

Supplementary Legislative Consent Memorandum

Professional Qualifications Bill

Background

1. This supplementary memorandum has been lodged by Kate Forbes, Cabinet Secretary for Finance and the Economy, supported by Ivan McKee MSP, Minister for Business, Trade, Tourism and Enterprise, under Rule 9.B.3.1(c) of the Parliament's standing orders. The Professional Qualifications Bill was introduced in the House of Lords on 12 May 2021.

2. The original LCM (LCM-S6-3) and supplementary LCM (LCM-S6-3a) noted that the Scottish Government could not recommend consent to the Bill as it then stood and that the Scottish Government intended to have further discussions with the UK Government regarding the requirement for the Scottish Ministers' consent to concurrent powers in the Bill.

3. The latest version of the Bill and the previous LCMs can be accessed via the following links:-

[Professional Qualifications Bill | Scottish Parliament Website](#)
[Professional Qualifications Bill \[HL\] - Parliamentary Bills - UK Parliament](#)

Need for a supplementary LCM

4. The Scottish Government and Officials have been working with the UK Government to try to encourage the UK Government to include a consent provision in the Bill for the exercise concurrent powers in devolved areas. The UK Government wrote to Mr McKee on 21 February confirming that they were not prepared to insert a consent mechanism into the Bill and were going to proceed with the Bill with an additional, 'Consultation with devolved authorities,' amendment tabled on 22 February for Report Stage.

5. This amendment is not covered by the scope of the original or supplementary LCM, but as it alters the executive competence of the Scottish Ministers, a supplementary LCM is required. The powers which are modified by this amendment would be within the legislative competence of the Scottish Parliament.

Consult amendment

6. UK Ministers have written informing the Scottish Government that they have tabled a 'Consultation with devolved authorities' amendment (Annex A), to be lodged in the House of Commons at Report Stage under which:

- i. UK Ministers would have a duty to consult Scottish Ministers;
- ii. A report on the consultation has to be published in advance of regulations being made;
- iii. Either, this report has to be agreed with Scottish Ministers as factual, or a period of 30 days must elapse before regulations can be made; and
- iv. The UK Government would also have to state the reason they chose to act without agreement.

7. Unlike a ministerial statement on the UK Government's intention not to act without agreement, these requirements will be on the face of the Bill. However, if agreement on the statement could not be reached for whatever reason, there would be no agreed official record of the consultation, and the amendment does not restrict UK Ministers' freedom to act in devolved areas without agreement.

Reasons consent is not recommended

8. The absence of a statutory requirement for the consent of Scottish Ministers means that the Scottish Ministers cannot recommend to the Scottish Parliament that it gives its consent to the Bill. The provisions of the Bill are only required because of Brexit, which was rejected by the people of Scotland and the Scottish Parliament.

9. While many aspects of the Bill are not contentious, the Scottish Government remains concerned about the exercise of concurrent powers under the Bill and, in particular, the lack of a legislative requirement for UK Ministers to obtain consent from the Scottish Ministers before exercising the powers conferred on them by the Bill in devolved areas. These concerns have been endorsed by the Scottish Parliament in a debate of 10 February, with Parliament agreeing consent should not be granted to the Bill without the addition of a consent provision.

10. The UK Government has tabled an amendment for Report Stage to add in a provision requiring UK Ministers to consult Scottish Ministers before exercising powers under devolved competence. The amendment itself does not satisfy the view expressed by the Scottish Parliament on 10 February that it could not agree to the Bill without the addition of a consent provision.

Financial implications

11. The amendments made to the Bill have no effect on the financial implications set out in the previous LCM.

Implications of not consenting

12. UK Ministers have confirmed their intention to proceed without securing legislative consent to the Bill, and not to respect the Sewel Convention by excluding devolved areas from the Bill.

Draft legislative consent motion

13. Under Rule 9B.3.3 (d) of the Parliament's Standing Orders, if a member of the Scottish Government does not propose to include a draft motion in the Memorandum, the Memorandum must explain why not. Paragraphs 8, 9 and 10 set out the Scottish Government's reasons for not including a draft motion in this Memorandum for the purposes of that rule.

Conclusion and Scottish Government position

14. It remains a matter of regret to the Scottish Government that the UK has withdrawn from the EU. The Scottish Government believes this has had widespread detrimental effects on the UK and Scotland, and is concerned over the harm that has been inflicted on Scotland by withdrawal from the European Union.

15. While the Scottish Government can accept the main purpose of the Professional Qualifications Bill, in replacing retained EU Law, it does not accept that the approach taken to this Bill demonstrates sufficient respect for Devolved Governments' responsibilities. Therefore, the Scottish Ministers cannot recommend that the Scottish Parliament gives its consent to the Bill.

Scottish Government
February 2022



House of Commons
Day XXth February 2022
CONSIDERATION OF BILL

PROFESSIONAL QUALIFICATIONS BILL [LORDS]

Secretary Kwasi Kwarteng

1

Clause 16, page 12, line 7, at end insert—

- “(7) In Schedule 7B to the Government of Wales Act 2006 (general restrictions on legislative competence of Senedd Cymru) in paragraph 11(6)(b) (exceptions to restrictions relating to Ministers of the Crown)—
- (a) omit the “or” at the end of paragraph (vi), and
 - (b) after paragraph (vii) insert “; or
 - (viii) the Professional Qualifications Act 2022”.

Member’s explanatory statement

This amendment means that the Secretary of State’s consent is not needed for Senedd Cymru to be able to remove the powers that the Secretary of State and the Lord Chancellor have under the Bill to make regulations that are within the legislative competence of the Senedd.

Secretary Kwasi Kwarteng

2

To move the following Clause—

“Consultation with devolved authorities

- (1) Before making regulations under this Act, the Secretary of State or the Lord Chancellor must consult—
 - (a) the Welsh Ministers, to the extent that the regulations contain provision which could also be made by the Welsh Ministers by virtue of section 16(2) (ignoring any requirement for the consent of a Minister of the Crown under section 16(5));
 - (b) the Scottish Ministers, to the extent that the regulations contain provision which could also be made by the Scottish Ministers by virtue of section 16(3);
 - (c) a Northern Ireland department, to the extent that the regulations contain provision which could also be made by a Northern Ireland department by virtue of section 16(4).
- (2) The Northern Ireland department which is to be consulted in accordance with subsection (1)(c) is such Northern Ireland department as the Secretary of State or (as the case may be) the Lord Chancellor considers appropriate having regard to the provision which is to be contained in the regulations concerned.

Consideration of Bill: XXth February 2022

Professional Qualifications Bill [Lords], continued

- (3) Before making regulations under this Act in relation to which the Secretary of State or the Lord Chancellor has consulted a devolved authority (or more than one devolved authority) in accordance with subsection (1), the Secretary of State or (as the case may be) the Lord Chancellor must publish a report on the consultation.
- (4) But the Secretary of State or (as the case may be) the Lord Chancellor may not publish the report unless either—
 - (a) the devolved authority concerned (or, if more than one, each of them) has agreed to the description included in the report for the purposes of subsection (5)(a), or
 - (b) there is no such agreement but the period of 30 days, beginning with the day on which a draft of the report was first sent to the devolved authority concerned (or, if more than one, the last of them), has expired.
- (5) The report on the consultation must include—
 - (a) a description of—
 - (i) the process undertaken in order to comply with subsection (1), and
 - (ii) any agreement, objection or other views expressed as part of that process by the devolved authority (or devolved authorities) concerned, and
 - (b) an explanation of whether and how such views have been taken into account in the regulations (including, in a case where the Secretary of State or (as the case may be) the Lord Chancellor proposes to make the regulations despite an objection, an explanation of the reasons for doing so).
- (6) The duty to consult in subsection (1) does not apply in relation to any revision of the regulations which arises from the consultation; and, for the purposes of subsection (4)(b), the draft report need not be identical to the published report for the period of 30 days to begin.
- (7) In this section “devolved authority” means the Scottish Ministers, the Welsh Ministers or a Northern Ireland department.”

Member’s explanatory statement

This amendment requires the Secretary of State or Lord Chancellor to consult the devolved authorities before making regulations under the Bill that contain provision which could be made under the Bill by the devolved authorities themselves and to publish a report on the consultation.

This Supplementary Legislative Consent Memorandum relates to the Professional Qualifications Bill (UK legislation) and was lodged with the Scottish Parliament on 28 February 2022

Professional Qualifications Bill – Supplementary Legislative Consent Memorandum

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