

Legislative Consent:

Victims and Prisoners Bill

Memorandum No. 2

April 2024

1. Background

- 1.** This report considers the Welsh Government's Supplementary Legislative Consent Memorandum No. 2 (the SLCM) on the Victims and Prisoners Bill (the Bill).
- 2.** The SLCM was laid before the Senedd on 15 April 2024 by the Cabinet Secretary for Culture and Social Justice, Lesley Griffiths MS. It relates to amendments which were tabled at House of Commons Report Stage, which concluded on 4 December 2023, and House of Lords Committee Stage, which concluded on 25 March 2024.
- 3.** The Business Committee referred the SLCM to this Committee with a reporting deadline of 29 April 2024.

2. Amendments to existing clauses that the Welsh Government deems require consent

- 4.** Since the first LCM was laid amendments have been made to clauses 1 to 4, 11, 15, 22 and 23 in Part 1 of the Bill. Paragraphs 12 to 17 of the SLCM sets out these changes.



5. The SLCM states: “these clauses require consent on the basis that safeguarding, support and information services to victims are areas within the Senedd’s legislative competence. In addition, issuing guidance on the discharge of duties to devolved authorities in respect of the victims’ code falls within competence.”¹

6. Paragraphs 18 and 19 of the SLCM sets out details of provisions under Part 2 of the Bill that have been amended. These changes include the addition of three new clauses which are connected to the existing clauses, as well as amendments to the existing clauses numbered 24 to 27 and 29 to 31 in the Bill as introduced to the Commons.

7. The SLCM states that – as was the case with the first LCM – the provisions 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 requirements on the Independent Public Advocate and Secretary of State that could be replicated by the Welsh Ministers in relation to Wales.”²

3. New clauses that the Welsh Government deems require consent

8. New Clause 20 concerns Domestic Homicide Reviews. The Welsh Government take the view that the Senedd could legislate in similar circumstances as the purpose of the new clause is to learn lessons on the services provided to the deceased, rather than the criminal conduct itself. The clause places functions on devolved Welsh Authorities such as local authorities and local health boards. However, it also places functions on some reserved authorities.

9. New Clause 37 concerns Prohibited Steps Reviews. This clause amends the Children Act 1989 and requires the Crown Court to make a “prohibited steps order” which prevents a parent from making a decision about a child’s upbringing without the express approval or permission of the court, when a

¹ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 14

² Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 19

parent is convicted of the murder or voluntary manslaughter of the other parent. It also provides for the order to be reviewed by the family courts.

10. While the Senedd could not legislate in the same terms as Courts remain a reserved area, the Welsh Government state that consent is required because the clause places functions upon devolved Welsh authorities.³

11. New Clause 40 concerns the Compensation for Infected Blood victims. Clause 40 places a duty on the Secretary of State to establish a body to administer a compensation scheme for victims of infected blood. The clause requires that the new body must be chaired by a High Court Judge (in England and Wales) as a sole decision maker and sets out its functions.

12. The SLCM acknowledges that the Senedd could not legislate in these terms as the body set up is a body set up for all four nations of the United Kingdom. However, the Welsh Government consider the clause to be within competence of the Senedd on the basis that it does not engage any of reservations in Schedule 7A to the Government of Wales Act 2006. In addition, it is considered that the provision relates to the devolved matter of health; further supported by the fact that the ex-gratia support scheme in Wales is run by the Welsh Infected Blood Support Scheme and was set up by Welsh Ministers with powers contained in the NHS (Wales) Act 2006.⁴

4. Welsh Government view on granting of consent

13. The SLCM recommends that consent is given to the new clauses 20, 37 and 30.

14. The Welsh Government support the **granting of consent** to these clauses for the reasons set out below:

- Clause 20 (Domestic Homicide Reviews): supported on the basis that it aligns with the Domestic Abuse Act 2021, and provides a wider and more comprehensive definition, which is consistent with the Single Unified Safeguarding Review process in Wales.⁵

³ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 25

⁴ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 30

⁵ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraphs 31 and 32

- Clause 37 (Prohibited Steps Review): supported on the basis that it aligns with the Violence Against Women and Girls Blueprint approach in Wales.⁶
- Clause 40 (Compensation for Infected Blood Victims): the Welsh Government recognises the benefits of ensuring equal provision across the UK and supports its inclusion.⁷

15. The SLCM recommends that **consent is withheld for the time-being** for clauses 1 to 4, 11, 22 and 23 relating to the Victims' Code; clause 15 relating to guidance about independent domestic violence and sexual violence advisors (IDVA); clauses 24 to 27 and 29 to 31 (of the Bill as introduced) relating to victims of major incidents. The SLCM states that in instances where amendments have been made to these clauses, they did not resolve any of the issues previously raised (in LCM No. 1).⁸ Furthermore, it outlines concerns regarding the potential constitutional implications and differences of view with regards to competence.⁹ The Welsh Government recommends withholding consent to allow time for further discussion with the UK Government and until these issues are resolved.

5. Our view

On whether legislative consent is required

We note that the issues identified in the original LCM (No. 1) have not been resolved during the amending stages and agree with the Welsh Government that consent is required for clauses 1 to 4, 11, 22 and 23 (relating to the Victims Code), 15 (relating to guidance about IDVAs); and 24 to 27 and 29 to 31 (relating to victims of major incidents).

We furthermore agree that consent is required for new clauses 20, 37 and 40.

Conclusion 1. We agree that all the clauses identified by the Welsh Government in the Supplementary LCM (No.2) require the consent of the Senedd.

⁶ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 34

⁷ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 35

⁸ Equality and Social Justice Committee, [Legislative Consent – Victims and Prisoners Bill](#), July 2023

⁹ Welsh Government, [SLCM – Victims and Prisoners Bill](#), 15 Apr 2024, paragraph 40 to 44

On engagement between governments and the amending stages

Although the amending stages for the Victims and Prisoners Bill were concluded in January 2024, it has taken the Welsh Government until 15 April 2024 to table this Memorandum. No reason or explanation has been given for this delay. As a result we have been placed in the highly unsatisfactory position of having very little time (less than two weeks) to scrutinise the SLCM before the Senedd is scheduled to consider the question of whether to grant consent.

Conclusion 2. It is extremely disappointing that the Welsh Government has offered no reason or explanation for the delay in tabling this SLCM, which has resulted in less than 2 weeks for us to undertake scrutiny.

We note that many of the issues identified in our original report remain unresolved and that talks between both governments are yet to achieve a resolution. This is not only disappointing but suggests to us that Ministers need to inject some urgency into these talks or else they will continue to drag on.

Recommendation 1. The Welsh Government should explain in its response to this report why so little progress has been made as a result of discussions with the Ministry of Justice and set out the date and duration of meetings between both parties at ministerial and officials level since July 2023.

On whether to grant consent

With regards to the new clauses on Domestic Homicide Reviews (new clause 20), Prohibited Steps Review (new clause 37) and Compensation for Infected Blood Victims (new clause 40) we note that the Welsh Government has no policy objections and recommends granting consent.

Recommendation 2. We recommend that the Senedd grants consent to new clause 20 (Domestic Homicide Revies); new clause 37 (Prohibited Steps Review) and new clause 40 (Compensation for Infected Blood Victims). However the Committee would like clarification from the Cabinet Secretary, that payments made in regard to the new clause 40 will be from central government funds.



With regards to the other clauses 1 to 4, 11, 22 and 23 (relating to the Victims Code), 15 (relating to guidance about IDVAs); and 24 to 27 and 29 to 31 (relating to victims of major incidents), we note the Welsh Government's objections on both policy and constitutional grounds, persist. As noted in our original report on the LCM (No. 1), we remain concerned that the Bill has the potential to undermine Welsh Government policy in devolved areas. For these reasons we recommend that the Senedd withholds consent to clauses 1 to 4, 11, 22 and 23, 15, 24 to 27 and 29 to 31.

Recommendation 3. On the basis of the information before us we recommend that the Senedd withholds consent to clauses 1 to 4, 11, 22 and 23 (relating to the Victims Code), 15 (relating to guidance about IDVAs); and 24 to 27 and 29 to 31 (relating to victims of major incidents).