

Jeremy Miles MS

Minister for Education and the Welsh Language

12 August 2021

Dear Jeremy

Legislative Consent Memorandum on the Professional Qualifications Bill

You will be aware that the Legislative Consent Memorandum on the Professional Qualifications Bill has been formally referred to the Legislation, Justice and Constitution Committee for scrutiny, and that we have been asked to report to the Senedd by 30 September.

Within the context of this deadline, and in light of the concerns set out in the Memorandum and your current position that you will not recommend that the Senedd gives its consent to the relevant provisions in the Bill, there are a number of matters which I would like to raise with you at this stage.

1. The Bill was introduced into the House of Lords on 12 May 2021. The Legislative Consent Memorandum was not laid until 17 June 2021, approximately 5 weeks later. Standing Order 29.2(i) requires a Legislative Consent Memorandum such as this to be laid normally no later than two weeks after the introduction of the Bill. Can you provide reasons for the delay on this occasion?
2. At paragraph 30 of the Memorandum you state that "The Welsh Government is unconvinced that the majority of the measures contained in this Bill are necessary."

What was the Welsh Government's role during the development of the Bill?

When did you become involved in the development of the Bill?

How would you describe intergovernmental relations on the development of this Bill?

Why is the Welsh Government unconvinced that "the majority" of the measures contained in the Bill are necessary?

Which provisions does the Welsh Government consider are necessary and why?



3. At paragraph 41 of the Memorandum you state that “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.”

What specific amendments to the Bill have you requested?

What is the current status of your discussions with the UK Government regarding the changes you will need to see made to the Bill before you would recommend that consent is given?

If no specific amendments have been requested, what changes would you need to see made to the Bill in order to address your concerns?

4. At paragraphs 32 to 35 of the Memorandum you set out how, without the consent of the Senedd or the Welsh Ministers, the Secretary of State or Lord Chancellor would be able to exercise regulation-making powers to amend primary legislation, including Senedd Acts. Can you confirm whether it is your understanding that the powers in the Bill would enable the Secretary of State or Lord Chancellor to amend the Government of Wales Act 2006 (the 2006 Act)?
5. At paragraph 35 you note that the UK Government has stated that “it does not intend to use concurrent powers in the areas of devolved competence without the agreement of the relevant [Devolved Administrations]”.

Where and when did the UK Government make this statement?

Have any discussions taken place as to the inclusion of this commitment on the face of the Bill?

6. At paragraph 36 and 37 of the Memorandum you set out how the Bill includes a “restriction unique to the Welsh Minister’s powers”, whereby the restrictions imposed by paragraphs 8 to 11 of Schedule 7B to the 2006 Act are effectively imported into the regulation-making process.

What specific discussions have you had with the UK Government about this restriction on the exercise of regulation-making powers conferred on the Welsh Ministers?

What explanation have you received as to why this particular “unique” restriction is imposed on the Welsh Minister’s powers?

The provision in question, clause 14(5) of the Bill, states that the Welsh Ministers may not make any provision using their regulation making powers in the Bill without the consent of a Minister of the Crown, where such provision would, if made in an Act of the Senedd, require Minister of the Crown consent. Is there anything outside of paragraphs 8 to 11 of Schedule 7B to the 2006 Act which would cause an issue in this regard?

7. At paragraph 38 you outline a range of policy concerns arising from the Bill. One concern relates to scope and you state that “the definition used in the Bill fails to clearly define scope” and you are unclear whether further education is in the scope of the Bill.



Which definition are you referring to?

What are the implications for the Welsh Government if further education is within the scope of the Bill?

If this issue is not resolved, how will this impact on whether or not you recommend consent?

8. Another concern outlined in paragraph 38 relates to how the Bill links professional qualifications and trade policy which you state "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". You further state "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."

Where and when did the UK Government provide the assurances you refer to in the Memorandum?

In what published guidance does it state that it is not the UK Government's intention to badge relevant decisions as trade-related rather than relating to professional qualifications?

What discussions has the Welsh Government had with the UK Government regarding the inclusion of provisions on the face of the Bill to give effect to the "assurances" ?

9. As regards financial concerns you state in paragraph 38 that there will be an "impact on Welsh Government budget considerations" and that the situation "could ultimately impact on costs for the Welsh Government". Please can you explain how the Welsh Government could be impacted financially and how the costs relate to those identified for devolved regulators (as identified in paragraph 39)?

I would welcome a response from you by 8 September, so that it may inform our consideration of the Memorandum at our meeting on 13 September.

Yours sincerely,



Huw Irranca-Davies

Chair