Taxes Act 2017 by way of example.

Senedd procedure for making regulations

16. 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). 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. 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.

Reason for making these provisions for Wales in a UK Bill

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

Welsh Government position on the Bill as introduced

18. Welsh Government states that it will not be able to recommend to the Senedd that it gives consent to the Bill as introduced on 12 May 2021, unless the Bill is “substantially amended to address our significant concerns.”

Concurrent powers

19. The Welsh Government’s objections are set out in the LCM, and include concerns about the creation of **concurrent regulation-making powers** for matters falling within devolved competence for both Welsh Ministers and the Secretary of State or the Lord Chancellor.

20. The LCM also states that 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:

“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.”

21. The LCM notes that 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. It says that 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, while at the same time clause 14(5) places a restriction on the exercise of the regulation-making powers conferred on the Welsh Ministers by requiring Minister of the Crown consent. The restriction on the exercise of the Welsh Ministers’ powers is unique, as Ministers in Scotland and Northern Ireland are not subject to a corresponding restriction. Welsh Government believes the concurrent powers undermine the long-established powers of the Senedd and Welsh Ministers to regulate on matters within devolved competence.

Policy concerns

22. Apart from concerns about the “impact of the concurrent functions on both current and future policy space”, the Committee notes that Welsh Government also has “a range of other policy concerns arising from this Bill pertaining to a failure to clearly define scope, proportionality, duplication and additional burdens put on devolved regulators.” The LCM does not provide any further detail in relation to these policy concerns.

23. The LCM goes on to state that “the Bill strays into areas that are usually excluded from free trade agreements and associated negotiations - e.g. state funded education.” It says that the linking of professional qualifications to trade policy reduces Welsh Ministers’ powers further “since decisions could be badged as ‘trade’ rather than ‘professional qualification’ decisions and imposed on Wales in contravention of the Sewel Convention.” It says that 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.”

24. The Committee also notes that the Bill interacts with other new post-Brexit domestic arrangements, including the UK Government’s new immigration system and UK Internal Market Act 2020. For example, the Act makes professional qualifications approved in one part of the UK automatically valid in other parts of the UK (with some exceptions). The Committee notes that the Welsh Government has not published an assessment of how the combined impact of the UK’s new arrangements might affect Wales. Financial and resource implications

25. The Committee also notes the LCM raises concerns that the Bill will impose an additional administrative and financial burden on Welsh devolved regulators that 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.” The UK Government’s Impact Assessment estimates potential transition costs of £90,000, stating that most costs will fall to regulators, the majority of which are public sector organisations (40 out of 57 regulators will be directly impacted).

26. The LCM states 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.”

Committee View

27. The Committee notes Welsh Government’s view that the matters contained within clauses 12-19 of the Bill fall within the test provided under Standing Order 29.1(i), that is that they fall within any purpose within the legislative competence of the Senedd, and therefore that the consent of the Senedd is required for these clauses in addition to clauses 1-10 for which consent is being sought.

28. The Committee also notes the concerns raised in the LCM regarding powers, policy matters and financial implications for Welsh Government’s budget and for devolved regulators.

29. The Committee would like Welsh Government to provide further information on the following matters:

- To provide its assessment on the impact of the Bill on regulated professions in Wales;
- To outline the impact on regulated professional qualifications in Wales for the purposes of ascertaining demand for certain professions
- To provide an update on discussions with the UK Government on its request for clarification on the scope of the Bill and its application to certain sectors, such as further education.
- To provide details of any discussions undertaken with the UK Government regarding any amendments that the Welsh Government has requested be made to the Bill.
- To provide an update on discussions the Welsh Government has had with affected regulators in Wales, including public sector organisations.
- To describe the relationship to, and combined effect of, the Bill with other relevant UK arrangements, such as the UK Internal Market Act 2020, the new immigration system and future international agreements.

30. Given the lack of time available for further scrutiny of the Bill's provisions or to publish related Committee correspondence, the Committee calls on the Welsh Government to provide the information requested as soon as possible, and make it available to all Senedd Members in advance of plenary consideration of the Legislative Consent Motion associated with this Bill.

31. 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 Memorandum.