

LEGISLATIVE CONSENT MEMORANDUM

ARMED FORCES 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 Armed Forces Bill (“the Bill”) was introduced in the House of Commons on 26 January 2021 and reintroduced on 12 May following Select Committee consideration. The Bill can be found at: [Armed Forces Bill 2019-21 — UK Parliament](#)

Policy Objectives

3. The UK Government’s stated policy objectives are:
 - To renew the Armed Forces Act 2006 (“AFA 2006”) and, in so doing, continue in force the primary legislation governing the Armed Forces;
 - To maintain the effectiveness of the service justice system so that it continues to meet the needs of the Armed Forces; and
 - To further incorporate the Armed Forces Covenant into law.

Summary of the Bill

4. The Bill is sponsored by the Ministry of Defence (MOD).
5. The Bill makes provisions in relation to the following matters:
 - Continuation of the AFA 2006;
 - Service courts, summary hearings and jurisdiction;
 - Service in the Armed Forces;
 - Service police: complaints, misconduct etc;
 - Sentencing and rehabilitation; and
 - Posthumous pardons

Provisions in the Bill for which consent is required

6. The Senedd's consent is required for the provisions relating to the Armed Forces Covenant (Clause 8 in the Bill as introduced).
7. Clause 8 of the Bill is entitled 'Armed Forces Covenant'. This clause inserts new sections 343AA to 343AF to Part 16A of the Armed Forces Act 2006, which place a duty on specified bodies and persons exercising relevant housing, education and healthcare functions in England, Wales, Scotland and Northern Ireland to have due regard to the Armed Forces Covenant.
8. The sections inserted by Clause 8 of the Bill, insofar as they apply to Wales, are as follows:
 - a. **Section 343AB(1)** imposes a duty on specified persons and bodies in Wales which exercise a relevant function to have 'due regard' to the principles of the Armed Forces Covenant, namely:
 - the unique obligations and sacrifices made by the Armed Forces;
 - to the principle that it is desirable to remove disadvantages from Service in, or former Service in the Armed Forces and
 - to the principle that special provision may be justified for the effect that Service in the forces may have had on individuals.
 - b. **Section 343AB(2)** defines a "relevant function" as a relevant housing, education and healthcare function. These are devolved policy areas and provisions relating to them are therefore within the legislative competence of the Senedd.
 - c. **Section 343AB(3)** sets out the public bodies in Wales to which the due regard duty will apply. These are:
 - Local authorities
 - Governing bodies of maintained schools
 - Local Health Boards
 - Special Health Authorities
 - NHS Trusts
 - d. **Sections 343AB(4) to (6)** sets out the meaning of relevant housing, education and healthcare functions with reference to relevant legislation.
 - e. **Section 343AE** describes how guidance supporting the legislation will work. The Secretary of State may issue guidance in relation to the due regard duty and the relevant public bodies must have regard to that guidance. The Secretary of State must consult with Welsh Ministers prior to issuing guidance so far as the guidance relates to devolved Welsh functions (i.e. executive functions and those within the Senedd's legislative competence). However, if the Secretary of State considers the revisions to the guidance are insubstantial, the Secretary of State has the power to publish revised guidance without consulting the Welsh Ministers in the first instance.

- f. **Section 343AF** provides the Secretary of State with a regulation-making power to extend the due regard duty to additional persons and bodies in Wales, or to specify additional relevant functions that are to be caught by the duty. However before doing so, the Secretary of State must consult the Welsh Ministers, insofar that the regulations contain provisions that are within ‘Welsh devolved competence’. This is defined as being a provision which would fall within the Senedd’s legislative competence or one which could be made in subordinate legislation by the Welsh Ministers acting alone. The regulations will be subject to the affirmative procedure.
9. Consent is required for these provisions because their purpose is about how Welsh public services carry out their functions. They impose functions on a number of Devolved Welsh Authorities and they have regard to, and impact upon devolved matters (i.e. the functions of public bodies exercising devolved functions in the devolved areas of housing, education and healthcare). Further, the Secretary of State’s regulation making power in Section 343AF could result in the due regard duty being conferred in more devolved areas, or on other Devolved Welsh Authorities. Accordingly this power has potential to impact on more devolved areas.
10. In the Bill as introduced on 26 January 2021, the UK Government indicated in the published Explanatory Notes to the Bill that they considered Clause 8 to fall within the Senedd’s legislative competence, and therefore would be seeking a legislative consent motion in respect of this Clause. However, the position of the UK Government has now changed and they no longer consider that any of the clauses in the Bill are within the legislative competence of the Senedd. The Explanatory notes as re-introduced on 12 May have been amended and now confirm the change in the UK Government’s assessment:

In the view of the Government, none of the matters to which the Bill relates are within the legislative competence of the Scottish Parliament, Senedd Cymru or the Northern Ireland Assembly.

Reasons for making these provisions for Wales in the Armed Forces Bill

11. The provisions inserted by Clause 8 of the Bill will help improve overall delivery of public services in relation to the Armed Forces Community in Wales. The Covenant, in its current form, has been in operation for nearly ten years, and while good procedures and initiatives have been put in place by service providers, there is legitimate concern that some members of the Armed Forces Community still face disadvantage when accessing public services. This is often caused by a lack of awareness of the Covenant and the unique nature of service in the Armed Forces.
12. The provisions should increase awareness among service deliverers and policy makers of the unique obligations and circumstances facing the

Armed Forces Community, and to build understanding of how these can affect their requirements of, and ability to access key public services.

13. By embedding this understanding in public sector decision-making via a new statutory duty to have due regard to the Covenant, this legislation will help improve overall delivery of public services in relation to the Armed Forces Community in Wales.
14. The provisions inserted by Clause 8 of the Bill will impact upon the delivery of public services within the devolved areas of housing, education and healthcare in Wales.
15. Therefore it is reasonable to utilise the UK Bill to make these provisions, ensuring a level of consistency across the UK with regard to implementation of the Covenant, whilst still allowing devolved services and provision to implement additional policy to support the Armed Forces community.

Financial implications

16. There are no financial implications for Wales in relation to the UK Government's Armed Forces Bill.

Conclusion

17. I recommend that Senedd Cymru consents to Clause 8 being included in the UK Government's Armed Forces Bill. It is my view that it is appropriate to deal with these provisions in this UK Bill as:
 - It will improve overall delivery of public services in relation to the Armed Forces Community in Wales and across the UK.
 - It will allow provisions to come into force at the same time across the UK.
 - A UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness among service deliverers and policy makers of the unique obligations and circumstances facing the Armed Forces Community.
 - It will build understanding of how the circumstances facing the Armed Forces community can affect their requirements of, and ability to access, key public services.
 - The provisions cover both devolved and non-devolved matters.

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