

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (NUMBER 2)

VICTIMS AND PRISONERS BILL

1. The supplementary legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO 29.2 requires a LCM to be laid before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Victims and Prisoners Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023. An LCM was laid on 19 May 2023 and can be found at [LEGISLATIVE CONSENT MEMORANDUM \(senedd.wales\)](#)
3. On 4 December 2023, during House of Commons Report stage, 119 government amendments and 1 non-government amendment were agreed. The UK Government proposed a further round of amendments on 15 January 2024 for consideration during House of Lords Committee Stage, and one of these amendments requires the consent of the Senedd. The supplementary LCM (No 2) sets out the Welsh Government’s position on these amended clauses, covering the relevant amendments made at both the House of Commons Report and House of Lords Committee Stages.
4. On 22 December 2023, the then Minister for Social Justice and Chief Whip wrote to the Llywydd explaining that it had not been possible to lay a supplementary legislative consent memorandum (SLCM) within the normal two week SO29 deadline at House of Commons Report Stage. Welsh Government officials only had final sight of the 119 government and 1 non-governmental amendments once they had been tabled, and it was not possible for them to analyse these within the two-week period.
5. The clauses referred to in the SLCM are as set out in the Bill as published on 6 December 2023, which can be found at: [Victims and Prisoners Bill \(parliament.uk\)](#)

Policy Objective(s)

6. The UK Government’s stated policy objectives are to deliver on three key manifesto commitments; to pass and implement a Victims’ Code into law, to reform the parole system, and to establish an Independent Public Advocate to support victims of a major incident. Additionally, the Bill seeks to introduce changes which aim to strengthen the operation of the Parole Board and ensure public confidence in the system. The Bill will prohibit prisoners who are serving a whole life order from entering a marriage or civil partnership while in prison; seeks to codify guidance for roles that support victims and establishes a body to administer the compensation scheme for victims of the infected blood scandal.

Summary of the Bill

7. The Bill is sponsored by the Ministry of Justice (the MoJ).
8. The Bill makes provision about victims of criminal conduct and others affected by criminal conduct; about the appointment and functions of individuals to act as independent public advocates for victims of major incidents; about reforms to the parole system; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.

Summary of key amendments made at the House of Commons and House of Lords Report stages

9. The House of Commons voted on a series of amendments at its Report stage on 4 December 2023, some of which related to matters within the competence of the Senedd. The amendments proposed by the UK Government on 15 January 2024 further amended one of these clauses.
10. This SLCM sets out the Welsh Government's position on the Bill, in line with the proposed amendments that fall within our competence, tabled by the UK Government on 4 December 2023 and 15 January 2024. Clause numbers are used where these are available.

Changes to the Bill since the laying of the LCM (Memorandum No 1) – amendments to existing clauses which engage the LCM process

Clauses 1 to 4, 11, 22 and 23 - Victims of Criminal conduct – Victims' code

11. The UK Government made several amendments to Part 1 of the Bill - Victims of Criminal conduct – Victims' code, during House of Commons Report Stage. Those relevant to the clauses are covered by this SLCM and outlined below.
12. An amendment was made to clause 1 to clarify that conduct which constitutes an offence may be "criminal conduct" for the purposes of Part 1 of the Bill, whether or not the offence has been reported. The amendment also amends section 52(3)(a) of the Domestic Violence, Crime and Victims Act 2004 for consistency.
13. An amendment was made to clause 11 which clarifies the meaning of "protected characteristics" for the purposes of guidance about reviewing victims' code compliance.
14. As stated in LCM (Memorandum No 1) these clauses require consent on the basis that safeguarding, support and information services to victims are areas within the Senedd's legislative competence. In addition, issuing guidance on the discharge of duties to devolved authorities in respect of the victims' code falls within competence.

Clause 15 – Victims of criminal conduct: Guidance about independent domestic violence and sexual violence advisors:

15. The UK Government laid an amendment to clause 15 at House of Commons Report Stage to clarify the meaning of “protected characteristics” for the purpose of the guidance about the independent domestic violence advisors and independent sexual violence advisors.
16. A further government amendment was laid to clause 15 during House of Lords Committee Stage and was agreed. The amendment changes the requirement for the Secretary of State to issue guidance to independent domestic violence and independent sexual violence advisors, to being a requirement to issue guidance to “victim support roles” of types specified in regulations.
17. As stated in LCM (Memorandum No 1) this clause requires consent on the basis that it makes provision with regard to welfare and safeguarding, which are devolved matters. It also requires devolved Welsh authorities with relevant functions to have regard to the Secretary of State’s guidance. As such these provisions are “relevant provisions” for the purposes of SO29

Part 2 - Clauses 24-27 and 29-31 (as introduced) - Victims of major incidents:

18. The UK laid a number of Government amendments to Part 2 of the Bill at House of Commons Report Stage which require a supplementary LCM. These are outlined below.
 - New clause to be inserted after clause 25 that amends the meaning of ‘major incident’.
 - New clause, to be inserted before clause 25, requiring the Secretary of State to appoint a standing advocate to undertake general functions in relation to victims of major incidents and other advocates appointed in respect of major incidents.
 - An amendment to clause 25 to enable the Secretary of State to appoint the standing advocate as an advocate in respect of a specific major incident.
 - An amendment to clause 27 to require the Secretary of State to appoint a lead advocate where more than one advocate is appointed in respect of a major incident.
 - An amendment to clause 30 to require the standing advocate appointed to make annual reports and a further amendment to enable an advocate (or the lead advocate where multiple advocates are appointed in respect of the same incident) to report at their discretion.

- New clause to be inserted after clause 30 making provision about the publication by the Secretary of State of reports made by an advocate.
- A number of amendments to clause 31 that relate to information sharing requirements and permissions for advocates.
- Other amendments consequential on the above.

19. As stated in LCM (Memorandum No 1) these clauses require consent on the basis that they concern the devolved area of the provision of support services, signposting, advocating and dissemination of information. In addition, they put reporting requirements on the Independent Public Advocate and Secretary of State that could be replicated by the Welsh Ministers in relation to Wales.

Changes to the Bill since the laying of the LCM (Memorandum No 1) - New clauses which engage the LCM process

20. As well as making amendments to the Bill the UK Government introduced new clauses. The following are subject to the LCM process.

New Clause 20 - Domestic Homicide Reviews

21. New Clause 20 was inserted after clause 15 (as introduced) and relates to reviews of deaths in England and Wales that may be related to domestic abuse. It amends the Domestic Violence, Crime and Victims Act 2004, allowing the Secretary of State to direct a specified person or body to establish and participate in, a domestic abuse related death review. The provision also amends section 26 of the Police, Crime, Sentencing and Courts Act 2022 (relationship of offensive weapons homicide reviews with other review requirements).

22. Paragraph 34 of Devolution Guidance Note 'Parliamentary and Assembly Primary Legislation affecting Wales' suggests that the UK Government consider that Senedd consent is required to impose a "reserved function" on a Devolved Welsh Authority. Therefore, this provision is brought to the Senedd's attention, as the clause places responsibilities on Devolved Welsh Authorities to undertake reviews for the purpose of learning lessons about the services they provide to the deceased. It is the view that the Senedd could legislate in similar circumstances as the purpose is to learn lessons on the services they provide to the deceased, rather than being about the criminal conduct itself (which relate to reserved matters). The Senedd could not however place these functions on reserved authorities and therefore the scope of any equivalent provision would be limited.

23. The provision allows the Secretary of State to place functions/ requirements on Devolved Welsh Authorities such as local authorities, local health boards established under section 11 of the National Health Service

(Wales) Act 2006 and NHS trusts established under section 18 of the National Health Service (Wales) Act 2006. The clause includes a power to add to the list of bodies subject to the provision meaning further Devolved Welsh Authorities could be added by the Secretary of State.

New clause 37 – Prohibited steps order

24. New Clause 37 to be inserted after clause 15 amends the Children Act 1989 (to insert new sections 10A and 10B) and requires the Crown Court to make a “prohibited steps order” which prevents a parent from making a decision about a child’s upbringing without the express approval or permission of the court, when a parent is convicted of the murder or voluntary manslaughter of the other parent. It also provides for the order to be reviewed by the family courts.
25. Courts remain a reserved responsibility, however new section 10B of the provision relates to reviews of orders made under section 10A, and places duties on local authorities, including Welsh local authorities (i.e. Devolved Welsh Authorities) to review the orders once they are made.
26. As noted above, paragraph 34 of Devolution Guidance Note ‘Parliamentary and Assembly Primary Legislation affecting Wales’ suggests that the UK Government appear to consider that Senedd consent is required to impose a “reserved function” on a Devolved Welsh Authority.
27. The duties on Welsh local authorities relate to reviews of the orders made, rather than the nature of parental responsibility and how it is acquired and may be lost, as these matters are reserved matters. The LCM process is nevertheless engaged for this provision as noted above, due to the impact on Devolved Welsh Authorities.

Non-Government amendments

28. One non-government amendment was laid and accepted related to compensation for infected blood victims.

New Clause 40 – Compensation for Infected Blood victims

29. Clause 40 was introduced as a non-government amendment laid and accepted at House of Commons Report Stage. The amendment places a duty on the Secretary of State to establish a body to administer the compensation scheme for the victims of the infected blood scandal within 3 months of the Act passing. The clause mandates that the body must be chaired by a judge of the High Court or Court of Session as a sole decision-maker. The clause further outlines the functions of the body, provides the Secretary of State with a regulation making power to make further provision about the body and defines a victim of the infected blood scandal by reference to the Second Interim Report of the Infected Blood Inquiry.

30. The legislative competence analysis has considered the extent to which a Welsh compensation body could be established in relation to Wales. Therefore, it does not directly consider clause 40 of the Bill which establishes a body on a four nations basis as this would be outside competence; alternatively, it considers a provision which could achieve substantially the same effect in Wales i.e., one which establishes a Welsh compensation body. Clause 40 is considered to be within competence of the Senedd on the basis that it does not engage any of reservations in Schedule 7A to the Government of Wales Act 2006. In addition, it is considered that the provision relates to the devolved matter of health; further supported by the fact that the ex-gratia support scheme in Wales is run by the Welsh Infected Blood Support Scheme (WIBSS) and was set up using the Welsh Minister's health powers contained in the NHS (Wales) Act 2006. Therefore, the LCM process is engaged.

Welsh Government Position on the Bill following Amendments tabled on 4 December 2023 and 15 January 2024 - Amendments to which I recommend the Senedd gives consent

New Clause 20 - Domestic Homicide Reviews

31. The Welsh Government believes amending the definition of domestic homicide reviews, to that of the Domestic Abuse Act 2021, is a positive step. The definition is wider, more comprehensive, and will improve understanding through consistency. In amending the definition, the number of reviews will no doubt increase. We believe that is more aligned to our Single Unified Safeguarding Review process that is currently in place in Wales.

32. Although we recommend the Senedd should give consent to the clause on the basis set out above, we would have liked to see the UK Government go further and undertake a wholesale review of the Domestic Homicide Guidance.

New clause 37 – Prohibited Steps Review

33. The core policy of Prohibited Steps Review is related to courts which is a reserved area and the LCM is being laid only with the respect to the impact that it has on local authorities.

34. Whilst the provision places duties on Devolved Welsh Local Authorities to undertake reviews of prohibited steps orders, the Senedd would not be able to legislate to replicate the provision of making the orders in the first instance because courts are reserved. The provision limits when Prohibited Steps orders are automatically made, to murder or involuntary manslaughter of the other parent. The Welsh Government believes that the provision supports the Violence Against Women and Girls Blueprint approach that we have in Wales as well as providing protection for children of perpetrators of serious crimes.

New clause 40 - Compensation for Infected Blood victims

35. The Welsh Government recognises the benefit in taking the clause forward so the provisions will apply at the same time across the UK. Whilst there is an existing scheme already set up in Wales, a four-nations approach is preferred to ensure there is equality of provision. I consider utilising the UK Bill to provide a pragmatic and efficient opportunity to ensure equal provision for all those living with the consequences of being treated with infected blood.
36. The Welsh Government understands that the UK Government has committed to bringing forward a government amendment at Lords Report Stage regarding the establishment of a compensation body for victims of the infected blood scandal, and the Welsh Government is working with the Cabinet Office on the drafting of that amendment.

Welsh Government Position on the Bill following Amendments tabled on 4 December 2023 and 15 January 2024 - Amendments where it is not yet possible to recommend the Senedd should give consent

Clauses 1 to 4, 11, 22 and 23 - Victims of Criminal conduct – Victims’ code

37. In the LCM laid on 19 May 2023 the then Minister for Social Justice and Chief Whip indicated that the UK Government had not provided a view on whether consent is required for clauses 1 to 4, 11, 22 and 23. The UK Government has since clarified its position. It is their view that these clauses are not within the competence of the Senedd as they relate to the detection and investigation of crime which is a reserved matter.
38. However, the Welsh Government’s position remains that the clauses are within the competence of the Senedd for the reasons set out in the earlier LCM laid for the Victims and Prisoners Bill. We remain concerned that the Victims Code could create constitutional issues. The amendments made to the clauses do not resolve any of the issues previously raised and we will continue to reserve our position whilst discussions with the UK Government continue on part one of the Bill.

Clause 15 – Victims of criminal conduct: Guidance about independent domestic violence and sexual violence advisors

39. The amendments made to clause 15 of the Bill do not resolve the areas of concerns set out in the LCM laid on 19 May 2023.
40. As stated in the LCM laid on 19 May 2023, our view is that any guidance in Wales should be issued by the Welsh Government rather than the UK Government, in line with our devolved responsibilities. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint partnership provides an opportunity to develop our own

definitions, and the existence of statutory guidance from the UK Government which applies in Wales could be confusing and restrictive.

41. The approach reflects our devolved competence on VAWDASV and ensures the specialist sector in Wales will be able to input into any guidance on the issue.
42. My officials are continuing discussions with UK Government counterparts with regards to clause 15. The purpose of these discussions is to broker a pragmatic solution that respects the National Partnership and Blueprint structure for delivering the aims of the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) (Wales) Act 2015. We welcome the engagement from the UK Government on clause 15 of the Bill so far, and we will continue to reserve our position on these clauses until these discussions have concluded.

Clauses 24-27 and 29-31 – Victims of major incidents: Appointment of independent public advocate

43. The latest Government amendments to the clauses do not include provisions for the consent of the Welsh Ministers to be required in the appointment and deployment of the advocate for victims of major incidents. Since any advocate will be working in a largely devolved area on which the Senedd can legislate, officials believe that its omission means the Senedd should not give consent to part two of Bill at this time.
44. Discussions are continuing between the Welsh Government and Ministry of Justice officials to strengthen the role of the Welsh Ministers while maintaining the legislative competence of the Senedd. We welcome the engagement from the UK Government on part two of the Bill so far, and we will continue to reserve our position on these clauses until these discussions have concluded.

Financial implications

45. There may be financial implications, but this will not be clear until the measures in the Bill are implemented.

Conclusion

46. There are provisions in the Bill which are welcomed and are in line with our policies. In respect of these clause, I am recommending the Senedd gives consent, as listed in paragraphs 31 to 36.
47. However, there are some provisions in the Bill where the Welsh Government is reserving its position whilst discussions continue with the UK Government, as listed in paragraphs 37 to 44.

Lesley Griffiths MS
Cabinet Secretary for Culture and Social Justice