

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM  
(MEMORANDUM NUMBER 5)**

**POLICE, CRIME, SENTENCING AND COURTS 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 Police, Crime, Sentencing and Courts Bill (“the Bill”) was introduced in the House of Commons on 9 March 2021. An LCM was laid on 22 March and subsequently on 28 May, when the Bill was reintroduced into Parliament and following the May 2021 Senedd Election. A supplementary LCM (Memorandum No 2) was laid on 5 November following an amendment to clause 17. Supplementary LCM (Memorandum No 3) was laid on 20 December in response to the 91 amendments tabled by the UK Government on 1 December for consideration at House of Lords Report Stage, 15 of which required the consent of the Senedd. A further supplementary LCM (Memorandum No 4) was laid on 7 January 2022 in response to the 19 amendments tabled by the UK Government on 4 January 2022 for consideration at House of Lords Report Stage, 1 of which required the consent of the Senedd. A legislative consent debate was held in the Senedd in relation to all of the LCMs detailed in this paragraph on 18 January. Two legislative consent motions were laid ahead of the debate. The Senedd was asked and voted to agree motion 1 and reject motion 2.
3. On 17 January 2022, during House of Lords Report stage 161 non-government amendments were agreed (please see paragraphs 9 to 11 below for further detail on the amendments within competence of the Senedd). The UK Government proposed a further 42 amendments on 22 February 2022 for the consideration during consideration of final amendments stage (‘Ping Pong’) when the Bill returns to the House of Commons on 28 February 2022. Eleven of these amendments require the consent of the Senedd. This supplementary LCM (Memorandum No 5) sets out the Welsh Government’s position on these clauses.
4. The clauses referred to in this supplementary LCM are as set out in the Bill as published on 18 January, which can be found at: [newbook.book \(parliament.uk\)](https://www.newbook.book.parliament.uk)

**Policy Objective(s)**

5. The UK Government’s stated policy objectives are to make the country safer by empowering the police and courts to take more effective action against crime and lead a fair justice system. This includes specific

commitment to protect and empower the police by enshrining the Police Covenant into law and introduce “a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime”.

6. On courts and sentencing the Bill includes commitments to: empower the courts to tackle crime; ensure a fair justice system by introducing tougher sentencing for the worst offenders and ending automatic halfway release from prison for serious crimes. It also aims to toughen community sentences, for example by tightening curfews, making those convicted do more hours of community payback, turn people away from crime and end the cycle of reoffending.

### **Summary of the Bill**

7. The Bill is sponsored by the Ministry of Justice.
8. The Bill makes provision;
  - for the police and other emergency workers to make provision about collaboration between authorities to prevent and reduce serious violence;
  - for new offences and for the modification of existing offences;
  - about the powers of the police and other authorities for the purposes of preventing, detecting, investigating or prosecuting crime or investigating other matters;
  - about the maintenance of public order;
  - about the removal, storage and disposal of vehicles; to make provision in connection with driving offences;
  - about cautions;
  - about bail and remand;
  - about sentencing, detention, release, management and rehabilitation of offenders;
  - about secure 16 to 19 Academies; and
  - in connection with, procedures before courts and tribunals; and for connected purposes.

### **Summary of key amendments made by the House of Lords at Report stage**

9. The House of Lords voted on a series of amendments at its Report stage on 17 January, some of which related to matters within the competence of the Senedd. For most of these cases, the amendments proposed by the UK Government on 22 February then further change the situation.
10. For reference only, the table below highlights the Lords amendments which would have been in competence of the Senedd, and the consequent impact of the proposed amendments tabled on 22 February.

<b>Clause description</b>	<b>Clause number (As amended at Lord's report stage)</b>	<b>Impact of amendments tabled at Commons on 22/2/22 (within competence only)</b>
Offences motivated by hostility towards the sex or gender of the victim	73	The proposed UK Government amendments would remove this Lords amendment entirely.
Imposing conditions on public processions	74	The proposed UK Government amendments would bring back subsections (2) and (3) which were removed by the Lords. The proposed amendments seek to keep the additional sub-section proposed by the Lords.
Imposing conditions on public assemblies	No clause number as removed from Bill	The proposed UK Government amendments would bring back this clause, which was removed by the Lords. They also insert an additional substantive amendment and further consequential amendments.
Repeal of the Vagrancy Act 1824 etc	81	The proposed UK Government amendments would remove the Lords amendment entirely, replacing it with a different amendment to repeal the Vagrancy Act 1824 and makes necessary consequential amendments.
Imposing conditions on one-person protests	No clause number as removed from Bill	The proposed UK Government amendments would bring back this clause, which was removed by the Lords. They would also insert an additional substantive amendment and further consequential amendments.

11. This LCM sets out the Welsh Government's position on the Bill, in line with the proposed amendments that fall within our competence, tabled by

the UK Government on 22 February. Clause numbers are used where these are available, but some new amendments do not have clause numbers as they were not included in the Bill as published on 18 January. These are referred to by their descriptions in line with the table above.

### **Changes to the Bill since the laying of the Supplementary LCM (Memorandum No 4) – amendment agreed at House of Lords report stage**

#### Clause 73 - Aggravation of offences on grounds of hostility related to sex or gender

12. Following the agreement to an amendment at House of Lords Report stage on 17 January, Clause 73 was added to the Bill. Clause 73 requires Courts to treat hostility based on sex or gender as an aggravating factor when considering the seriousness of offences excluding sexual offences and specific domestic abuse offences. It also requires the Secretary of State to make regulations requiring Chief Officers of the Police to keep data about the number of reports relating to such crimes.
13. The proposed amendments tabled on 22 February state that the UK Government disagrees with the House of Lords in its amendment, and proposes to the House of Commons that clause 73 is removed from the Bill. I am still providing advice on this Clause, in line with the decision of the Lords on 17 January.
14. This amendment is assessed as being within the legislative competence of the Senedd. Whilst policing and protecting personal data are reserved matters, we are responsible for safeguarding, including the protection of women and girls, which was the intended purpose of the clause.

### **Changes to the Bill since the laying of the Supplementary LCM (Memorandum No 4) - amendments tabled by the UK Government on 22 February 2022 for consideration by the House of Commons during “Ping-Pong”**

#### Clause 74 - Imposing condition on public processions

15. The UK Government through these amendments is proposing to reinstate section (2) and (3) to Clause 74, following the agreement to remove these sections at House of Lords Report stage. Furthermore, the UK Government is proposing to keep the additional sub-section proposed by the House of Lords. The new sub-section amends the Public Order Act 1986 by including instances of when public processions may cause serious disruption to the life of the community. This includes when a procession may result in a significant delay in the delivery of a time-sensitive product, or where a procession may result in a prolonged disruption of access to any essential goods or essential services. It also

prescribes when serious disruption may be caused as a result of noise generated by a procession.

16. Whilst public order is a reserved matter the noise element in this clause relates to environmental health matters, which are devolved to the Senedd.

#### Imposing conditions on public assemblies and Imposing conditions on one-person protests

17. Agreement was made at House of Lords Report stage to remove both of these clauses in their entirety, which we were supportive of. The UK Government are proposing to fully reinstate these clauses with amendments.
18. The UK Government is proposing to amend the clause 'Imposing conditions on public assemblies' by including instances of when public assemblies may cause serious disruption to the life of the community. This includes when an assembly may result in a significant delay in the delivery of a time-sensitive product, or where an assembly may result in a prolonged disruption of access to any essential goods or essential services. It also prescribes when serious disruption may be caused as a result of noise generated by an assembly.
19. Furthermore, the UK Government is proposing to amend the clause 'Imposing conditions on one person protests' by prescribing when serious disruption may be caused as a result of noise generated by a one person protest.

#### Expedited Public Spaces Protection Orders

20. The UK Government is proposing amendments in relation to expedited public spaces protection orders. These amendments allow local authorities to make an expedited public spaces protection order in relation to schools or sites within their area which are used as vaccination or testing centres, if those places have been subject to protests or demonstrations which have had, or likely to have the effect of harassing or intimidating staff at the sites, users of the site, volunteers at the site or impeding access to the services of the school or site.
21. These amendments impose reserved functions on local authorities, which are Devolved Welsh Authorities. For this reason, I am laying this supplementary LCM to reflect these amendments.

#### Clause 81 – Repeal of the Vagrancy Act 1824 etc

22. On 17 January the Lords agreed an amendment to repeal the Vagrancy Act 1824 and this amendment was assessed as being within the competence of the Senedd as it related to homelessness which is devolved.

23. The UK Government is now proposing to remove this amendment and have tabled an alternative amendment. The new UK Government amendment takes a different approach to the repeal of the Vagrancy Act compared to the Lords amendment. However, the amendment is still assessed as being within competence as it impacts on the devolved matters of housing and homelessness, and thus is included within this LCM.

### **Welsh Government Position on the Bill following Amendments tabled on 22 February - Summary**

24. A summary of our position regarding the amendments tabled on 22 February for consideration at House of Commons during “Ping Pong” is as follows.

25. All amendments to the Bill tabled on 22 February to which I recommend the Senedd gives consent:

- Clause 73 - Offences motivated by hostility towards the sex or gender of the victim
- Clause 81 – Repeal Vagrancy Act 1824

26. All amendments to the Bill tabled on 22 February to which I recommend the Senedd withholds consent:

- Clause 74 – Imposing conditions on public processions
- Imposing conditions on public assemblies
- Imposing conditions on one-person protests
- Expedited public spaces protection orders

### **Welsh Government Position on the Bill following Amendments tabled on 22 February - Amendments to which I recommend the Senedd gives consent**

Clause 73 - Offences motivated by hostility towards the sex or gender of the victim

27. I recommended that the Senedd should fully support consent to this motion as agreed in the Lords, although the proposed UK Government amendments tabled on 22 February would remove it from the Bill. The measures are in line with our aim to address misogyny in all of its forms and to ensure women can live free from the threat of prejudice and gender-based violence.

Clause 81 – Repeal the Vagrancy Act 1824

28. The Welsh Government has been clear that the Act is no longer fit for purpose in the 21<sup>st</sup> Century and should be repealed. We have made this

view clear in discussions with the UK Government long before this Bill was laid.

29. Police services have better laws for dealing with anti-social behaviour, and we should move on from a law which criminalises someone based on their housing situation. Using the powers under the Vagrancy Act to move someone on will alienate that person and reinforce mistrust of public services. This approach delays the point at which support for someone sleeping rough can be given. This is more likely to push them away from that support and into danger.

30. On this basis, we support this amendment and the repeal of the Act and therefore I recommend the Senedd gives consent for this clause.

### **Welsh Government Position on the Bill following Amendments tabled on 22 February - Amendments to which I recommend the Senedd withholds consent**

#### Clause 74 - Imposing condition on public processions

31. This clause has been included in previous LCMs I have laid, and therefore this further LCM is being laid to reflect this amendment. Our position on this clause remains the same and I therefore recommend the Senedd should continue to withhold consent for this clause.

#### Imposing conditions on public assemblies and Imposing conditions on one-person protests

32. These reinstated clauses have been included in previous LCMs I have laid. Therefore, this supplementary LCM is being laid to reflect the amendments to these two clauses. Our position on both of these clauses remains the same and therefore I recommend the Senedd should continue to withhold consent for both clauses.

#### Expedited public spaces protection orders

33. The Welsh Government fully supports the need to ensure that people working in, attending or accessing schools and vaccine sites should be able to do so safely. However, the current legal framework provides sufficient scope to secure vaccine sites without limiting the right to protest.

34. Local authorities already have the ability to issue public spaces protection orders, and this amendment would not increase their ability to combat dangerous or anti-social behaviour. Instead, it would merely give local authorities expedited access to these powers in some circumstances, eliminating fair and proportionate due process in favour of kneejerk and unchecked responses to protest.

35. The right to protest is fundamental to the success of democracy. Freedom of expression, even when we disagree with it, is good for people, good for communities and good for society as a whole. On that basis, I recommend the Senedd withholds consent for this clause.

### **Financial implications**

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

### **Conclusion**

37. There are provision in the Bill which are welcomed and are in line with our policies. In respect of these clause, I am recommending the Senedd gives consent, as listed in paragraphs 27 to 30.

38. However, there are some provisions in this Bill which are not in line with our policies. In respect of these provisions, I am recommending the Senedd withholds consent, as listed in paragraphs 31 to 35.

**Jane Hutt MS**  
**Minister for Social Justice**  
**28 February 2022**

**Annex A - Comparison table between the original and new version of the Bill 18 January 2022**

Original version:

[newbook.book \(parliament.uk\)](http://newbook.book.parliament.uk)

November 2021:

[newbook.book \(parliament.uk\)](http://newbook.book.parliament.uk)

January 2022:

[newbook.book \(parliament.uk\)](http://newbook.book.parliament.uk)

Clause number on introduction	Clause description	As amended at report stage	As amended at Lord's report stage	Impact of amendments tabled at Commons on 22/2/22 (within competence only)
1	Police Covenant report	1	1	
2	Increase in penalty for assault on emergency worker	2	2	
	Required life sentence for manslaughter of emergency worker		3	
3	Special constables and Police Federations: amendments to the Police Act 1996	3	4	
4	Meaning of dangerous driving: constables etc (dangerous)	4	5	
5	Meaning of careless driving: constables etc (careless)	5	6	
6	Regulations relating to section 5 and 6 (regs)	6	7	
7	Duties to collaborate and plan to prevent and reduce serious violence	7	8	
8	Powers to collaborate and plan to prevent and reduce serious violence	8	9	
9	Power to authorise collaboration etc. with other persons	9	10	
10	Specified authorities and local government areas	10	11	
11	Educational, prison and youth custody authorities	11	12	
12	Preventing and reducing serious violence	12	13	
13	Involvement of local policing bodies	13	14	
14	Involvement of educational,	14	15	

	prison and youth custody authorities			
15	Disclosure of information	15	16	
16	Supply of information to local policing bodies	16	17	
17	Directions	17	18	
18	Guidance	18	19	
19	Amendments to the Crime and Disorder Act 1998	19	20	
20	Amendment to the Police and Justice Act 2006	20	21	
21	Regulations	21	22	
22	Index of defined expressions	22	23	
23	Duty to arrange a review	23	24	
24	Relevant review partners	24	25	
25	Relationship with other review requirements	25	26	
26	Notification of Secretary of State	26	27	
27	Conduct of review	27	28	
28	Information	28	29	
29	Information: supplementary	29	30	
30	Delegating functions	30	31	
31	Guidance	31	32	
32	Power to pay grant: local health boards	32	33	
33	Piloting	33	34	
34	Regulations	34	35	
35	Interpretation	35	36	
36	Extraction of information from electronic devices: investigations of crime etc	36	37	
37	Application of section 37 <del>36</del> to children and adults without capacity	37	38	
	Requirements for voluntary provision and agreement	38	39	
38	Application of section 36 37 where user has died etc.	39	40	
39	Extraction of information from electronic devices: investigations of death	40	41	
40	Code of practice about the extraction of information	41	42	
41	<del>Regulations about the extraction of Confidential information</del>	42	43	

42	Authorised persons	43	44	
43	Pre-charge Bail	44	45	
44	Arranging or facilitating commission of a child sex offence	45	46	
45	Positions of trust	46	47	
	Voyeurism: breast-feeding		48	
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46	Criminal damage to memorials: mode of trial	47	50	
47	Overseas production orders	48	51	
48	Power to photograph certain persons at a police station	49	52	
49	Power to specify date of attendance at police station for fingerprinting etc	50	53	
	Application of Police and Criminal Evidence Act 1984 to National Food Crime Unit of Food Standards Agency		54	
50	Entry and search of premises for human remains or material relating to human remains	51	55	
51	Special procedure for access to material relating to human remains	52	56	
52	Additional seizure powers	53	57	
53	Functions of prisoners custody officers in relation to live link hearings	54	58	
	Proceeds of crime: Account freezing orders	55	59	
	Code of practice relating to non-criminal hate incidents		60	
	Further provision about a code of practice under section 60		61	
	Increase in penalty for offences related to game etc		62	
	Trespass with intent to search for or to pursue hares with dogs etc.		63	

	Being equipped for searching for or pursuing hares with dogs etc.		64	
	Recovery order on conviction for certain offences involving dogs		65	
	Disqualification order on conviction for certain offences involving dogs		66	
	Seizure and disposal of dogs in connection with disqualification order		67	
	Termination of disqualification order		68	
	Section 67: Supplementary		69	
	Disqualification orders: appeals		70	
	Urgent review of offences under section 61 of the Sexual Offences Act 2003		71	
	Accountability of public authorities: duties on police workforce		72	
	Offences motivated by hostility towards the sex or gender of the victim		73	The UK Government amendments remove this Lords amendment entirely.
54	Imposing conditions on public processions	56	74	The proposed UK Government amendments would bring back subsections (2) and (3) which were removed by the Lords. The proposed amendments seek to keep the additional sub-section proposed by the Lords.
55	Imposing conditions on public assemblies	57	Removed from Bill	The proposed UK Government amendments would bring back this clause, which was removed by the Lords. They also insert an additional substantive amendment and further consequential amendments.
56	Offences under sections 12 and 14 of the Public Order Act	58	75	

	1986			
57	Obstruction of vehicular access to Parliament	59	76	
58	Power to specify other areas as controlled areas	60	77	
59	Intentionally or recklessly causing public nuisance	61	78	
	Wilful obstruction of highway		79	
	Key national infrastructure		80	
	Repeal of Vagrancy Act 1824		81	The proposed UK Government amendments would remove the Lords amendment entirely, replacing it with a different amendment to repeal the Vagrancy Act 1824 and makes necessary consequential amendments.
60	Imposing conditions on one-person protests	62	Removed from Bill	The proposed UK Government amendments would bring back this clause, which was removed by the Lords. They would also insert an additional substantive amendment and further consequential amendments.
61	Offence relating to residing on land without consent in or with a vehicle	63	82	
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64	Causing death by dangerous driving or careless driving when under the influence of drink or drugs: increased penalties	66	85	
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