

## LEGISLATIVE CONSENT MEMORANDUM

### POLICE, CRIME, SENTENCING AND COURTS BILL

1. Following the recent Senedd Elections a new legislative consent memorandum is being laid. 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. Police, Crime, Sentencing and Courts Bill (“the Bill”) was introduced in the House of Commons on 9 March 2021. The Bill as introduced can be found at: <https://bills.parliament.uk/bills/2839/publications>

#### Policy Objective(s)

3. The UK Government’s stated policy objectives are to make the country safer by empowering the police and courts to take more effective action against crime and lead a fair justice system. This includes specific commitment to: protect and empower the police by enshrining the Police Covenant into law; pass the Bill; and introduce “a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime.
4. On courts and sentencing the Bill includes commitments to: empower the courts to tackle crime; ensure a fair justice system by introducing tougher sentencing for the worst offenders and ending automatic halfway release from prison for serious crimes. It also aims to toughen community sentences, for example by tightening curfews, making those convicted do more hours of community payback, turn people away from crime and end the cycle of reoffending.

#### Summary of the Bill

5. The Bill is sponsored by the Ministry of Justice.
6. The Bill makes provision ;
  - for the police and other emergency workers to make provision about collaboration between authorities to prevent and reduce serious violence;
  - to make provision for new offences and for the modification of existing offences;
  - to make provision about the powers of the police and other authorities for the purposes of preventing, detecting, investigating or prosecuting crime or investigating other matters;

- to make provision about the maintenance of public order;
- to make provision about the removal, storage and disposal of vehicles; to make provision in connection with driving offences;
- to make provision about cautions;
- to make provision about bail and remand;
- to make provision about sentencing, detention, release, management and rehabilitation of offenders;
- to make provision about secure 16 to 19 Academies;
- to make provision for, and in connection with, procedures before courts and tribunals; and for connected purposes.

### **Provisions in the Bill for which consent is required**

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

- Part 1 ‘Protection of the Police’ Clause 1 - **‘Police Covenant’**. This establishes a duty on the Secretary of State to publish an annual report on the Police Covenant and present this to Parliament. The annual report on progress against the covenant may relate to devolved matters to Wales such as health services.

- Part 2 Chapter 1 – Functions relating to Serious Violence - **‘Serious Violence Duty’**

Clause 7 (Duties to collaborate and plan to prevent and reduce serious violence) Specified authorities for a local government area are required to collaborate with each other to prevent and reduce serious violence in the area. Prepare and implement a strategy for exercising their functions to prevent and reduce serious violence in the area.

Clause 8 (Powers to collaborate and plan to prevent and reduce serious violence) gives the power for two or more specified authorities to collaborate with each other and exercise functions jointly to prevent and reduce serious violence in the relevant area. Power of the Secretary of State to make regulations for or in connection with the publication and dissemination of a strategy under this section.

Clause 9 (Power to authorise collaboration etc. with other persons) gives the Secretary of State power by regulation to confer powers on a specified authority to collaborate with a prescribed person to prevent and reduce serious violence in a prescribed area. It also confers powers on a prescribed person to collaborate with a specified authority to prevent and reduce serious violence in a prescribed area.

Clause 10 (Specified authorities and local government areas) defines what is meant by a 'specified authority, which include Local Authorities, Local Health Boards and Fire and Rescue Authorities.

Clause 11 (Educational, prison and youth custody authorities) defines for the purposes of the Bill what is meant by an educational, prison, and youth detention authority.

Clause 12 (Preventing and reducing serious violence) clarifies what is meant by '*preventing and reducing serious violence in an area*', as preventing people from becoming involved in serious violence in the area and reducing instances of serious violence in the area.

Clause 13 (Involvement of local policing bodies) gives power to the Police Crime Commissioners (PCC) to assist specified authority in the exercise of the authority's functions. This includes a Secretary of State regulation making power to make provision conferring functions on a PCC for a police area for the purposes of assisting a specified authority in the performance of its functions. A specified authority is under a duty to cooperate with a PCC.

Clause 14 (Involvement of educational, prison and youth custody authorities) gives power to a "relevant authority" which includes an educational, prison, or youth custody authority for a local government area or a 'relevant area' and a specified authority to collaborate with each other to prevent and reduce serious violence in that area.

Clause 15 (Disclosure of information) gives a power for a specified authority; a local policing body; an educational authority; a prison authority; a youth custody authority, to disclose information that it holds for the purpose of its functions to another person, previously listed, for the purposes of the exercise by the other person of its functions under or in accordance with this Chapter.

Clause 16 (Supply of information to local policing bodies) enables a local policing body to request information to assist in its functions. The clause places a duty on "specified authorities", Local Authorities, Local Health Board's, and Fire and Rescue Authorities and 'educational authorities', to comply with this request subject to a number of safeguards.

Clause 17 (Direction) gives a power to the Secretary of State to issue directions to a specified authority as listed above. The Secretary of State must consult with Welsh Ministers before giving a direction under this section to a devolved Welsh authority within the meaning of the Government of Wales Act 2006.

Clause 18 (Guidance) gives a power for the Secretary of State to issue guidance in exercising any function in accordance with this chapter. The Secretary of State must consult the Welsh Ministers before issuing

guidance relating to the exercise of functions by a devolved Welsh authority within the meaning of the Government of Wales Act 2006.

Clause 19 (Amendments to the Crime and Disorder Act 1998) –

Amends section 5A of the C&D Act re: so as to make preventing people becoming involved in serious violence and the reduction of instances of serious violence grounds for local policing authorities to enter into combination agreements. An agreement for a combined area may be made only if every responsible authority in relation to that area is a party to the agreement..

Amends section 6 (formulation and implementation of strategies) to allow a responsible authority to formulate a strategy for preventing people from becoming involved in serious violence and reducing instances of serious violence.

Amends section 17 (duty to consider crime and disorder implications) to insert the duty imposed on an authority to do all it reasonably can to prevent serious violence, prevent people from becoming involved in serious violence and reduce instances of serious violence in its areas.

Amends section. 18 (interpretation of Chapter 1) to include interpretation of “violence” and “serious violence”.

Clause 20 (Amendment to the Police and Justice Act 2006) amends section 19 (11) - local authority scrutiny of crime and disorder matters: interpretation, to include reference to Serious Violence within meaning of Chapter 1 of Part 1 of the Crime and Disorder Act 1998.

Clause 21 (Regulations) A procedure for making regulations. The Secretary of State must consult the Welsh Ministers before making regulations under this chapter that apply to devolved Welsh authority within the meaning of the Government of Wales Act 2006.

Clause 22 (Index of defined expressions). This clause relates to the operative clauses. This is not a substantive provision but interacts with substantive provisions

- Part 2 Chapter 2 – Offensive Weapon Homicide Review - ‘**Homicide Reviews**’

Clause 23 (Duty to arrange a review) Introduces a duty on local safeguarding partners to assess whether a person’s death meets specific criteria for a full independent statutory homicide review and to make arrangements for such a review to be completed where the conditions are met.

Clause 24 (relevant review partners) This has been amended on introduction and now adds a regulation making power to make provision for identifying which review partners are to be the relevant review partners in respect of a person's death and explains what the regulations may contain.

Clause 25 (relationship with other review requirements) Sets out circumstances when the review duty does not apply and provides regulation making power for the Secretary of State to specify that the duty does not apply in certain other circumstances.

Clause 26 (notification of Secretary of State) Creates, notification requirements of a homicide review.

Clause 27 (conduct of review) Requires relevant homicide review partners in relation to a person's death to co-operate in and contribute to the carrying out of a homicide review.

Clause 28 (Request for information) Imposes a function on any relevant homicide review partner to request information and creates a duty to comply with such a request for information.

Clause 29 (saving for data protection legislation) Changed on introduction of the Bill to information supplementary. Makes provision about the disclosure of personal data.

Clause 30 (Delegating functions) Gives power to a relevant homicide review partner to jointly appoint one of themselves, or another person or body to carry out the homicide review. Gives regulation making powers to the Secretary of State to enable relevant review partners to act jointly and for a county council and district council to agree that one carries out functions on behalf of the other.

Clause 31 (guidance) Places a duty on homicide review partners to have regard to any guidance issued by the Secretary of State. The clause has been amended to include a duty to consult the Welsh Ministers in relation to devolved Welsh authorities.

Clause 32 (Power to pay grant; *Local Health Boards* (title amended on introduction)) Provides power for Secretary of State to pay a grant to a local health board in Wales towards expenditure incurred or to be incurred by it under this Chapter. The amount of the grant is to be determined by the Secretary of State, as are the conditions under which it may be paid.

Clause 33 (Piloting) Provides powers for the Secretary of State to conduct pilots of homicide reviews.

Clause 34 (Regulations) Sets out the conditions for regulations under this Chapter to be made subject to the made affirmative procedure.

Clause 35 (Interpretation) The list has been amended and now includes Devolved Welsh Authorities. The clause has also been amended to include a duty to consult Welsh Ministers prior to making regulations in so far as they relate to a devolved Welsh authority.

- Part 3 'Public Order' - Clause 59 - '**Intentionally or recklessly causing of Public Nuisance**'. This replaces the existing common law offence of public nuisance with a new statutory offence as recommended in the Law Commission Report on 'Simplification of the Criminal Law: Public Nuisance and Outraging Public Decency 2015'.

Clause 54 – Amends section 12 of the Public Order Act 1986 which is a power for the police to impose conditions on public processions. The Bill enables the senior police officer at the scene to take into account the effects of the noise of the procession and to impose conditions if it results in intimidation or harassment of people in the vicinity.

Clause 55 – Amends section 14 of the Public Order Act 1986 a power for the police to impose conditions on public assemblies (length of time, numbers etc.) and there is an associated offence if conditions are not complied with. The Bill will amend the section to enable the noise generated by persons taking part in the assembly to be taken into account if it may result in serious disruption to the activities of an organisation which are carried on in the vicinity of the assembly.

Clause 60 - relates to one person protests and is similar to sections 54 and 55 in that it amends section 14 of the Public Order Act 1986 and imposes conditions and provides that regulations can be made in respect of one person protests.

- Chapter 4 – Other Provisions, Clause 46 [mem1] – '**Criminal damage to memorials**'. This clause changes the mode of trial relating to the offence of criminal damage where the damage done is to a memorial. Currently, low value (under £5000) criminal damage cases can only be tried in the Magistrates' Court. This clause would allow such cases to be tried in a Crown Court, where criminal damage can carry up to 10 years imprisonment (or life imprisonment where the defendant intended or was reckless as to danger to life). The maximum sentence in the Magistrates' Court would be 6 months for these offences. .
- Part 1 'Protection of the Police' – Clause 2 [ew1] '**Increase in penalty for assault on emergency worker**'. This amends s. 1 of the **Assaults on Emergency Workers (Offences) Act 2018**, increasing the penalty from 12 months to 2 years.
- Clause 61 – Unauthorised encampments - '**Offence relating to residing in a vehicle on land without consent**' and associated

clauses. Strengthening police powers to tackle unauthorised encampments, allowing them to seize vehicles where those who have been asked to leave do not do so.

- [ue1a] Guidance on exercise of police powers in respect of trespassers on land – giving power of to the Secretary of State to issue guidance to the police force regarding certain functions under Criminal Justice and Public Order Act.
- [ue2] Various amendments to the Criminal Justice and Public Order Act 1994
- Part 2 Chapter 3 **Extraction of Information from Electronic Devices.** Clause 36 (Extraction of information from electronic devices: investigations of crime etc). This provides a legal framework for data extraction from mobile phones and digital devices by an authorised person for specific purposes, such as, prevention, detection, investigation and prosecution of crime.

Clause 37 (Application of section 36 to children and adults without capacity). Provides a child or adult without capacity are not to be treated as capable of voluntarily providing an electronic device or agreeing to the extraction of information.

Clause 40 (Code of practice about the extraction of information) Requires the Secretary of State to prepare a code of practice containing guidance about the exercise of powers in relation to the extraction of information from electronic devices relating to investigations of crime and death.

Clause 41 (Regulations about the extraction of confidential information) Provides a regulation making power to the Secretary of State about the exercise of powers in relation to the extraction of information from electronic devices relating to investigations of crime and death, regarding confidential information.

Clause 42 (Authorised persons) Specifies that “Authorised person” is defined in Schedule 3, subject to certain provisions of the clause.

8. The above provisions have been included in the LCM because they fall within the legislative competence of the Senedd in so far as they relate to devolved matters involving Environmental Protection, Land, Housing, Local Authorities, Local Health Boards, Education and Fire and Rescue Services. However, we would recommend the Senedd withholds consent to some of these provisions as currently drafted (see para 14, 15,16 and 17 below).

**Reasons for making these provisions for Wales in the Police Crime Sentencing and Courts Bill.**

9. Much of the Bill relates to criminal proceedings which are a reserved matter (see para 8 of Schedule 7A) . The Welsh Government is committed to ensuring our communities are safe, strong and resilient. We continue to work with our four police forces, Local Authorities, UK Government and other agencies to help ensure our people and our communities remain safe. It is imperative we continue to work collaboratively across organisations. Some clauses in the Bill will further assist in making our communities safe and enhance the collaborative working relationships between partners continue. However, aspects of the Bill legislate with regard to devolved policy functions which impact upon the Criminal Justice System.
10. The Bill covers vast areas within the criminal justice setting which relate to reserved matters. It would not make sense to attempt to disaggregate the relatively few devolved matters and take them forward through separate legislation, and there is no space in the Welsh Government's current legislative programme for a Bill making provision solely for Wales on these matters. Nor is there any Bill in the programme to which such provision could be added.

### **Welsh Government position on the Bill as introduced**

11. The Welsh Government is generally supportive of the Bill. However, there remains disagreement between the UK Government and the Welsh Government on the Serious Violence Duty. There are also concerns regarding the provisions in the Bill for the Unauthorised Encampments and the noise abatement element of the public processions clauses relating to Public Order.
12. The Welsh Government recommends the Senedd gives consent to the Police Covenant, Serious Violence Duty (clauses 7,8,10-16 and 19-22), Homicide Review (clauses 23-35), Increase in penalty for assault on emergency worker, Extraction of Information from Electronic Devices (clauses 36,37,40,41,43) and clause 59 of Part 3 'Public Order'. However, for the reasons given below, the Welsh Government will not be able to recommend to the Senedd that it gives consent to the Serious Violence Duty (clauses 9, 17 and 18), criminal damage to memorials (clause 46), unauthorised encampments (clause 61 (ue1a) (ue2)) and clauses 54, 55 and 60 of the Public Order part of the Bill as currently drafted.
13. The Welsh Government will recommend to the Senedd that it does not give consent to the following provisions in the Bill as currently drafted:
14. **Serious Violence Duty** powers for the SoS - clause 9 (Power to authorise collaboration etc. with other persons), clause 17 (Direction), clause 18 (Guidance). The concern with these new powers which allows the SoS to

issue directions for the purposes of enforcing the serious violence duty could potentially see the SoS issuing directions on devolved matters which fall within the remit of devolved Welsh authorities.

15. **Unauthorised Encampments** 'Offence relating to residing in a vehicle on land without consent', [ue1a] Guidance on exercise of police powers in respect of trespassers on land and [ue2] Various amendments to the Criminal Justice and Public Order Act 1994. The Welsh Government's approach to managing unauthorised encampments has focussed on engagement with communities and investment for adequate provision of authorised sites and enabling local authorities to meet the accommodation needs (residential and transit) of Gypsy, Roma and Traveller communities. This area of work is prioritised in the forthcoming Race Equality Action Plan, which contains a specific goal on better addressing accommodation needs of these communities. The proposed clauses put forward by the UK Government focus on enforcement and criminalisation, which undermine and jeopardise the semi-nomadic way of life of Gypsies, Roma and Travellers who may not have anywhere appropriate to station their trailers.
  
16. **Public Order** clause 54 (imposing conditions on public processions), clause 55 (imposing conditions on public assemblies) and clause 60 (Imposing conditions on one-person protests). Whilst public order is a reserved matter the noise elements in these clauses relate to environmental health matters, which are devolved to Welsh Government. We support the clause in relation to protecting residents from increased noise pollution, however this is the responsibility of Welsh Government. Whilst the Welsh Government does not have powers to direct the police in relation to noise levels, it does have overall responsibility for noise abatement and is responsible for directing local authorities on this matter. The legislation is not clearly defined and it is therefore difficult to assess its implications on the responsibilities of Devolved Welsh Authorities.
  
17. **Criminal damage to memorials:** mode of trial clause 46. Whilst sentencing and courts is a reserved matter, monuments, memorials and culture are devolved. We consider that creating the possibility of an individual being tried in the Crown Court and being imprisoned for up to 10 years (or, where the defendant intended or was reckless regarding the engagement of life, for life) for criminal damage worth under £5000 is disproportionate. This clause amends the procedure for dealing with criminal damage to memorials which, in our view, is within the competence of the Senedd (which could create an offence that covers the same conduct, and in so doing, determine the maximum prison sentence and mode of trial for that offence).
  
18. Work to resolve these outstanding concerns will continue during the passage of the Bill through Parliament and a supplementary Legislative

Consent Memorandum will be brought forward at the appropriate time, if required.

### **Financial implications**

19. There are no financial implications to this Bill.

### **Conclusion**

20. It is my view that it is appropriate to deal with some provisions in this UK Bill as it will make sensible and important changes to the criminal justice system and its services, which will benefit the people and communities of Wales in improving their safety. Welsh Government will not be in a position to recommend that consent be given to the clauses noted in paragraphs 14, 15, 16 and 17 unless the Bill is amended to address our concerns.

**Jane Hutt, MS**  
**Minister for Social Justice**  
**May 2021**