

LEGISLATIVE CONSENT MEMORANDUM

DOMESTIC ABUSE BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, 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 Domestic Abuse Bill 2019-21 (“the Bill”) was introduced in the House of Commons on 3 March 2020. The Bill can be found at: https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124_en_1.html .

Policy Objective(s)

3. The purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies.

Summary of the Bill

4. The Bill is sponsored by the Home Office and the Ministry of Justice.
5. The Bill makes the following provisions:
 - **Part 1** provides for a statutory definition of domestic abuse which underpins other provisions in the Bill.
 - **Part 2** creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to cooperate with the Commissioner.
 - **Part 3** provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”).
 - **Part 4** places new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation.
 - **Part 5** confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; and prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.

- **Part 6** extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- **Part 7** makes miscellaneous and general provision. In particular, this Part enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; and confers a power on the Secretary of State to issue statutory guidance.

Provisions in the Bill for which consent is required

6. The following provisions of the Bill are within legislative competence of the Senedd:

- **Clause 3** (Children as victims of domestic abuse). This recognises that children who witness domestic abuse in the home are also victims as a result of witnessing that abuse and, as such, any reference to a 'victim of domestic abuse' within the Bill includes such a child.
- **Clause 65** (Consent to serious harm for sexual gratification not a defence). This amendment legislates for the principle (established in the case of *R. v. Brown* [1993] 2 All ER 75), that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim's death.
- **Clause 66** (Offences against the person committed outside the UK: England and Wales), is one of the Part 6 clauses inserted into the Bill in furtherance of the UK's ratification of the 'Council of Europe Convention on Combatting Violence Against Women and Domestic Violence' (the "Istanbul Convention") by the United Kingdom. Clause 66(1) of the Bill extends the scope of particular offences against the person so that:
 - if such an offence is committed outside of the UK by a UK national or a person who is habitually resident in the UK, and
 - the act constitutes an offence under the law in force in that country, and if it were done in England and Wales, would constitute an offence in England and Wales,

then the person is also guilty in England and Wales of that offence. The offences covered by clause 66(1) are: murder, manslaughter, offences under sections 18, 20 or 47 (offences relating to bodily harm or injury) of the Offences Against the Person Act 1861 and offences of administering poison under sections 23 or 24 of that Act.

- **Clause 68** (Amendments relating to offences committed outside the UK) as with Clause 66 is included in furtherance of the UK's ratification of the Istanbul Convention. Clause 68 of and part 1 of Schedule 2 to the Bill amends the Protection from Harassment Act 1997, the Sexual Offences Act 2003 and the Serious Crime Act 2015 so as to achieve the same effect as clause 66(1) in relation to the offences of putting people in fear of violence, stalking involving fear of violence or serious alarm or distress, certain sexual offences listed in Schedule 2 to the Sexual Offences Act 2003, and coercive or controlling behaviour in an intimate or family relationship.
 - **Clause 73** (Power of the Secretary of State to issue Guidance about domestic abuse, etc). This is a power to issue guidance about the effect of any provision made by or under Parts 1 to 5 of the Bill, section 66 or Part 1 of Schedule 2, or sections 69 - 72, and on other matters relating to domestic abuse in England and Wales. In particular the Secretary of State (SoS) must issue guidance about the effect of domestic abuse, the particular kinds of behaviours that amount to domestic abuse and the effect of domestic abuse on children. Clause 73(6) requires the SoS to consult with the Welsh Ministers insofar as the guidance relates to a devolved Welsh authority.
7. It is considered that the Senedd's consent is required for all of the above provisions.

Reasons for making these provisions for Wales in the Domestic Abuse Bill

8. The Bill seeks to improve the prevention of abuse and the protection of victims. The Welsh Government believes that the measures in relation to reserved authorities will support the work already underway in Wales through the Violence Against Women Domestic Abuse and Sexual Violence (Wales) Act 2015.
9. Clause 65 delivers significant and important changes as it legislates for the principle that consent to serious harm for sexual gratification would not be a defence, it is imperative that it is implemented across the jurisdiction of England and Wales at the same time.
10. Clause 66 and 68 of the Bill are included to fulfil the UK's obligations under article 44 of the Istanbul Convention. Whilst the Senedd could pass legislation to implement international obligations, the Welsh Government is unable to unilaterally ratify the Istanbul Convention because it is not a Nation State and must rely on UK Government for this purpose. The Welsh Government is supportive of measures being taken in collaboration with the UK Government which will permit ratification.
11. It is the view of the Welsh Government that clause 73, (as it is currently drafted), significantly encroaches on the executive functions of the Welsh

Minister's and the legislative competence of the Senedd. Officials will work closely with the UK Government to seek an amendment to the clause to ensure it accurately reflects and respects the devolution settlement.

12. Furthermore, there is no space in the Welsh Government's current legislative programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be added.

Financial implications

13. While there are no direct financial implications for the Welsh Government or the Senedd Cymru arising from the powers under the Bill, there may be future financial implications for Wales in terms of the overall effect should a differing approach be taken.

Conclusion

14. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness of domestic abuse matters.

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