

LEGISLATIVE CONSENT MEMORANDUM

VICTIMS AND PRISONERS 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 Victims and Prisoners Bill (“the Bill”) was introduced in the House of Commons on 29 March 2023. The Bill as introduced can be found at: [Victims and Prisoners Bill](#).
3. On 11 April, I wrote to the Llywydd explaining that it has not been possible to lay this legislative consent memorandum within the normal two-week SO29 deadline. My officials had not had sight of the final version of the Bill, late changes to the Bill or Explanatory Notes prior to it being introduced and were also not informed that the Bill title had been changed to ‘Victims and Prisoners Bill’. A number of additional provisions have also been included within the Bill since a draft copy was initially published in 2022. Due to this it has taken time to fully consider the devolution consequences of what is being proposed through the Bill, which has meant missing the normal two-week laying deadline.

Policy Objective(s)

4. The UK Government’s stated policy objectives are to deliver on three key manifesto commitments; to pass and implement a Victims 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 also prohibit prisoners who are serving a whole life order from entering a marriage or civil partnership.

Summary of the Bill

5. The Bill is sponsored by the Ministry of Justice (the MoJ).
6. 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 independent public 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.

Engagement with the UK Government

7. My officials have engaged with officials in MoJ on the clauses expected to be introduced as part of the Bill. A draft version of the Bill, then known as the Victims Bill, was published for pre-legislative scrutiny on 22 May 2022.
8. Since the pre-legislative scrutiny period, MoJ has shared some proposed changes and additional draft clauses relating to the Victims element of the Bill with the Welsh Government. However, the Bill as tabled is considerably wider in scope than the draft Bill published in 2022. In particular, the draft Bill did not include any clauses relating to the parole system, Parole Board or the ability of prisoners to form a marriage or civil partnership. The Welsh Government did not have sight of the final Bill or Explanatory Notes prior to the Bill being introduced, was not informed that the scope of the Bill had widened in this way and was not informed that the title of the Bill had changed to the Victims and Prisoners Bill.

Provisions in the Bill for which consent is required

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

9. Clauses 1 and 2 relate to the definition of a “victim” and the issuing of a code of practice as to the services to be provided to victims by persons appearing to the Secretary of State (“SoS”) to have functions relating to victims, or any aspects of the criminal justice system.
10. 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 is of the view 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 and policing (paragraphs 8, 39, 40 and 41 of Schedule 7A to the Government of Wales Act 2006 (“GoWA”). However, although services to victims are provided as a direct result of criminal conduct, the criminal conduct has already taken place. These provisions do not appear to concern the criminal law and our position is that defining a victim of crime for the purposes of the Bill does not impact upon the single legal jurisdiction of England and Wales. This is also the case in respect of the issuing of a code of practice as to the services to be provided to victims.
11. As Clauses 3 and 4 relate to the preparation and revision of the victims’ code and are therefore ancillary to Clause 1 and 2 consent is also required.
12. Clause 11 relates to the requirement on the SoS to issue guidance on the discharge of duties by reserved authorities in respect of the victims’ code. 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

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 similar provisions to this clause and consent is therefore required.

13. Clause 22 relates to data protection regarding Part 1 of the Bill with clause 23 allowing for consequential provisions. These clauses are ancillary to Part 1 of the Bill and therefore consent is required.
14. Although these provisions fall within competence, the Senedd could not legislate for the entirety of the regime outlined in the Bill in relation to the victims' code. For example, the provisions set out in clauses 5 – 10 place compliance duties on reserved authorities and therefore engage the restriction in paragraph 8(1)(a) of Schedule 7B to GoWA. As noted in paragraph 12 above, to enact equivalent provisions the Senedd would require the appropriate Minister's consent. Without such consent the Senedd would be unable to ensure that reserved authorities (including justice bodies such as police forces and the courts and tribunals service) comply with any Victims' code enacted by the Senedd. This would mean such a code would not be as effective as its English equivalent and likely to be more akin to guidance than a duty.

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

15. This clause provides that the SoS must issue guidance about independent domestic violence advisors and independent sexual violence advisors; and that any bodies having functions relating to victims, or to the criminal justice system, must have regard to it.
16. Consent is required as this clause 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 therefore are "relevant provisions" for the purposes of SO29.

Clauses 24-27 and 29-31 – Victims of major incidents: Appointment of independent public advocate:

17. These provisions create the new statutory role of Independent Public Advocates ("IPA") and allows the SoS to appoint an individual (or multiple individuals) to act as an IPA. The Bill's Explanatory Notes state the purpose of the 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.*"

18. Consent is required for clauses 24-27, which concern the appointment and functions of the IPA, as these clauses concern the devolved area of the provision of support services, signposting, advocating and dissemination of information. Clauses 30 and 31, on information sharing practice and broader guidance for IPAs, are ancillary to these clauses and consent is therefore also required.
19. Clause 29 places a duty on the IPA to report to the SoS. Similar provisions could be enacted by the Senedd, such as creating reporting requirements to the Welsh Ministers, and therefore consent is required as the duty is placed on a statutory role which falls within competence.
20. Clause 28, which amends section 47(2) of the Coroners and Justice Act 2009 to make IPAs an “interested person” for the purposes of an investigation or inquest into a person’s death, is an exception and consent is not required for this clause. This is because the subject matter of Part 1 of the Coroners and Justice Act 2009 is reserved under paragraph 167, section L3 (Coroners) of Schedule 7A to GOWA.

UK Government view on the need for consent

21. The UK Government agree that consent is required for clauses 15 (Guidance about independent domestic violence and sexual violence advisors) and for clauses 24-27 and 29-31 (Appointment of independent public advocates).
22. The UK Government has not yet been able to provide a view on whether consent is required for clauses 1 to 4, 11, 22 and 23 (Victims’ code and ancillary clauses) prior to the laying of this LCM. The Welsh Government will continue to engage with the UK Government as it considers this issue and its position.

Clauses within the competency of the Senedd where consent is not recommended:

Clause 15 - Guidance about independent domestic violence and sexual violence advisors:

23. This clause makes provision with regard to welfare and safeguarding, which are devolved matters. On that basis, our view is that any guidance on this issue in Wales should be issued by the Welsh Government rather than the UK Government, in line with our devolved responsibilities. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint partnership provides an opportunity to develop our own definitions, and the existence of statutory guidance from the UK Government which applies in Wales could be confusing and restrictive.

24. This approach reflects our devolved competencies on VAWDASV and ensures the specialist sector in Wales will be able to input into any guidance on this issue.
25. My officials have held constructive and collaborative discussions with their UK Government counterparts regarding clause 15. The recommendation to withhold consent is a reflection that the landscape has evolved in Wales, and the inception of the National Partnership and Blueprint structure for delivering the aims of the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) (Wales) Act 2015. This structure is a key forum to broker shared decisions and commitments. We will be pursuing further conversations regarding an amendment to the bill at a later stage following further engagement with MoJ and the specialist VAWDASV sector in Wales.

Clauses within the competency of the Senedd, where there are key matters of concern to be resolved before consent can be recommended:

Clauses 1 to 4, 11, 22 and 23 - Victims' code and ancillary clauses:

26. We are currently waiting for the MoJ to respond to questions on the legal status of the Victim's Code in Wales, and the risks that it could set out responsibilities and expectations which are within the competence of the Senedd. We are continuing to engage with the UK Government on this issue, but until MoJ are able to address these issues we are not in a position to recommend consent on these clauses.

Clauses 24-27 and 29-31 - Appointment of independent public advocate:

27. As drafted, the Bill states that appointing an IPA is purely a matter for the Secretary of State and does not reflect the fact that these provisions (save for clause 28) are within the legislative competence of the Senedd. We also believe that notwithstanding this legislation, the Welsh Ministers would be able to appoint a non-statutory IPA following an incident in Wales under existing powers. The benefits for Wales of inclusion within these provisions are therefore currently unclear. We need to explore this issue further with the UK Government before we are in a position to make a recommendation with regard to consent on these clauses.

Financial implications

28. There are no financial implications to this Bill.

Conclusion

29. In my view it is not appropriate to recommend consent in respect of Clause 15, Guidance about independent domestic violence and sexual violence advisors.

30. In my view it is not appropriate to recommend consent for the following provisions until further discussions have been held with UK Government:

- Clauses 1 to 4, 11, 22 and 23 - Victims' code and ancillary clauses
- Clauses 24-27 and 29-31 - Appointment of independent public advocate

Jane Hutt MS
Minister for Social Justice
19 May 2023