

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (NUMBER 3)

VICTIMS AND PRISONERS BILL

1. This supplementary legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2. SO 29.2 requires a LCM to be laid 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 Victims and Prisoners Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023. An LCM was laid on 19 May 2023 and can be found at [LEGISLATIVE CONSENT MEMORANDUM \(senedd.wales\)](#). A Supplementary LCM was laid on 15 April 2024 and can be found at [SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM \(NUMBER 2\) VICTIMS AND PRISONERS BILL \(senedd.wales\)](#).
3. On 9 and 16 April, the UK Government tabled further amendments to the Bill. Some of these amendments engage the LCM process as set out in SO 29.2, and these are considered in this SLCM.
4. Two new clauses have been added to the Bill at Lords Report stage on a duty for specified public authorities to co-operate with the Victims’ Commissioner and on a requirement for the Secretary of State to publish and implement a strategy for mandatory training to be provided to those who have obligations under the Victims’ Code, as a result of successful opposition amendments (amendments [57](#) and [58](#) respectively).
5. My officials have discussed these amendments with UK Government colleagues, and I understand the UK Government is still considering its position on both of them. Given the distinct possibility of future government amendments in relation to these clauses, this SLCM does not consider the new clauses created by amendments 57 and 58. I will address these clauses once there is a settled UK Government position and any government amendments in relation to the clauses have been tabled.
6. The clauses referred to in the SLCM are as set out in the Bill as published on 25 March 2024, which can be found at: [Victims and Prisoners Bill \(parliament.uk\)](#).

Policy Objective(s)

7. The UK Government’s stated policy objectives are to deliver on three key manifesto commitments; to pass and implement a Victims’ Code into law, to reform the parole system, and to establish an Independent Public Advocate to support victims of a major incident. Additionally, the Bill seeks to introduce changes which aim to strengthen the operation of the Parole Board and ensure public confidence in the system. The Bill will prohibit

prisoners who are serving a whole life order from entering a marriage or civil partnership while in prison; seeks to codify guidance for roles that support victims and establishes a body to administer the compensation scheme for victims of the infected blood scandal.

Summary of the Bill

8. The Bill is sponsored by the Ministry of Justice (the MoJ).
9. The Bill makes provision about victims of criminal conduct and others affected by criminal conduct; about the appointment and functions of individuals to act as advocates for victims of major incidents; about reforms to the parole system; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.

Changes to the Bill since the laying of the SLCM (Memorandum No 2) which engage the LCM process.

Part 1 - Clauses 1 to 4, 11, 26 and 27 – Victims' Code

10. The UK Government made several amendments to Clauses 2 to 11, which relate to the Victims Code, at Lords Report stage. The relevant amendments for the purposes of this SLCM are:
 - a. Clarify that the Victims' Code issued under Clause 2 is directed at persons exercising functions of a public nature relating to victims or any aspect of the criminal justice system.
 - b. Clarify the principles that must underpin the Victims Code.
 - c. Require the Secretary of State, when considering whether to make different provision in the Victims' Code for victims of different descriptions, to have regard to the particular needs of victims who are under the age of 18 or who have protected characteristics.
 - d. Require the Secretary of State to consult the Commissioner for Victims and Witnesses and the Welsh Ministers when preparing or revising the victims' code.
 - e. Require persons specified in the Victims' Code to provide services in accordance with it, unless they have good reasons not to, and to have procedures for dealing with complaints.
 - f. Replace references to "children" in clause 11 with references to under-18s (the original LCM noted in relation to Clause 11, an LCM is required but that any decision regarding consent should mirror the decision for clauses 1, 2 & 3).
 - g. Requires the Secretary of State to consult the Commissioner for Victims and Witnesses before issuing guidance under Clause 11 of the Bill on raising awareness of, and reviewing compliance with, the Victims' Code.
11. As stated in LCM (Memorandum No 1) and SLCM (Memorandum No 2) these clauses require consent on the basis that safeguarding, support

and information services to victims are areas within the Senedd's legislative competence.

Part 1 - Clause 15 – Victims of criminal conduct: Guidance about specified victim support roles

12. The UK Government laid amendments to Clause 15 at Lords Report Stage to clarify the meaning of “children” for the purposes of guidance issued under Clause 15 and to require the Secretary of State to consult the Welsh Ministers about guidance to be issued under Clause 15, so far as it relates to a matter, provision about which, would be within the legislative competence of the Senedd.
13. As stated in LCM (Memorandum No 1) and SLCM (Memorandum No 2), this clause requires consent on the basis that it makes provision with regard to welfare and safeguarding, which are devolved matters. It also requires devolved Welsh authorities with relevant functions to have regard to the Secretary of State's guidance. As such these provisions are “relevant provisions” for the purposes of SO29.

Part 2 - Clauses 28 and 30 plus new review clause - Victims of major incidents:

14. The UK Government laid amendments to Clauses 28 and 30 of the Bill at Lords Report stage, which would require the Secretary of State to consult the Welsh Ministers before declaring an incident that occurs in Wales to be a major incident in relation to the requirement to appoint an advocate and before appointing an advocate in respect of a major incident that occurs in Wales.
15. There is a further amendment, after clause 39, that requires the Secretary of State to review the operation of Part 2 of the Bill in the period of 18 months following the first time an advocate is appointed under clause 30. The Senedd could make similar provision requiring this of the Welsh Ministers in relation to an advocate for victims in Wales.
16. As stated in LCM (Memorandum No 1) and SLCM (Memorandum No 2), these clauses require consent on the basis that they concern the devolved area of the provision of support services, signposting, advocating and dissemination of information. In addition, they put reporting and review requirements on the Advocate for victims of major incidents and the Secretary of State that could be replicated for Wales in an Act of the Senedd.

Part 3 and the Schedule – Infected Blood Compensation Authority

17. The UK Government laid amendments to Part 3 of, and the Schedule to, the Bill which would replace the existing Clause 40 and insert a series of new clauses. The purpose of the new clauses is to make provision about the establishment of an arm's length body, the Infected

Blood Compensation Authority (IBCA), to administer an infected blood compensation scheme, as well as making interim payments.

18. The provisions require the UK Government to make regulations to establish an infected blood compensation scheme for making payments to eligible persons. The regulations may include matters such as eligible persons, payments, procedure for making applications and reviews and appeals.
19. There is also a requirement that the UK Government makes interim payments of £100,000 to the estates of people infected by contaminated blood products who have died, and were registered with the Infected Blood Support Schemes, or its predecessor schemes, where an interim payment has not already been made.
20. The clauses further contain provision relating to a duty of relevant persons (listed) to cooperate with the IBCA, and a power for the UK Government to make arrangements for the provision of advice and assistance to applicants under the scheme.
21. The amendments include a Schedule which contains further detail on the constitution of the IBCA, a power for the UK Government to make transfer schemes with relevant persons for the purpose of transferring to the IBCA such property, rights and liabilities of a relevant person (which includes WMs and certain NHS bodies in Wales) as they consider appropriate for the purposes of enabling the IBCA to carry out its functions, as well as the tax treatment for those schemes. The final part of the Schedule concerns consequential amendments and includes a power for the Welsh Ministers to make consequential amendments by regulations which are within the legislative competence of the Senedd.
22. 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.
23. Part 3 of and the Schedule to, the Bill is within the legislative competence of the Senedd, with the exception of paragraph 21 of the Schedule relating to tax treatment of transfer schemes. 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.

UK Government view on the need for consent

24. The UK Government agree consent is required for the amendments tabled with relation to Clauses 15, 28, 30 and to Part 3 of, and Schedule to, of the Bill.
25. The UK Government does not agree consent is required for the amendments tabled with relation to Clauses 1-4, 11, 26 and 27.

Welsh Government Position on the Bill following Amendments tabled at Lords report stage - Amendments to which I recommend the Senedd gives consent.

Part 3 and the Schedule – Infected Blood Compensation Authority

26. We support these provisions extending to and applying in Wales. The Welsh Government recognises the benefit and importance in taking these clauses forward so the provisions will apply at the same time across the UK to ensure that those who have received infected blood products receive compensation. A four-nations approach is preferred to ensure there is equality of provision. Welsh Government officials have worked with the UK Government and the other devolved nations in preparing the clauses.

27. As part of the work the UK Government has included two statutory consent requirements. This means the consent of the Welsh Ministers is needed before the Secretary of State/Minister for the Cabinet Office can add any new devolved bodies to the list of bodies required to cooperate with the IBCA (what would be clause 46 of the Bill) and the consent of the Welsh Ministers is required before any transfer schemes can be made by the UK Government which transfer such property, rights and liabilities of the Welsh Ministers and Welsh NHS Trusts/Special Health authorities as considered appropriate for the purposes of the IBCA carrying out its functions (paragraph 20 of the Schedule). Whilst the Welsh Government acknowledges that such transfers are necessary to ensure the operability of the IBCA, the requirements will ensure that the Welsh Ministers consent must be obtained for any such transfers to take place.

28. We are therefore supportive of the inclusion of the amendments in the Bill and recommend consenting to the provisions.

Welsh Government Position on the Bill following Amendments tabled at Lords report stage - Amendments to which I recommend the Senedd does not give consent

Part 1 - Clauses 1 to 4, 11, 26 and 27 – Victims' Code

29. Although we support the policy intention of bringing the Victims' Code into law, there are outstanding constitutional issues with the amended clauses.

30. The amendments would now require the Secretary of State to consult with the Welsh Ministers in the process of making or amending the Victims' Code. As noted previously the Senedd could not replicate the Victims' Code provisions in full, however given the impact on devolved subject matter, it remains essential that an appropriate recognition for devolved principles can be achieved.

Part 1 - Clause 15 – Victims of criminal conduct: Guidance about specified victim support roles

31. The amendments made to the clauses do not fully resolve the issues previously raised. Although we support the policy intention of providing clearer guidance on support roles for victims of VAWDASV and of criminal conduct more broadly, there are substantial constitutional issues with the amended clause.

32. Although the amendments provide that the Secretary of State must now consult the Welsh Ministers about guidance to be issued under Clause 15, so far as it relates to a matter, provision about which, would be in the legislative competence of the Senedd, our position remains that it would not be appropriate for these powers to be exercised solely by the Secretary of State in relation to Wales.

Part 2 - Clauses 28 and 30 plus new review clause - Victims of major incidents:

33. The amendments made to clauses 28 and 30 provide that the Secretary of State must consult the Welsh Ministers before declaring a major incident in Wales and before appointing an advocate for victims to such a major incident. There is also a new clause to provide for a review by the Secretary of State of the operation of the advocate.

34. However, these amendments do not fully resolve the issues previously raised. Part 2 of the Bill does not include provisions for the consent of the Welsh Ministers to be required in the declaration of a major incident in Wales and in the appointment and deployment of the advocate for victims of a major incident in Wales. It is within the legislative competence of the Senedd to legislate for an advocate for victims in Wales, and we also believe that notwithstanding this legislation, the Welsh Ministers would be able to appoint a non-statutory advocate following an incident in Wales under existing powers. The Welsh Government therefore believes that failure to include a requirement for the Welsh Ministers to grant consent for the appointment of an advocate in the Bill means that the Senedd should not give consent to these provisions.

Financial implications

35. There may be financial implications, but this will not be clear until the measures in the Bill are implemented.

Conclusion

36. Part 3 of the Bill is welcome and is in line with our policies. I am recommending the Senedd gives consent to this Part of the Bill, as listed in paragraph 26-28.
37. However, I recommend the Senedd withhold its consent in relation to the amendments and provisions listed in paragraphs 29-34.
38. We continue to discuss these clauses with the UK Government, and remain optimistic about the possibility of a compromise on these clauses which respects the Senedd's legislative competence and the Welsh Ministers' executive powers.

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Cabinet Secretary for Culture and Social Justice