

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 3)

DOMESTIC ABUSE 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 Domestic Abuse Bill 2019-21 (“the Bill”) was introduced in the House of Commons on 3 March 2020. The latest version of the Bill, as amended at House of Lords Committee Stage, can be found at:
<https://services.parliament.uk/bills/2019-21/domesticabuse.html>

Policy Objective(s)

3. The UK Government’s stated policy objectives are to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies.

Summary of the Bill

4. The Bill is sponsored by the Home Office and the Ministry of Justice.
5. The Bill makes the following provisions:
 - **Part 1** provides for a statutory definition of domestic abuse which underpins other provisions in the Bill.
 - **Part 2** creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to cooperate with the Commissioner.
 - **Part 3** provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”).
 - **Part 4** places new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation.
 - **Part 5** confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; and prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.

- **Part 6** extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- **Part 7** makes miscellaneous and general provision. In particular, this Part enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; and confers a power on the Secretary of State to issue statutory guidance.

Update on position since the publication of the second Legislative Consent Memorandum

6. On 3 August 2020 I laid a Legislative Consent Memorandum, based on the Bill as introduced into Parliament on 3 March 2020. A Supplementary Legislative Consent Memorandum (Memorandum No.2) was laid on 20 January 2021.
7. Both memorandums confirmed we are supportive of the Bill as introduced and subsequently amended.
8. I stated in Memorandum No.2 that we have secured a UK Government amendment to clause 73 to ensure the Secretary of State's (SoS) power to issue guidance is respectfully limited to matters which are reserved. This amendment will prevent the SoS from issuing guidance that relates to 'Welsh devolved matters'. Therefore, Memorandum No.2 did not include Clause 73 as it no longer requires the consent of the Senedd in accordance with the Standing Orders.
9. On 1 March 2021 the UK Government tabled further amendments to the Bill which are detailed below. I am supportive of these amendments.

Changes to the Bill since the publication of the Supplementary Legislative Consent Memorandum (Memorandum No.2) for which consent is required.

10. Extension of the offence of controlling or coercive behaviour in an intimate or familiar relationship. This amendment would remove the co-habitation requirement in the controlling or coercive behaviour offence (at section 76 of the Serious Crime Act 2015) so that it may apply to both ex-partners and family members who do not live together. The amendment to section 76 of the 2015 Act will replicate the definition of 'personally connected' at clause 2 of the Bill to increase consistency across legislation which defines personally connected for the purposes of domestic abuse.
11. Non-fatal strangulation. This amendment creates a new offence to intentionally strangle or do any other act, that affects a person's ability to

breathe, and constitutes battery of another person and causes serious harm.

12. Schedule 2 - Extraterritorial jurisdiction. This is already included in the Memorandum. The UK Government is making further amendments that will make it an offence to commit a sexual offence in a country that itself does not recognise the offence as a crime. These amendments apply to reserved matters (only) and are not within the competence of Senedd Cymru and note is made within this Memorandum for completeness as Schedule 2 is already included in the second amended Memorandum.
13. Domestic Homicide Reviews (DHR). This amendment would require final copies of all reports setting out conclusions of DHRs to be sent to the Domestic Abuse Commissioner for England and Wales for good practice review purposes. In Wales the reviews are completed by Local Authorities and Local Health Boards. We have been liaising with the UK Government to ensure for the purposes of this amendment (as per a previous UK Government amendment we have already obtained) that the power of the Commissioner to issue instructions relevant to matters contained within the DHR to authorities is limited to reserved bodies only (such as police or probation services).
14. Evidence of domestic abuse for the purposes of legal aid: restriction of fees. This amendment will ensure that where a healthcare professional (typically a GP) either provides services 'wholly or mainly' under a medical services contract or has examined the person making the request for evidence in the course of providing services under a general medical services contract, the healthcare professional may not impose a fee upon that person for providing a letter or report for the purposes of an application for 'civil legal services' as defined by section 8(3) Legal Aid, Sentencing and Punishment of Offenders Act 2012 or other evidence of domestic abuse as may be required by other Regulations. The amendment will exclude those practitioners operating services on a purely 'private' basis.

Welsh Government position on the Bill as amended

15. We welcome the UK Government's amendments. With regards to the amendment about extending the offence of controlling or coercive behaviour in an intimate or familial relationship to apply to both ex-partners and family members that do not live together, we believe this is a very important provision. Domestic abuse and other forms of violence do not end simply because the perpetrator is no longer living in the same household as the victim.
16. I am very much in favour of the creation of a new criminal offence in respect of non-fatal strangulation. This will seek to address concerns that perpetrators can avoid punishment because strangulation and suffocation

can at times leave no visible injury, making it hard to prosecute under existing laws.

17. Consent is required for these provisions because they fall within the legislative competence of the Senedd. The purposes of these clauses to safeguard and protect those at risk of domestic violence and ensure that such behaviour is appropriately dealt with are not reserved to the UK Government. The restriction in paragraph 4 'Criminal Law' Schedule 7B to the Government of Wales Act 2006 does not apply.
18. Consequently we support the application of both amendments to Wales.
19. The proposed amendment regarding medical fees, makes provision about accessing health care, specifically preventing a medical practitioner from levying a charge for obtaining a medical report for the purposes of making an application for legal aid. Matters relating to the Welsh NHS are largely devolved, and health authorities are specifically listed as "devolved Welsh Authorities" under schedule 9A of the Government of Wales Act 2006. For these reasons we would advise that the amendment would fall within legislative competence and that the consent of the Senedd is required.
20. I believe that victims of domestic violence and other crimes should not be financially penalised for seeking a healthcare professional's report or letter. We would not want to see Welsh citizens being treated in a disadvantaged way in comparison to people living in England. Given the uncertainty as to how quickly equivalent provisions could be implemented in Wales by primary or subordinate legislation, it has been determined to include this in the Bill to ensure parity of treatment for patients in Wales. The clause also contains regulation making powers for Welsh Ministers to alter the scope of these provisions (as they apply to Wales) in the future, with the agreement of the Senedd. The SoS power to issue guidance in relation to this provision is consistent with the position set out at paragraph 8 above and so will not apply in relation to Wales.
21. Consequently we support the application of this amendment to Wales.
22. The Domestic Homicide Reviews (DHR) amendment will ensure that the final DHRs are copied to the Domestic Abuse Commissioner for England and Wales to enable the Commissioner to ensure good practice, by assisting reserved bodies such as the police and probation services to implement lessons learnt from DHRs through issuing instructions to reserved bodies. It is essential that reserved bodies in Wales receive information and good practice advice that will enable them to deliver the best services to the people of Wales, therefore I support this amendment.
23. The DHR amendment requires the consent of the Senedd because it legislates with regard to devolved matters and confers reserved functions on devolved Welsh authorities.

Financial implications

24. While there are no direct financial implications for the Welsh Government or Senedd Cymru arising from the powers under the Bill, there may be future financial implications for Wales in terms of the overall effect should a differing approach be taken. Further detailed analysis would need to be undertaken in this instance.

Conclusion

25. It is our view that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, we consider that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for making these legislative changes that will enhance provision for domestic abuse survivors in Wales. There is no space in the Welsh Government's current Legislative Programme for a Bill making provision for Wales on these matters, nor is there any Bill in the programme to which such provisions could be included.

Jane Hutt, MS
Deputy Minister and Chief Whip
March 2021