



T: 0300 244 4000
E: scottish.ministers@gov.scot

Claire Baker MSP
Convener of Economy and Fair Work Committee
Scottish Parliament
Edinburgh
EH99 1SP

30 March 2022

Dear Claire,

LEGISLATIVE CONSENT MEMORANDUM – PROFESSIONAL QUALIFICATIONS BILL

I am writing in response to your letter of 9 February and the report which your Committee published on the Supplementary Legislative Consent Memorandum for the UK Professional Qualifications Bill (“the Bill”).

I am grateful for the explanation you gave of your Committee’s analysis of the Bill during the debate on 10 February in the Scottish Parliament, and for publishing your report and recommendations. I would like to put on record my apology for the delay in submitting the first supplementary LCM.

It is deeply regrettable that the Bill completed both Report Stage and 3rd Reading in the House of Commons on 14 March, without being amended to add a consent provision to the Bill.

I note the recommendations made in your report, and I am writing to address the outstanding questions from your first report.

- A requirement on the face of the Bill to obtain the consent of the Scottish Ministers before making regulations in areas of devolved competence, which would enable the Scottish Parliament to have a scrutiny role in how these devolved powers are exercised.

Scottish Government Ministers and officials made considerable efforts throughout the passage of the Bill to persuade the UK Government to include a provision to require the consent of Scottish Ministers and emphasised the need to give the Scottish Parliament the opportunity to scrutinise the use of these powers. I raised the issue on numerous occasions in person and in writing and in the latter stages of the Bill the Deputy First Minister also wrote to the UK Government. In my contact with UK Ministers I emphasised the importance of the Committee’s report in reaching any conclusions in regard to

the Bill. Scottish Government officials advised BEIS in November 2021 that the Committee's report had been published and it was made clear that Scottish Ministers would expect UK Ministers to respect the view of the Scottish Parliament.

Officials used your report to highlight to BEIS that anything short of a requirement on UK Ministers to secure the consent of Scottish Ministers would result in the Scottish Parliament being denied the right to scrutinise the exercise of its powers by UK Ministers.

The Scottish Government had hoped that the key issues of consent and Scottish Parliamentary scrutiny could be resolved before reverting to your Committee. Unfortunately resolution was not achieved, despite our extensive efforts.

The UK Government has chosen to ignore the views of the Scottish Parliament, and proceed with the legislation in breach of the Sewel Convention, and to unilaterally amend the Bill to add a requirement for UK Ministers to consult but not seek the consent of devolved ministers before acting in devolved areas under the Bill. During the Report Stage of the Bill in the House of Commons on 14 March, the UK Parliamentary Under-Secretary for Business, Energy and Industrial Strategy, Paul Scully, claimed that the UK Government's approach was necessary because:

It is vital that the UK Government are able to implement such [international] agreements across the UK in a timely and consistent manner, as failure to do so could jeopardise the UK Government's credibility and ability to secure ambitious provisions to support UK services exports with global trade partners.

The Scottish Government rejects this argument. Implementation of international obligations is a devolved matter under the Scotland Act 1998, which also contains powers for the UK Government to intervene should the Scottish Government or Parliament fail to fulfil such obligations. The UK Government has never had to use those powers. In addition, Scottish Ministers are obliged to comply with the law, including international obligations, under the Scottish Ministerial Code.

The UK Government has consistently failed to explain why these normal arrangements are, uniquely, inadequate for international obligations on professional qualifications. Neither has it explained why the circumstances of this Bill are "not normal" in a way that justifies setting aside the legislative consent decision made by the Scottish Parliament under the Sewel Convention.

In his remarks in the Commons, Mr Scully again made no attempt to do so but merely said:

“the Sewel convention envisages situations in which the UK Parliament might need to legislate without consent, and those situations are clearly exceptional”

The worrying implication of this statement is that the UK Government considers mere disagreement with the Scottish Parliament on a consent decision is sufficient for circumstances to be regarded as “not normal” and for the UK Government to set aside the views of the Parliament. This is to empty the Sewel Convention of any meaningful effect. This is unacceptable, contrary to the spirit of devolution, and deeply damaging to the devolution settlement. The Scottish Government will be making the case for reform of the Convention’s practical application, seeking to ensure that the Scottish Parliament’s views are respected in devolved areas. I am sure the Committee and the Parliament will also want to consider the effects of the UK Government’s approach to the Convention, not least because the UK Government appears set to act in a similar way in the Subsidy Control Bill.

- That there should be a scrutiny role for the Scottish Parliament in relation to health and social care workforce planning to avoid unintended consequences where regulations are made by the UK Government that may impact, even inadvertently, upon the Scottish Government’s policy in devolved areas.

Scottish Ministers agree with the Committee. The importance of scrutiny, in general, has been repeatedly raised with the UK Government, and we have not received a satisfactory answer as to why they are seeking to avoid scrutiny through this Bill. The Scottish Government is deeply concerned that the UK Government will be able to make regulations under the powers conferred by the Bill with no requirement for the Scottish Government to consent and therefore no opportunity for the Scottish Parliament to scrutinise the exercise of those powers. This is true for regulations under the Bill which relate to devolved health and social care provisions as well as other regulated professions.

- The Scottish Government should set out how it will track, and keep the Parliament informed about, regulatory changes being made in another part of the UK which affect areas of devolved competence.

This work is underway.

- That a process should be put in place to ensure early notification and opportunities for parliamentary scrutiny of intra-government communications in areas where the activities of one UK administration may affect others.

The Government agrees with the Committee on the need for proper scrutiny by the Scottish Parliament on matters for which it is responsible, especially where UK Ministers have taken powers to act in devolved areas. Good inter-governmental relations, timely communication on proposals and meaningful engagement are vital for this process to be effective. The record of this UK Government, including on this Bill, has demonstrated the need for a step

change in its attitude and behaviour to establish trust and a productive relationship, and to allow the Parliament to carry out its democratic functions.

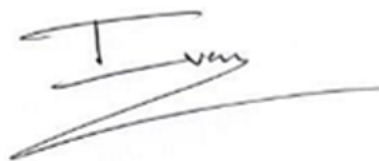
New arrangements for conducting intergovernmental relations were announced by the UK Government in January of this year. These are now being implemented and should, if operated in good faith, improve transparency and engagement between the governments and allow the Scottish Government to notify the Parliament in the way the Committee describes. The Government will keep the Parliament informed of developments as these new arrangements are put in place.

- The issues raised by the DPLRC in relation to the appropriateness of delegating the powers in clauses 1 and 3 should be pursued. Broadly, the committee was concerned that the powers were very widely drawn and there was insufficient justification for using secondary rather than primary legislation. There were a number of more specific points.

Officials have raised the contents of the DPLRC report with BEIS, and I am aware that the responsible Minister in Northern Ireland raised similar concerns on the scope and definitions of powers in the Bill in correspondence with UK Ministers. This was also raised in the House of Lords. UK Ministers have neither amended the Bill to address these issues, nor provided a satisfactory explanation as to why this approach has been taken.

As you know the Scottish Government agreed with the Committee, and the Parliament as a whole, on the importance of a consent mechanism for the powers in this Bill. We are concerned at the arguments made by the UK Government both on the substance of the provisions, and on setting aside the Sewel Convention and we will continue to raise this through the intergovernmental process.

Yours Sincerely,

A handwritten signature in dark ink, appearing to read 'Ivan McKee', with a stylized flourish at the end.

IVAN MCKEE