

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Victims and Prisoners Bill

April 2024



1. Background

The Victims and Prisoners Bill

1. The Victims and Prisoners Bill¹ (the Bill) was introduced into the House of Commons and had its first reading on 29 March 2023. It is sponsored by the Ministry of Justice.

2. The long title to the Bill (as introduced) states that it is a Bill to:

“Make 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 the release of prisoners; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.”

3. The Bill completed its passage through the House of Commons on 4 December 2023, and had its first reading in the House of Lords on 6 December 2023. Committee Stage in the House of Lords was completed on 25 March 2024. Report Stage in the House of Lords began on 16 April 2024. At the time of agreeing our report, Report Stage was ongoing, with a third sitting scheduled to take place on 30 April 2024.

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

5. On 19 May 2023, the then Minister for Social Justice and Chief Whip, Jane Hutt MS, laid before the Senedd a Legislative Consent Memorandum² (the Memorandum) in respect of the Bill.

¹ Victims and Prisoners Bill, as introduced (Bill 286)

² Welsh Government, Legislative Consent Memorandum on the Victims and Prisoners Bill, May 2023

6. We reported on the Memorandum on 3 July 2023 (our first report).³
7. Paragraphs 11 to 14 of our first report set out the provisions of the Bill which, at the time, the Welsh Government considered to require the Senedd's consent, and identified where disagreement existed between the Welsh and UK Governments.
8. Paragraphs 15 to 18 of our first report set out the delegated powers in the Bill being conferred on both the Welsh Ministers and the Secretary of State.
9. Paragraphs 19 and 25 of our first report set out the Welsh Government's position on the Bill, as set out in the Memorandum.
10. Our first report contained four recommendations.
11. The then Minister for Social Justice and Chief Whip responded to our first report on 11 August 2023.⁴

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2)

12. On 22 December 2023, the then Minister for Social Justice and Chief Whip wrote to the Llywydd stating:

"My officials have been engaging with officials in the Home Office and the Ministry of Justice throughout the passage of the Bill and monitoring amendments. During the House of Commons Report Stage 151 government and non-government amendments were tabled and accepted. Officials only had sight of the amendments to the Bill once they had been tabled. Whilst my officials have continued to consider if these amendments fall within competence of the Senedd or substantially change the advice set out in the LCM laid on 19 May, it has not been possible to analyse these and lay a supplementary LCM within the two-week window set out in Standing Orders.

It is expected that further amendments will be made to the Bill during the House of Lords Committee Stage, including potential Government amendments to modify or overturn the

³ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memorandum on the Victims and Prisoners Bill](#), July 2023

⁴ [Letter from the Minister for Social Justice and Chief Whip](#), 11 August 2023

previously accepted non-Government amendment related to the Infected Blood Inquiry. We are also continuing to liaise with UK Government on the issues previously subject to legislative consent memoranda outlined above, and expect further amendments on some of those issues during Committee Stage.

I therefore expect to lay a further supplementary LCM on the Bill following Committee Stage in the Lords, setting out the latest situation on relevant amendments ahead of the expected legislative consent motion debate. Given the timescales, that supplementary LCM will also cover any relevant amendments made at Commons Report Stage. Our current expectation is for the consent motion debate to take place in late February.”⁵

13. The Cabinet Secretary for Culture and Social Justice, Lesley Griffiths MS, laid a Supplementary Legislative Consent Memorandum in respect of the Bill on 15 April 2024.⁶

14. The Business Committee agreed that the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee should report on the initial Memorandum by 29 April 2024.⁷

Update on the position since the publication of the Memorandum, and provisions for which the Senedd's consent is required

15. Memorandum No. 2 relates to amendments which were tabled for House of Commons Report Stage, which concluded on 4 December 2023, and House of Lords Committee Stage, which concluded on 25 March 2024.

16. In Memorandum No. 2, the Cabinet Secretary states:

“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

⁵ [Letter from the Minister for Social Justice and Chief Whip to the Llywydd](#), 22 December 2023

⁶ Welsh Government, [Supplementary Legislative Consent Memorandum \(Memorandum No. 2\) on the Victims and Prisoners Bill](#), April 2024

⁷ Business Committee, [Timetable for consideration: Supplementary Legislative Consent Memorandum \(No. 2\) on the Victims and Prisoners Bill](#), April 2024

*2023 and 15 January 2024. Clause numbers are used where these are available.*⁸

17. It is our understanding that the amendments which are the subject of Memorandum No. 2 were tabled on 28 November 2023⁹, 30 November 2023¹⁰, and 17 January 2024¹¹.

18. Clause numbering in Memorandum No. 2 refers to the Bill as brought from the House of Commons.¹²

19. Paragraphs 11 to 30 of Memorandum No. 2 set out changes made to the Bill since the laying of the Memorandum.

20. The relevant provisions for the purpose of Memorandum No. 2 are:

- clauses 1 to 4, 11, 15, 22 to 27, 29 to 31, and Government amendments New Clause (NC) 22, NC23 and NC24 (Part 1 - Victims of Criminal conduct);
- Government amendment NC20 (Domestic abuse related death reviews);
- Government amendment NC37 (Restricting parental responsibility where one parent kills the other);
- Amendment NC40 (Compensation for victims of the infected blood scandal) (we believe this to be Amendment NC27¹³).

21. Paragraphs 11 to 14, 37 and 38 of Memorandum No. 2 provide details about amendments made to the Bill at Commons' Report Stage to clauses 1 to 4, 11, 22 and 23 which all relate to the Victims' code.

22. In Memorandum No. 2, the Cabinet Secretary highlights that, at the time of laying the Memorandum, the UK Government had not provided to the Welsh Government a view on whether legislative consent was required from the Senedd for clauses 1 to 4, 11, 22 and 23 of the Bill. The Cabinet Secretary states:

⁸ Memorandum No. 2, paragraph 10

⁹ Victims and Prisoners Bill, [Notice of Amendments as at 28 November 2023](#)

¹⁰ Victims and Prisoners Bill, [Notice of Amendments as at 30 November 2023](#)

¹¹ Victims and Prisoners Bill, [HL Bill 31\(i\) Amendments for Committee, 17 January 2024](#)

¹² [Victims and Prisoners Bill](#), as brought from the Commons (HL Bill 31)

¹³ While we believe this to be Amendment NC27, references in the report will refer to NC40 for ease given it is this numbering which appears in Memorandum No. 2.

"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.

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."¹⁴

23. Paragraphs 15 to 17 and 39 to 42 of Memorandum No. 2 provide details about amendments made to the Bill at both Commons' Report Stage and Lords' Committee Stage (amendment tabled on 17 January 2024¹⁵) to clause 15 which relates to guidance about independent domestic violence and sexual violence advisors.

24. At paragraph 39 of Memorandum No. 2 the Cabinet Secretary states that the amendments made to clause 15 "do not resolve the areas of concerns" set out in the Memorandum laid in May 2023. She adds:

"... 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. (...)

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."¹⁶

¹⁴ Memorandum No. 2, paragraphs 37 and 38

¹⁵ Victims and Prisoners Bill, HL Bill 31(i) Amendments for Committee, 17 January 2024

¹⁶ Memorandum No. 2, paragraphs 40 and 42

25. Paragraphs 18, 19, 43 and 44 of Memorandum No. 2 provide details about amendments made to the Bill at Commons' Report Stage to clauses 24 to 27 and 29 to 31 which concern information relating to victims and the appointment of advocates. These changes include the addition of three new clauses, as well as amendments to the existing clauses numbered 24 to 27 and 29 to 31 in the Bill as introduced to the Commons.

26. The new clause amendments referred to in paragraph 18 were all tabled on 28 November 2023¹⁷ during Commons' Report Stage and are as follows:

- Government amendment NC22 (Meaning of "major incident" etc);
- Government amendment NC23 (Appointment of standing advocate);
- Government amendment NC24 (Publication of reports).

27. On these changes, at paragraphs 43 and 44 of Memorandum No. 2 the Cabinet Secretary states:

"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.

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."

28. Paragraphs 21 to 23, 31 and 32 of Memorandum No. 2 provide details about Government amendment NC20 which concerns domestic abuse related death reviews. The amendment was tabled on 28 November 2023¹⁸ during Commons' Report Stage.

¹⁷ Victims and Prisoners Bill, Notice of Amendments as at 28 November 2023

¹⁸ Victims and Prisoners Bill, Notice of Amendments as at 28 November 2023

29. This new clause enables the Secretary of State to direct a specified person or body to establish and participate in a domestic abuse related death review, and allows the Secretary of State to place functions and requirements on Devolved Welsh Authorities. It brings the definition of domestic homicide reviews in line with that of the Domestic Abuse Act 2021. 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.

30. At paragraph 22 of Memorandum No. 2 the Cabinet Secretary states:

“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.”

31. The Cabinet Secretary goes on to state that the Welsh Government “believes amending the definition of domestic homicide reviews, to that of the Domestic Abuse Act 2021, is a positive step”¹⁹. She also adds:

“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.”²⁰

32. Paragraphs 24 to 27, 33 and 34 of Memorandum No. 2 provide details about Government amendment NC37 which concerns restricting parental responsibility

¹⁹ Memorandum No. 2, paragraph 31

²⁰ Memorandum No. 2, paragraph 32

where one parent kills the other. The amendment was tabled on 30 November 2023²¹ during Commons' Report Stage.

33. In Memorandum No. 2 the Cabinet Secretary states:

"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. (...)

... 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.

*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."*²²

34. The Cabinet Secretary goes on to state:

"... the LCM is being laid only with the respect to the impact that it has on local authorities. (...)

*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."*²³

35. Paragraphs 29, 30, 35 and 36 of Memorandum No. 2 provide details about amendment NC40 which concerns compensation for victims of the infected blood scandal. The amendment was a non-government amendment also tabled on 30 November 2023²⁴ during Commons' Report Stage.

²¹ Victims and Prisoners Bill, Notice of Amendments as at 30 November 2023

²² Memorandum No. 2, paragraphs 25 to 27

²³ Memorandum No. 2, paragraphs 33 and 34

²⁴ Victims and Prisoners Bill, Notice of Amendments as at 30 November 2023

36. This new clause 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 three months of the Act passing. It provides the Secretary of State with a regulation-making power to make further provision about the body and defines a victim by reference to the Second Interim Report of the Infected Blood Inquiry.

37. At paragraph 30 of Memorandum No. 2 the Cabinet Secretary states:

“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.”

38. The Cabinet Secretary goes on to state:

“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.

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.”²⁵

39. In conclusion, the Cabinet Secretary states:

- There may be financial implications as a result of the provisions which are the subject of Memorandum No. 2 but “this will not be clear until the measures in the Bill are implemented.”²⁶
- Consent is being recommended for New Clauses 20, 37 and 40.²⁷
- The Welsh Government is “reserving its position whilst discussions continue with the Government” and it is not yet possible to recommend the Senedd should give its consent to the amendments to clauses 1 to 4, 11, 15, 22 to 27, and 29 to 31 and New Clauses 22, 23 and 24.²⁸

Delegated powers

40. As noted above in paragraphs 29 and 36, Government amendment NC20 includes a new direction-making power for the Secretary of State and amendment NC40 includes a new regulation-making power for the Secretary of State.

2. Committee Consideration

41. We considered Memorandum No. 2 at our meeting on 29 April 2024 and, given the reporting deadline of 29 April 2024 set by the Business Committee, we agreed our report the same day.²⁹

Our view

Provisions requiring legislative consent

42. We note the Welsh Government’s assessment of the provisions within the Bill that require the consent of the Senedd, as set out in Memorandum No. 2.

43. We agree with the Welsh Government that the amendments to clauses 1 to 4, 11, 15, 22 to 27, 29 to 31 fall within a purpose within the legislative competence of

²⁵ Memorandum No. 2, paragraphs 35 and 36

²⁶ Memorandum No. 2, paragraph 45

²⁷ Memorandum No. 2, paragraph 46

²⁸ Memorandum No. 2, paragraph 47

²⁹ [Legislation, Justice and Constitution Committee](#), 29 April 2024

the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd. Similarly, we consider that the Senedd's consent is required for Government amendments NC20, NC22, NC23, NC24 and NC37, along with non-government amendment NC40.

44. As required by Standing Orders, Memorandum No. 2 sets out the reasons why the Welsh Government consider that consent is required for each clause (or amendment to a provision) listed in that memorandum. The test for whether consent is needed is set out in Standing Order 29.1.

45. We note that for Government amendments NC20 and NC37 the Cabinet Secretary has referred to paragraph 34 of the UK Government's Devolution Guidance Note (DGN) 'Parliamentary and Assembly Primary Legislation affecting Wales'.³⁰ The DGN sets out guidance for the UK Government as to when it thinks consent is required by the Senedd for clauses in UK legislation. However, this is not a relevant test for consideration for the purpose of the Senedd's Standing Orders. In our view, given that Memorandum No. 2 is laid before the Senedd under Standing Order 29, it is confusing and unhelpful to make reference to criteria that do not apply to the Senedd's legislative consent process without adequate explanation.

Conclusion 1. We consider that the amendments to the Bill as set out in Memorandum No. 2 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

Delegated powers

46. We note that Government amendment NC20 includes a new direction-making power for the Secretary of State, and amendment NC40 includes a new regulation-making power for the Secretary of State.

The Welsh Government's approach to the Bill and the legislative consent process

47. We highlight in Chapter 1 of our report that, in all but one case, Memorandum No. 2 relates to amendments tabled on 28 and 30 November 2023 during Commons' Report Stage. This constitutes a delay of approximately four months in the laying of this supplementary consent memorandum in respect of

³⁰ UK Government, Devolution Guidance Note, [Parliamentary and Assembly Primary Legislation affecting Wales](#).

those amendments. The solitary amendment tabled for Lords' Committee Stage which is included as a relevant provision in Memorandum No. 2 was tabled on 17 January 2024, meaning a memorandum for this amendment is approximately 10 weeks late.

48. In our view, there does not seem to be any reasonable justification for the delay, as we go on to outline.

49. We acknowledge that, in her letter to the Llywydd on 22 December 2023, the then Minister for Social Justice and Chief Whip said that she expected to:

"... lay a further supplementary LCM on the Bill following Committee Stage in the Lords, setting out the latest situation on relevant amendments ahead of the expected legislative consent motion debate. Given the timescales, that supplementary LCM will also cover any relevant amendments made at Commons Report Stage. Our current expectation is for the consent motion debate to take place in late February."

50. The approach set out in this letter would curtail the scrutiny period available to Members of the Senedd to consider amendments made to the Bill which impact on devolved areas. As such, we are unclear why the Welsh Government proposed such an approach.

51. It is both unfortunate and disappointing that this is not the first time we have had to note our concern with the decisions taken by a Welsh Minister and the relevant government department regarding the timely laying of legislative consent memoranda.

52. In our report on the Welsh Government's Legislative Consent Memoranda on the Energy Bill³¹, we said that the Welsh Government must learn lessons from its handling of that Bill to ensure that severe delays to the laying of consent memoranda does not happen again, and to ensure that the Senedd is presented in a timely manner with the necessary information it requires to perform its democratic role.³²

53. Recommendation 2 in that same report asked the Welsh Government to provide us within three months the outcome of a review of the lessons learned

³¹ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memoranda on the Energy Bill](#), September 2023

³² Report on the Welsh Government's Legislative Consent Memoranda on the Energy Bill, Conclusion 6

from its preparation of the required legislative consent memoranda for the Energy Bill. The then Minister for Climate Change, Julie James MS, wrote to us on 12 December 2023 and responded to our recommendation.³³

54. The then Minister for Climate Change re-iterated the Welsh Government's view that it expects timely and open engagement from the UK Government on all potentially relevant UK legislation, in line with commitments made as part of the Intergovernmental relations review.

55. We, of course, acknowledge that the then Minister for Climate Change has no direct responsibility for the Welsh Government's actions in relation to this Bill. Nonetheless, the Welsh Government's handling of the Energy Bill and the lessons which should have been learned are directly relevant to the Senedd's consideration of this Bill and any UK Bill which is the subject of legislative consent memoranda.

56. We accept that, to a certain extent, the information which must be presented by the Welsh Government in any legislative consent memoranda laid before the Senedd can be affected by poor intergovernmental information-sharing.

57. However, as confirmed in the letter from the then Minister for Social Justice and Chief Whip to the Llywydd on 22 December 2023, the Welsh Government had sight of the amendments tabled to the Bill during Commons' Report Stage in late November 2023. It would also appear that the Welsh Government had sight of the amendments tabled for Lords' Committee Stage in mid-January.

Conclusion 2. The Senedd would have been afforded more time for scrutiny had the Welsh Government laid a supplementary legislative consent memorandum earlier and in respect of the amendments tabled at Commons' Report Stage, and followed that with a further memorandum relating to amendments tabled at Lords' Committee Stage. Instead, the Senedd's opportunity for scrutiny of new provisions in the Bill, as well as amendments to previously known clauses, has been severely hampered.

Conclusion 3. The delay in laying the required supplementary legislative consent memoranda in relation to the Bill is not acceptable and has severely undermined the ability of the Senedd and its Members to effectively scrutinise the Bill and its impact in Wales.

³³ [Letter from the Minister for Climate Change](#), 12 December 2023

Recommendation 1. The Cabinet Secretary should, no later than during the relevant consent debate for the Bill, provide full details to explain the delays in laying before the Senedd the required supplementary legislative consent memoranda for the Bill, and clarify why she considers the delays in laying the supplementary memoranda to be acceptable.