

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-S6-3¹) confirmed the Scottish Government could not recommend consent to the Bill as it currently stood and 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 LCM can be accessed via the following links:-

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

Need for a supplementary LCM

4. The Scottish and UK Governments have been working together on refining both the regulatory autonomy and cooperation, to make them as effective as possible for the Scottish interest. The UK Government tabled amendments relating to regulator autonomy and cooperation provisions on 2 November² amendments 1, 12 and 13.
5. These amendments are not covered by the scope of the original LCM, but as they fall within the legislative competence of the Scottish Parliament, a supplementary LCM is required. These amendments relate to provisions in the Bill which confer powers on the Scottish Ministers in respect of devolved professions. The amendments also alter the competence of the Scottish Ministers by adding conditions which must be fulfilled by a national authority before exercising powers under the Bill. Scottish Ministers are defined as a national authority for devolved professions under the Bill.
6. The Scottish Government has undertaken discussions with the UK Government on potential amendments to the Bill to include a requirement for consent from Scottish Ministers where regulations are to be made by UK Ministers in

¹ [splcms063.pdf \(parliament.scot\)](#)

² <https://bills.parliament.uk/publications/43487/documents/902>

devolved areas. These discussions have not resulted in any changes to the Bill as it stands.

Regulator Consultation and Autonomy – Amendment 1, 12 and 13

7. **Conditions and declarations relevant to the recognition of qualifications**

Amendment 1 – this amendment modifies clause 1 of the Bill to provide more detail about the conditions which may be specified in regulations under that clause which must be satisfied in order for a professional qualification to be recognised. The amendment provides that the condition will be valid whether or not it relates to UK qualifications or experience. This amendment also modifies clause 1, to provide that were regulations made under that clause which enable a regulator to determine whether an individual has substantially the same knowledge and skills as required to practice the profession in the UK, that determination may be made on the basis of overseas qualifications/experience or on such other basis as the regulator sees fit. The intention is to ensure that regulators domestic standards are maintained e.g. where the only route to registration is through a particular qualification.

8. **Regulator Autonomy Amendment 12** – this amendment provides that the appropriate national authority can only make regulations under Clauses 1, 3 and 4 if two conditions are met. The first condition is that, regulations must not remove the independence of the regulator to stop an individual being able to practise who is 'unfit' and the second is that the regulations must not compromise standards of the profession.

9. **Regulation Consultation Amendment 13** – this amendment provides that the appropriate national authority must consult a regulator before making regulations under clauses 1, 3 and 4 of the Bill if the regulator is likely to be affected by regulations or if otherwise appropriate. The power in clause 1 covers recognition routes, clause 3 covers Free Trade Agreement (FTA) negotiations and regulations and clause 4 covers giving power to regulations for Mutual Recognition Agreements (MRA). Recognition routes covers the various ways that qualifications can be recognised between nations or sectors.

10. These amendments for Regulator Consultation and Autonomy are intended to alleviate concerns of various regulators including the General Teaching Council for Scotland (GTCS).

11. The GTCS has been concerned that it would be legitimate under the Bill to have a teacher who is not qualified to the standards required in Scotland to appeal a recognition decision, referring to 'substantially the same qualification'.

Consent recommendation

12. The Scottish Government welcomes these amendments which address legitimate concerns which were raised by regulators during the early stages of the Bill's passage.

13. However, these amendments do not address the key concern which the Scottish Government has with the Bill as drafted which is the conferral of powers on the Secretary of State and Lord Chancellor in devolved areas, exercisable without the consent of the Scottish Ministers. The Delegated Powers and Law Reform Committee and the Economy and Fair Work Committee both agreed in their reports on the original Legislative Consent Memorandum that consent should not be given to the Bill unless a suitable amendment was made to address this issue. Despite official level discussions and Ministerial meetings no suitable amendment has, at this stage, been forthcoming. As a result, the Scottish Government cannot recommend to the Parliament that it gives consent to the Bill as currently drafted.

Financial implications

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

Implications of not consenting

15. If UK Ministers respect the Sewel Convention and exclude devolved areas from the Bill, the Scottish Government may be required to legislate to deal with residual EU legislation, implement professional qualification aspects of international agreements and formalise information sharing requirements that are included in the Professional Qualifications Bill.

Draft Legislative Consent Motion

16. 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. Paragraph 13 sets out the Scottish Government's reason for not including a draft motion in this Memorandum for the purposes of that rule.

Conclusion and Scottish Government position

17. 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.

18. 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.

19. 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.

20. While many aspects of the Bill are not contentious, the Scottish Government remains concerned about the exercise of concurrent powers under the Bill conferred by the definition of appropriate national authority and, in particular, the lack of a legislative requirement for UK Ministers to obtain consent from the Scottish Ministers before exercising the powers conferred by the Bill in devolved areas.

Scottish Government
January 2022

This Supplementary Legislative Consent Memorandum relates to the Professional Qualifications Bill (UK legislation) and was lodged with the Scottish Parliament on 27 January 2022

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