

The Welsh Government's Supplementary Legislative Consent Memorandum (Memorandum No. 2) on the Police, Crime, Sentencing and Courts Bill

November 2021



1. Background

1. The Police, Crime, Sentencing and Courts Bill (the Bill) was originally introduced into the House of Commons and had its first reading on 9 March 2021.¹ It is sponsored by the Ministry of Justice. The Bill² was re-introduced on 18 May 2021 following a carry-over motion.
2. The Bill completed its stages in the House of Commons on 5 July 2021. It was introduced into the House of Lords on 6 July 2021,³ completed its second reading on 14 September 2021 and is currently at Report stage.

The Welsh Government's Legislative Consent Memorandum

3. On 28 May 2021, the Minister for Social Justice, Jane Hutt MS (the Minister), laid before the Senedd a Legislative Consent Memorandum⁴ (the Memorandum) in respect of the Bill.
4. We reported⁵ on the Memorandum on 14 October 2021. The Minister responded to our report on 12 November.⁶
5. Paragraphs 10 to 16 of that report set out the clauses of the Bill that require the Senedd's consent, and identify where disagreement exists between the Welsh and UK Governments.

The Welsh Government's Supplementary Legislative Consent Memorandum

6. On 5 November 2021, the Minister laid a Supplementary Legislative Consent Memorandum⁷ (Memorandum No. 2) in respect of the Bill.

¹ Police, Crime, Sentencing and Courts Bill [HC Bill 268, 2019-21]

² Police, Crime, Sentencing and Courts Bill [HC Bill 5, 2021-22]

³ Police, Crime, Sentencing and Courts Bill [HL 40]

⁴ Welsh Government, Legislative Consent Memorandum, Police, Crime, Sentencing and Courts Bill, May 2021

⁵ Legislation, Justice and Constitution Committee report, The Welsh Government's Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill, October 2021

⁶ Letter from the Minister for Social Justice, 12 November 2021

⁷ Welsh Government, Supplementary Legislative Consent Memorandum, Police, Crime, Sentencing and Courts Bill, November 2021

- 7.** The Business Committee agreed that the Legislation, Justice and Constitution Committee should report on Memorandum No. 2 by 25 November 2021.⁸
- 8.** Memorandum No. 2 concerns an amendment to clause 17 (Directions) of the Bill agreed in the House of Lords. Clause 17 is part of suite of clauses relating to serious violence (clauses 7 to 22)
- 9.** The original Memorandum states that the Senedd's consent is required for clauses 7, 8, 10 to 16 and 19 to 22⁹ and recommends that the Senedd withhold consent to clauses 9, 17 and 18, noting that:

"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".¹⁰

Amendment made to clause 17 the Bill

- 10.** Clause 17 is part of a suite of clauses requiring local public authorities to work together in serious violence partnerships to tackle serious violence (referred to in Memorandum No. 2 as the serious violence duty or "SVD").
- 11.** Memorandum No. 2 states:

"The amendments, the subject of this LCM, are to clause 17 but relate to clauses 9 and through to 22 in respect of which it was recommended that consent was withheld on the basis that on introduction of the Bill to which Memorandum No. 1 relates to clause 17 was a duty consult rather than to obtain consent of Welsh Ministers."¹¹

- 12.** Memorandum No. 2 explains that the relevant amendment "replaces the requirement on the Secretary of State to consult the Welsh Ministers" and instead "means the Secretary of State

⁸ Business Committee, Timetable for consideration of the Supplementary Legislative Consent Memorandum for the Police, Crime, Sentencing and Courts Bill, November 2021

⁹ Welsh Government, Memorandum, paragraph 12

¹⁰ Welsh Government, Memorandum, paragraph 14

¹¹ Welsh Government, Memorandum No. 2, page 2

must obtain consent of the Welsh Ministers prior to directing a devolved Welsh authority." It adds that the Welsh Government supports the amendment.¹²

The Welsh Government's position

13. Paragraphs 7 and 8 of Memorandum No. 2 state:

"Because the amendment to Clause 17 has been achieved, as detailed above, we now recommend consent be given to clauses 9 through to 22 of the Bill (the SVD clauses), all of which require the legislative consent of the Senedd.

Intergovernmental discussions continue on the remaining provisions to which the Welsh Government is currently not recommending that the Senedd gives consent. These are (in the Bill as introduced): criminal damage to memorials (clause 46), unauthorised encampments (clause 61) and clauses 54, 55 and 60 on public order. Further LCMs will follow as appropriate, ahead of the legislative consent debate."

2. Committee consideration

14. We considered Memorandum No. 2 at our meeting on 15 November 2021.¹³

Our view

15. We note that Memorandum No. 2 concerns an amendment to clause 17 of the Bill, such that the Secretary of State is now required to obtain the consent of the Welsh Ministers before giving a direction to a devolved Welsh authority under that clause.

16. We note that the Welsh Government has stated in Memorandum No. 2 that it is now satisfied that the Bill provides appropriate protection and safeguards in terms of the interaction with devolved Welsh authorities and other devolved issues.¹⁴

17. In so doing, and as highlighted in the Minister's response to us of 12 November, this addresses the recommendation in our report on the Memorandum, which requested an update on the position regarding clauses 17 and 18.

¹² Welsh Government, Memorandum No. 2, page 2

¹³ Legislation, Justice and Constitution Committee, 15 November 2021

¹⁴ Welsh Government, Memorandum No. 2, page 2

18. Our original report highlighted the poor quality of the Memorandum. It is therefore disappointing that the information contained in Memorandum No. 2 is confusing. In particular, we wish to highlight the following points:

- Memorandum No. 2 omits any reference to clauses 7 and 8, which form part of the suite of provisions concerning the Serious Violence Duty;
- it is not immediately clear how the amendment to clause 17 relates to “clauses 9 and through to 22” as stated in Memorandum No 2;¹⁵
- Memorandum No 2 suggests that the Welsh Government recommended in the Memorandum that the Senedd refuse consent to clauses 10 to 16 and 19 to 22,¹⁶ whereas in fact it recommended that the Senedd give consent to those provisions;¹⁷
- the Memorandum made reference to clauses 62 and 63 of the Bill concerning unauthorised encampments (without referring to the specific clause numbers), as provisions which the Welsh Government considered to be within the legislative competence of the Senedd and for which the Welsh Government recommends the Senedd withhold consent; however, paragraph 8 of Memorandum No. 2, which lists the provisions to which the Welsh Government is currently not recommending that the Senedd gives consent (and which remain under continuing intergovernmental discussion) makes no reference to clauses 62 and 63.

19. It is important that Members of the Senedd are provided with accurate information and are clear about what clauses they are being asked to consider consenting to within a UK Bill.

Recommendation 1. The Minister should, in advance of the debate on the relevant consent motion, clarify why Memorandum No. 2 on the Bill did not refer to clauses 7 and 8, and also explain how clause 17 relates to “clauses 9 and through to 22” as stated in Memorandum No. 2.

¹⁵ Welsh Government, Memorandum No. 2, page 2

¹⁶ Welsh Government, Memorandum No. 2, page 2

¹⁷ Welsh Government, Memorandum, paragraph 12

Recommendation 2. The Minister should, in advance of the debate on the relevant consent motion, make the Welsh Government's position clear on the clauses of the Bill which require the consent of the Senedd, and:

- the clauses for which it is recommending consent; and
- the clauses for which it is not recommending consent.

20. On this issue, we welcome that the Minister's letter of 12 November in responding to recommendation 2 in our original report, clarified that clause 42 of the Bill requires the consent of the Senedd.