

Report on the Legislative Consent Memorandum on the Victims and Prisoners Bill

July 2023

1. Background

1. This report considers the Welsh Government's Legislative Consent Memorandum (the LCM) on the Victims and Prisoners Bill (the Bill).

2. The long title of the Bill states that its purpose is 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.”¹

3. The LCM was laid before the Senedd on 19 May 2023 by the Minister for Social Justice and Chief Whip, Jane Hutt MS (the Minister).

¹ UK Parliament, Victims and Prisoners Bill (as introduced)



4. The Business Committee referred the LCM to the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee, with a reporting deadline of 14 July 2023.

2. The Legislative Consent Memorandum

5. Paragraphs 4 to 6 of the LCM summarise the Bill and its policy objectives. Paragraphs 9 to 20 of the LCM set out the Welsh Government's assessment of the provisions in the Bill for which consent is required.

6. Paragraphs 7 and 8 summarise the engagement between the Welsh Government and the UK Government's Ministry of Justice (MoJ). The Welsh Government highlights concerns regarding the "considerably wider [...] scope than the draft Bill as originally published in 2022". The Welsh Government stated that it did not have sight of the final Bill or Explanatory Notes prior to introduction, was not informed that the scope of the Bill had widened nor that the title had changed to the Victims and Prisoners Bill.

7. The LCM states there are no financial implications to the Bill.²

3. Summary of provisions for which consent is sought

8. The Welsh Government's assessment is that the following provisions in the Bill require the Senedd's consent:

- clauses 1 to 4, 11, 22 and 23 (Victims of criminal conduct);
- clause 15 (Guidance about independent domestic violence and sexual violence advisors);
- clauses 24 to 27 and 29 to 31 (Victims of major incidents).

9. The UK Government agrees that clauses 15, 24 to 27 and 29 to 31 require the Senedd's legislative consent. However the UK Government has "not yet been

² Welsh Government, Legislative Consent Memorandum, Victims and Prisoners Bill, 19 May 2023, paragraph 28

able to provide a view on whether consent is required for clauses 1 to 4, 11, 22 and 23 prior to the laying of this LCM.”³

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

10. Clauses 1 to 4 relate to the definition of a “victim”, require the Secretary of State to issue a code of practice (a “Victims’ Code”) in connection with the services to be provided to victims and contain ancillary requirements around the Victims’ Code including preparation and revision, publication, consultation and laying before parliament.

11. The Welsh Government considers that consent is required as these clauses relate to “safeguarding, support and information services to victims” which are areas within the Senedd’s legislative competence. The UK Government’s view is that these clauses concern the engagement of victims with the criminal justice system and therefore relate to the reserved matters of the single legal jurisdiction, policing and the prevention, detection and investigation of crime (as set out in Schedule 7A to the Government of Wales Act 2006 (GoWA)).⁴ The Welsh Government contends that although services to victims are provided as a direct result of criminal conduct, the criminal conduct has already taken place. Furthermore it states that the provisions “do not appear to concern the criminal law” and do not impact upon the single legal jurisdiction of England and Wales.⁵

12. Clause 11 relates to the requirement for the Secretary of State to issue guidance on the discharge of duties by reserved authorities in respect of the Victims’ Code. The Welsh Government’s view is that consent is required for this clause. It notes:

“As placing duties on the SoS and / or reserved authorities engages the restriction in paragraph 8(1)(a) of Schedule 7B to GoWA the Senedd could not enact a provision which directly replicates this clause without 3 the appropriate UK Minister’s consent. However, as this provision relates to issuing guidance on the discharge of duties in respect of the victims’ code (which falls within competence), the Senedd could, for instance, create a duty on the Welsh Ministers to issue guidance in relation to a victims’ code for Wales. This means the Senedd could enact

³ Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, paragraph 22

⁴ Paragraphs 8, 39, 40 and 41 of Schedule 7A to GoWA

⁵ Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, paragraph 10

similar provisions to this clause and consent is therefore required.”⁶

13. Clauses 22 and 23 make ancillary provision relating to data protection, together with consequential amendments and repeals.

14. The LCM notes that although the Welsh Government’s view is that these provisions fall within competence, the Senedd would be unable to legislate for the entirety of the regime outlined in the Bill. For example, certain provisions in Part 1 place duties on reserved authorities which would require UK Ministerial consent if contained in an Act of the Senedd. The LCM further notes that, without such consent, the Senedd would be unable to ensure compliance by reserved bodies (including police forces and the courts) with any Welsh victims code. As a result the LCM notes that such a code would be less effective than its English equivalent and more akin to guidance.⁷

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

15. Clause 15 requires the Secretary of State to issue guidance about independent domestic violence advisors and independent sexual violence advisors, including the role of such advisors and their training/qualifications.

16. The Welsh Government notes that this clause makes provision in relation to “welfare and safeguarding” and requires relevant devolved Welsh authorities to have regard to the guidance. Both Welsh and UK governments agree that consent is required for this clause.⁸

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

17. Part 2 of the Bill (clauses 24-31) creates the new statutory role of an Independent Public Advocate (“IPA”) and allow the Secretary of State to appoint an individual (or multiple individuals) to act as an IPA. The Bill’s Explanatory Notes state the purpose of an IPA is to “provide advice and support to the bereaved and the injured following a major incident and through any investigation, inquest and inquiry that follows.”⁹ A major incident is described as “one that occurs in England or Wales” and “appears in the opinion of the

⁶ Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, –paragraph 12

⁷ Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, paragraph 14

⁸ Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, paragraphs 16 and 21

⁹ [Explanatory Notes](#), Victims and Prisoners Bill, paragraph 400

Secretary of State to have caused the death of, or serious harm to, a significant number of individuals”.¹⁰

18. The Welsh Government and the UK Government agree that legislative consent is required for clauses 24-27 and 29-31.

Clause 28

17. Clause 28 amends the Coroners and Justice Act 2009 to include an IPA as an “interested person” for the purposes of an investigation or inquest. The Explanatory Notes to the Bill as introduced suggested that this clause would require the legislative consent of the Senedd.¹¹ However, in the LCM the Welsh Government notes that the subject-matter of Part 1 of the Coroners and Justice Act 2009 is a reserved matter under paragraph 167 of Schedule 7A to GoWA.¹² Following our request for clarification the Minister confirmed that both Welsh and UK Governments agree that consent is not required in relation to clause 28 and that the discrepancy had arisen as a result of an error in the Explanatory Notes, which would be corrected.¹³

4. Engagement between the Welsh Government and the Ministry of Justice

18. Both governments agree on the clauses in Part 2 of the Bill which require consent, but remain in discussions on the majority of the clauses in Part 1 (clause 15 being the exception) which the Welsh Government has identified as requiring consent. Moreover, the Welsh Government has indicated that engagement between officials remains ongoing and that it is unable to finalise its preferred position in several areas until further discussions between the respective governments have taken place.

¹⁰ [Explanatory Notes](#), Victims and Prisoners Bill, paragraph 560

¹¹ [Explanatory Notes](#), Victims and Prisoners Bill, Annex A, page 50

¹² Welsh Government, [LCM: Victims and Prisoners Bill](#), 19 May 2023, paragraph 20

¹³ Equality and Social Justice Committee, PTN 3.8 [Correspondence with the Minister for Social Justice and Chief Whip regarding the Legislative Consent Memorandum on the Victims and Prisoners Bill](#)

Engagement on clauses 1 to 4, 11, 22 and 23

19. The Minister told us that the officials last met on 14 June, during which “Ministry of Justice leads agreed to further consider our views on competence for these clauses and how they could impact on devolved bodies.” She added:

“We will be better placed to address this question in full once we have received a more definitive position on the clauses from the Ministry of Justice. We will continue to update the Senedd on this matter as these conversations progress and we have a more complete understanding of how these clauses would impact devolved bodies or responsibilities in practice.”¹⁴

Engagement on clause 15

20. The Welsh Government notes that this clause as currently drafted places a unilateral duty on the Secretary of State (“SoS”) to issue guidance on the roles and functions of Independent Domestic Violence Advisers (“IDVAs”) and Independent Sexual Violence Advisers (“ISVAs”) despite the Welsh Government’s view that this clause falls “substantially within competence”.¹⁵ The Welsh Government is currently awaiting further details from the MoJ regarding potential amendments to this clause before finalising its position.

Engagement on clauses 24-27 and 29-31

21. The Welsh Government objects to the provisions in clauses 24-27 and 29-31 in their current form, and notes that they provide the Secretary of State “with a unilateral power to appoint an IPA in the event a major incident occurs in Wales, without any input from the Welsh Ministers despite the Senedd’s competence in this area.”¹⁶ The Welsh Government also believes that the appointment of a (non-statutory) IPA by the Welsh Ministers would be possible under existing powers. Discussions between both governments are ongoing and the Minister suggested that the Committee would shortly receive an update.¹⁷

¹⁴ Equality and Social Justice Committee, PTN 3.8 [Correspondence with the Minister for Social Justice and Chief Whip regarding the LCM on the Victims and Prisoners Bill](#)

¹⁵ Equality and Social Justice Committee, PTN 3.8 [Correspondence with the Minister for Social Justice and Chief Whip regarding the LCM on the Victims and Prisoners Bill](#)

¹⁶ Equality and Social Justice Committee, PTN 3.8 [Correspondence with the Minister for Social Justice and Chief Whip regarding the LCM on the Victims and Prisoners Bill](#)

¹⁷ Equality and Social Justice Committee, PTN 3.8 [Correspondence with the Minister for Social Justice and Chief Whip regarding the LCM on the Victims and Prisoners Bill](#)

5. Our view

On whether legislative consent is required

We agree with the Welsh Government and the UK Government that **consent is required** for clauses 15, 24–27 and 29–31.

Furthermore, we agree with the Welsh Government that Senedd **consent is required** in respect of clauses 1 to 4, 11, 22 and 23 in Part 1 of the Bill on the basis that they have a devolved purpose of provision of support services to victims, or are ancillary to that purpose.

Conclusion 1. We agree that clauses 1– 4, 11, 15, 22–27, and 29–31 require the Senedd’s legislative consent.

On whether the Senedd should grant legislative consent

We note that the Welsh Government recommends that the Senedd withholds its consent to this Bill unless and until it receives assurances in several areas. These assurances will in some instances require amendment to the Bill and we understand from the Minister that discussions between the Welsh Government and the MoJ are ongoing. In the absence of any detail regarding the precise nature of these assurances or the changes that may yet be made to the Bill, we must instead give a view on the clauses as they stand.

With regards to clause 15 specifically, we agree that it is illogical and potentially undesirable for the UK Government to have the power to issue guidance in a devolved policy area, especially one where the Welsh Government is pursuing its own agenda. The fact that the powers in clause 15 would enable the UK Government to act unilaterally in this space are of particular concern and we note the Welsh Government’s arguments regarding the potentially detrimental impact this could have for collaboration and partnership working.

With regards to clauses 24–27 and 29–31 and the appointment of an Independent Public Advocate, we agree with the Welsh Government that the power to appoint an IPA would be more appropriately exercised by the Welsh Ministers if a major incident occurred in Wales.

In addition to these specific points, we are concerned generally that this Bill has the potential to undermine Welsh Government policy. Although engagement

between both governments suggests a compromise can be found, progress has yet to materialise. While we would urge both parties to reach agreement, as things stand, we cannot recommend that the Senedd gives consent to the LCM.

Recommendation 1. We recommend that the Senedd withholds legislative consent in relation to the Victims and Prisoners Bill.

In addition, one Member objected in principle to any legislation affecting devolved Welsh matters being enacted via a UK Government Bill.