

# **The Welsh Government's Legislative Consent Memorandum on the Police, Crime, Sentencing and Courts Bill**

October 2021



## 1. Background

### **The UK Government's Police, Crime, Sentencing and Courts Bill**

**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.<sup>1</sup> It is sponsored by the Ministry of Justice. The Bill<sup>2</sup> was re-introduced on 18 May 2021 following a carry-over motion.

**2.** The explanatory notes to the Bill note that its purpose is to:

- protect the police and other emergency workers and enhance the wellbeing of police officers and staff;
- protect the public by giving the police the tools needed to tackle crime and disorder, and by addressing the root causes of serious violent crime using multi-agency approaches to prevention;
- ensure that the most serious violent and sexual offenders spend time in prison that matches the severity of their crimes, protects victims and gives the public confidence;
- tackle repeat and prolific offenders through robust community sentences which punish and also address offenders' needs; and
- modernise the delivery of criminal justice by overhauling existing court processes to provide better services for all court users.<sup>3</sup>

**3.** 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,<sup>4</sup> completed its second reading on 14 September 2021 and is scheduled to begin committee stage on 20 October 2021.

### **The Welsh Government's Legislative Consent Memorandum**

**4.** Standing Orders 29.1 and 29.2 provide that a Legislative Consent Memorandum is required when a relevant UK Bill modifies or falls within the Senedd's legislative competence.

---

<sup>1</sup> [Police, Crime, Sentencing and Courts Bill](#) [HC Bill 268, 2019-21]

<sup>2</sup> [Police, Crime, Sentencing and Courts Bill](#) [HC Bill 5, 2021-22]

<sup>3</sup> [Police, Crime, Sentencing and Courts Bill](#), Explanatory Notes, May 2021, paragraph 1

<sup>4</sup> [Police, Crime, Sentencing and Courts Bill](#) [HL 40]

---

- 5.** In particular, Standing Order 29.1 provides that the Welsh Ministers must lay a Legislative Consent Memorandum where a Bill in the UK Parliament makes provision in relation to Wales:
- for any purpose within the legislative competence of the Senedd (apart from incidental, consequential, transitional, transitory, supplementary or savings provisions relating to matters that are not within the legislative competence of the Senedd); or
  - which modifies the legislative competence of the Senedd.
- 6.** When considering whether a particular clause requires consent, we have applied the “purpose test” set out in the first bullet point (Standing Order 29.1(i)) i.e. does the provision have a devolved purpose.
- 7.** On 28 May 2021, the Minister for Social Justice, Jane Hutt MS (the Minister), laid before the Senedd a Legislative Consent Memorandum<sup>5</sup> (the Memorandum) in respect of the Bill.
- 8.** The Business Committee agreed that the Legislation, Justice and Constitution Committee should report on the Memorandum by 14 October 2021.<sup>6</sup>

### **Provision for which the Senedd's consent is required**

---

- 9.** Paragraphs 7 and 8 of the Memorandum set out the Welsh Government's assessment of the provisions in the Bill which require the Senedd's consent.
- 10.** Paragraphs 9 and 10 of the Memorandum set out the reasons for making provisions for Wales in the Bill. These are:

*“Much of the Bill relates to criminal proceedings which are a reserved matter (see para 8 of Schedule 7A) ... Some clauses in the Bill will further assist in making our communities safe and enhance the collaborative working relationships between partners continue. However, aspects of the Bill legislate with regard to devolved policy functions which impact upon the Criminal Justice System.*

*The Bill covers vast areas within the criminal justice setting which relate to reserved matters. It would not make sense to attempt to disaggregate the relatively few devolved matters and take them forward through separate legislation, and there is no space in the Welsh Government's current legislative*

---

<sup>5</sup> Welsh Government, [Legislative Consent Memorandum, Police, Crime, Sentencing and Courts Bill](#), May 2021

<sup>6</sup> Business Committee, [Timetable for consideration of the Legislative Consent Memorandum for the Police, Crime, Sentencing and Courts Bill](#), July 2021

---

*programme for a Bill making provision solely for Wales on these matters. Nor is there any Bill in the programme to which such provision could be added."*

**11.** Paragraphs 11 to 18 of the Memorandum set out the Welsh Government's position on the Bill, as introduced. The Memorandum states:

*"The Welsh Government is generally supportive of the Bill. However, there remains disagreement between the UK Government and the Welsh Government on the Serious Violence Duty. There are also concerns regarding the provisions in the Bill for the Unauthorised Encampments and the noise abatement element of the public processions clauses relating to Public Order."*<sup>7</sup>

**12.** The Memorandum identifies the provisions which the Welsh Government consider are within the legislative competence of the Senedd:<sup>8</sup>

**Part 1 (Protection of the police etc)**

- clause 1 (Police covenant report);
- clause 2 (Increase in penalty for assault on emergency worker) (referred to as "Clause 2 [ew1]" in the Memorandum).

**Part 2 (Prevention, investigation and prosecution of crime)**

Chapter 1 (Functions relating to serious violence) comprising clauses 7 to 22;  
Chapter 2 (Offensive weapons homicide reviews) comprising clauses 23 to 35;  
The following clauses in Chapter 3 (Extraction of information from electronic devices):

- clause 36 (extraction of information from electronic devices: investigation of crime etc);
- clause 37 (Application of section 36 to children and adults without capacity);
- clause 40 (Code of practice about the extraction of information);
- clause 41 (Regulations about the extraction of confidential information);
- clause 42 (Authorised persons).

In Chapter 4 (Other provisions), clause 46 (Criminal damage to memorials: mode of trial) (referred to as "clause 46 [mem1]" in the Memorandum).

**Part 3 (Public Order)**

- clause 54 (Imposing conditions on public processions);
- clause 55 (Imposing conditions on public assemblies);
- clause 59 (Intentionally or recklessly causing public nuisance);
- clause 60 (Imposing conditions on one-person protests).

**Part 4 (Unauthorised encampments)**

- clause 61 (Offence relating to residing on land without consent in or with a vehicle.
- clause 62 (Amendments to existing powers) (referred to as "[ue2]" in the Memorandum);

---

<sup>7</sup> Memorandum, paragraph 11

<sup>8</sup> Memorandum, paragraph 7

– clause 63 (Guidance on exercise of police powers in respect of trespassers on land etc) (referred to as “[ue1a]” in the Memorandum).

**13.** The Welsh Government states that these provisions:

*“...have been included in the LCM because they fall within the legislative competence of the Senedd in so far as they relate to devolved matters involving Environmental Protection, Land, Housing, Local Authorities, Local Health Boards, Education and Fire and Rescue Services.”<sup>9</sup>*

**14.** The Welsh Government recommends consent for all the provisions (but see paragraph 16), except as follows

*“... the Welsh Government will not be able to recommend to the Senedd that it gives consent to the Serious Violence Duty (clauses 9, 17 and 18), criminal damage to memorials (clause 46), unauthorised encampments (clause 61 (ue1a) (ue2)) and clauses 54, and 60...”<sup>10</sup>*

**15.** The Memorandum goes on to explain why consent is not being recommended for these provisions<sup>11</sup> and states that work to resolve outstanding concerns will continue during the passage of the Bill through the UK Parliament, with a supplementary Legislative Consent Memorandum being laid if required.<sup>12</sup>

**16.** However, on the issue of recommending consent, the Welsh Government recommends consent for clause 43 (Pre-charge bail),<sup>13</sup> which is not referred to elsewhere in the Memorandum, but not clause 42, which is mentioned.<sup>14</sup>

## The UK Government's position on legislative consent

**17.** In its March 2021 explanatory notes, the UK Government notes that the Bill generally deals with reserved matters in Wales. Nevertheless, it acknowledges that some measures in the Bill do relate to devolved matters “in particular by extending the functions of local authorities, local health boards, fire and rescue authorities and educational authorities in Wales”.<sup>15</sup>

---

<sup>9</sup> Memorandum, paragraph 8

<sup>10</sup> Memorandum, paragraph 12

<sup>11</sup> Memorandum, paragraphs 14-17

<sup>12</sup> Memorandum, paragraph 18

<sup>13</sup> Memorandum, paragraph 12

<sup>14</sup> Memorandum, paragraph 7

<sup>15</sup> [Police, Crime, Sentencing and Courts Bill, Explanatory Notes](#), March 2021, Annex C.

**18.** Additionally, in these explanatory notes the UK Government states:

*"The provisions in Clause 1 (police covenant), Chapter 1 of Part 2 (serious violence duty), Chapter 2 of Part 2 (homicide reviews), Clause 59 (offence of public nuisance) relate, in part, to matters within the legislative competence of Senedd Cymru."*<sup>16</sup>

**19.** However, in explanatory notes to the Bill introduced to the House of Commons following carry over<sup>17</sup> and subsequently in the House of Lords,<sup>18</sup> reference is omitted to provisions in clause 1 being related in part to matters within the legislative competence of the Senedd.

**20.** Two of the three sets of explanatory notes, suggest that the UK Government is seeking legislative consent from the Senedd for clauses 1, 7 to 22 (and Schedules 1 and 2), clauses 23 to 35 and clause 59.<sup>19</sup>

## **The report of the House of Lords Delegated Powers and Regulatory Reform Committee**

**21.** On 13 September 2021, the Delegated Powers and Regulatory Reform Committee in the House of Lords published its report on the Bill.<sup>20</sup> It expressed surprise and concern "at the large number of inappropriate delegations of power in this Bill"<sup>21</sup> and highlights specific concerns at the inclusion of certain types of delegations of power "on flimsy grounds".<sup>22</sup> We note other findings in our consideration below.

---

<sup>16</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, March 2021, paragraph 217

<sup>17</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, May 2021, paragraph 216

<sup>18</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, July 2021, paragraph 220,

<sup>19</sup> See Annex C, footnote 12 and Annex D, footnote 14 respectively. Clause 59 became clause 60 in the Bill introduced to the House of Lords.

<sup>20</sup> Delegated Powers and Regulatory Reform Committee, House of Lords, 6th Report of Session 2021–22, Police, Crime, Sentencing and Courts Bill, Public Service Pensions and Judicial Offices Bill, September 2021, HL Paper 65

<sup>21</sup> HL Paper 65, paragraph 4

<sup>22</sup> HL Paper 65, paragraphs 6–7

---

## 2. Committee consideration

**22.** We considered the Memorandum at our meeting on 20 September 2021.<sup>23</sup> We wrote to the Minister on 22 September 2021<sup>24</sup> to seek further information on a number of issues. The Minister responded on 28 September 2021 (the Minister's letter).<sup>25</sup>

**23.** We also received correspondence from the Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service in September 2021, which included its written evidence to the UK Parliament and a briefing from the Friends, Families and Travellers group.<sup>26</sup> The correspondence related in particular to clauses in the Bill about unauthorised encampments.

### Overview

---

**24.** We note that the extent to which the Bill makes provision in devolved areas is limited and that it contains no delegated powers for the Welsh Ministers to make subordinate legislation.

### The Memorandum

---

**25.** The Bill touches on the boundaries of devolution, adding significant complexity to the consent process. In such circumstances, we would expect the Welsh Government's Memorandum to address this complexity in the context of the consent being sought and accordingly, to explain clearly why, and the circumstances for which consent is requested. Regrettably, the Memorandum does not include this information.

**26.** In addition to the lack of clarity, the Memorandum is poorly structured and drafted, with provisions considered out of numerical sequence and references made to non-numeric clauses (such as ue1a and ue2), with no attempt to explain what the use of this format means or why it is being used.

**27.** The Memorandum does not help facilitate an understanding of why consent is being sought for individual clauses and instead reserves its focus, albeit limited, on why the Welsh Government is not recommending consent for certain other clauses.

---

<sup>23</sup> [Legislation, Justice and Constitution Committee, 20 September 2021](#)

<sup>24</sup> [Letter to the Minister for Social Justice, 22 September 2021](#)

<sup>25</sup> [Letter from the Minister for Social Justice, 28 September 2021](#)

<sup>26</sup> [Letter from Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service, 15 September 2021](#) enclosing [House of Lords second reading briefing: Part 4 Police, Crime, Sentencing and Courts Bill a Briefing from Friends, Families and Travellers, September 2021](#) and [Written evidence to the UK Parliament from the Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service, May 2021](#)

---

**28.** The clauses for which consent is being sought are simply provided with minimal explanation of how they relate and interact with Welsh Government policy, preceded by a single sentence stating that they are within the legislative competence of the Senedd.<sup>27</sup>

**29.** The justification for seeking consent in the Memorandum is inadequate. Paragraph 9 of the Memorandum contains a generalised comment that some “clauses in the Bill will further assist in making our communities safe and enhance the collaborative working relationships between partners” but with no detail to specify why this is the case and which clauses this comment applies to. Paragraph 10, while making an understandable point that it would not be sensible to disaggregate the relatively few devolved matters and include them within a separate Welsh Bill, also uses an unconvincing argument that there is no space to legislate within the Welsh Government's programme.

**30.** It remains unclear to us why the Welsh Government persists with an argument of a lack of capacity to justify using UK Government Bills to legislate in devolved areas.

**31.** It is because of the lack of justification for seeking the Senedd's consent that we wrote to the Minister seeking further information. The information contained in the Minister's response was helpful to some degree and should have appeared in the Memorandum to enable scrutiny from the start of the process.

### **Provisions for which consent is sought: agreement with the Welsh Government**

---

**32.** We agree with the Welsh Government's assessment that the consent of the Senedd is required for the following provisions in the Bill:

Clause 1 (Police covenant report);

Clause 2 (Increase in penalty for assaults on emergency workers);

Clauses 7 to 22 (Functions relating to serious violence);

Clauses 23 to 35 (Offensive weapons homicide review);

Clauses 36 to 37 and 40 to 42 (Extraction of information from electronic devices);

Clause 46 (Criminal damage to memorials: mode of trial).

### **Clauses 9, 17, 18**

**33.** The Welsh Government's Memorandum recommends refusal of consent for clauses 9, 17 and 18 in relation to enforcing the serious violence duty because they could potentially result in

---

<sup>27</sup> Memorandum, paragraph 7



the Secretary of State issuing directions on devolved matters which fall within the remit of devolved Welsh authorities.

**34.** Clause 9 creates a regulation-making power for the Secretary of State to provide for collaboration and information sharing between persons prescribed in those regulations ("prescribed persons") and certain public bodies to prevent and reduce serious violence (subject to compliance with, for example, data protection legislation).

**35.** Clause 17 permits the Secretary of State to give directions to specified authorities, educational authorities, prison authorities or youth custody authorities for the purposes of securing compliance with duties imposed in relation to serious violence where the Secretary of State is satisfied that such authorities have failed to discharge such duties. Clause 18 permits the Secretary of State to issue guidance to specified authorities, prescribed persons, local policing bodies, educational, prison or youth custody authorities in exercising functions relating to the serious violence duty. Those persons must have regard to any such guidance issued. Clauses 17(4) and 18(3) require the Secretary of State to consult the Welsh Ministers before giving a direction to, or issuing guidance relating to the exercise of functions by, a devolved Welsh authority (within the meaning of section 157A of the *Government of Wales Act 2006*).

**36.** The Minister's letter explained that:

*"The serious violence duty will place responsibilities on a number of public authorities to collaborate and plan to prevent and reduce serious violence. Some of those bodies fall within the remit of devolved Welsh authorities these are: Local Authorities, Local Health Boards, and Fire and Rescue Authorities. In addition there will be some responsibilities placed on educational establishments to collaborate.*

*As currently read, the Bill would allow the Secretary of State to direct these authorities to collaborate without the consent of the Welsh Ministers. The Welsh Government is hopeful that an amendment will be laid to commit the Secretary of State to gain consent from the Welsh Ministers prior to using this power where it is levied at devolved matters."<sup>28</sup>*

**37.** As with our report on the UK Government's Armed Forces Bill,<sup>29</sup> we are concerned that only making provision within the Bill to consult the Welsh Government in respect of clauses 17 and 18 does not demonstrate an understanding by the UK Government of the Welsh

---

<sup>28</sup> Letter from the Minister for Social Justice, 28 September 2021

<sup>29</sup> Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memoranda on the Armed Forces Bill](#), October 2021

---

Government's position as the elected Government in Wales. We agree with the Welsh Ministers that the Bill should require consent to be provided before the UK Government exercises powers under clauses 17 and 18 in relation to devolved Welsh authorities.

**Recommendation 1.** The Minister should, in advance of the Senedd's debate on the relevant consent motion, provide an update to her letter of 28 September 2021 and advise whether an amendment is to be laid to the Bill requiring the Secretary of State to gain consent from the Welsh Ministers prior to exercising powers under clause 17 and 18 in relation to devolved Welsh authorities.

### **Clauses 36 to 37 and 40 to 42**

**38.** As regards clauses 36 to 37 and 40 to 42 regarding data extraction from mobile phones and digital devices, we asked why the Welsh Government believes that the clauses are within the legislative competence of the Senedd. This is because the explanatory notes to the Bill indicate the purpose of the provisions as being the prevention, detection and investigation of crime<sup>30</sup> (which is a reserved matter). On clauses 36 to 37 and 40 to 41, the Minister replied by saying:

*"The broad purpose of the power to extract information from an electronic device in this provision may be described as the protection or safeguarding of individuals. One of the circumstances in which this provision may be used is in protecting a child or an at-risk adult. Safeguarding issues fall within the legislative competence of the Senedd and are addressed in the Social Services and Well-being (Wales) Act 2014, for example."<sup>31</sup>*

**39.** As regards clause 42 (see paragraph 16 above), the Minister told us:

*"Given the wide ranging definitions of who can be nominated authorised persons, investigating officer and prosecution authority included in clause 42 (as set out below), it is likely that this could encompass officers and authorities that are not reserved such as Local Authorities.*

*We would recommend that consent is given to clause 42."*

**40.** We note the content of the Minister's letter and acknowledge that the provisions do contain elements which fall within a devolved purpose, namely the safeguarding of children or at-risk adults from neglect or physical, mental or emotional harm.

---

<sup>30</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, May 2021, paragraph 45

<sup>31</sup> Letter from the Minister for Social Justice, 28 September 2021

---

**41.** The information provided in the Minister's letter in respect of these clauses explains the Welsh Government's position and should have been included in the Memorandum.

### **Clause 46**

**42.** On clause 46 we agree with the Welsh Government that consent to this clause is required. However, we note that the Welsh Government's analysis of the effect of this clause as set out in its letter appears to be contradictory. The Welsh Government confirms that an offence under s.1(2) of the *Criminal Damage Act 1971* of damage to property which (intentionally or recklessly) endangers life is already indictable only and subject to a maximum sentence of life imprisonment. It is therefore unclear to us how the effect of this clause could be to increase the maximum sentence for such offences, when the maximum sentence already applies.

### **Provisions for which consent is sought: disagreement with the Welsh Government**

---

**43.** We note the reasons given by the Welsh Government in its Memorandum and subsequent letter as to why it believes consent is required for the following clauses:

Clause 43 (Pre-charge bail);

Clauses 54 to 55 (Public processions and assemblies);<sup>32</sup>

Clause 59 (Intentionally or recklessly causing public nuisance);<sup>33</sup>

Clause 60 (Imposing conditions on one-person protests);<sup>34</sup> and

Clause 61 to 63 (Unauthorised encampments).<sup>35</sup>

**44.** However, we consider that these clauses do not require the consent of the Senedd. In the commentary set out below, we have applied the "purpose test" required by Standing Order 29.1(i) (i.e. does the provision have a devolved purpose) in considering whether consent is required.

### **Clause 43**

**45.** As we indicate in paragraph 16 of this report, paragraph 12 of the Memorandum states that consent is required for clause 43.

---

<sup>32</sup> Now clauses 55 to 56 in HL Bill 40

<sup>33</sup> Now clause 60 in HL Bill 40

<sup>34</sup> Now clause 61 in HL Bill 40

<sup>35</sup> Now causes 62-64 in HL Bill 40

**46.** We asked the Welsh Government to explain why it believes clause 43 to be within the legislative competence of the Senedd and, in addition, why the Senedd should give its consent to that clause. However, in responding, the Minister's letter did not address this point.

**47.** It is possible that reference to clause 43 in paragraph 12 of the Memorandum is a typographical error and should have referred to clause 42.

**Recommendation 2.** The Minister should clarify why she believes clause 43 to be within the legislative competence of the Senedd and, if so, why the Senedd should give its consent to that clause.

### **Clauses 54 to 55**

**48.** Clauses 54 to 55 (now clauses 55 and 56) of the Bill broaden the circumstances in which police officers have the power to impose conditions on public processions and public assemblies. Clause 61 relates to one person protests and provides the Secretary of State with a power to make regulations to define what amounts to "serious disruption" in that context.

**49.** The Welsh Government's Memorandum states in relation to these clauses:

*"... whilst public order is a reserved matter the noise elements in these clauses relate to environmental health matters, which are devolved to Welsh Government."*<sup>36</sup>

**50.** However, the Bill's explanatory notes provide that in relation to these clauses, the intention is to address gaps in the legislation currently in place to manage protests and assemblies, with a view to broadening police powers in circumstances where such protests and/or assemblies are causing a disturbance to the public.<sup>37</sup>

**51.** We consider that it is apparent that the main purpose of the clauses relates to the maintenance of public order. The effect of the noise elements contained in the provisions is intended to minimise disruption to the public in the vicinity, rather than for any reasons relating to environmental health.

**52.** We are of the view that clauses 54 to 55 (now clauses 55 to 56) fall outside the devolved purpose test set out in Standing Order 29.1 and therefore do not require the consent of the Senedd.

---

<sup>36</sup> Memorandum, paragraph 16

<sup>37</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, May 2021, paragraph 68

## Clause 59

**53.** As regards clause 59 (now clause 60), we note that both the Welsh Government and UK Government consider that it requires the consent of the Senedd. When we asked the Minister to explain why, she said:

*"Section 59 provides for an offence of intentionally or recklessly causing public nuisance. This replaces the existing common law offence of public nuisance with a new statutory offence and can capture a broad range of behaviour."*<sup>38</sup>

**54.** We consider this to be an unsatisfactory explanation and, in the absence of more detailed information, we remain of the view that clause 59 (now clause 60) falls outside the devolved purpose test set out in Standing Order 29.1 and therefore does not require the consent of the Senedd.

## Clause 60

**55.** As regards clause 60 (now clause 61), the explanatory notes to the Bill make it clear that the intention of the provisions is to increase the powers available to uphold public order; there is no reference to environmental health.<sup>39</sup>

**56.** Although we acknowledge that the provisions do concern the control of excess noise levels, we consider the purpose of targeting excess noise levels is to maintain public order and minimise disruption to the public in the vicinity, rather than environmental health reasons. Any link that the effect of the provision has to environmental health (in conferring powers in relation to noise control) is no more than a loose and consequential result of the intended purpose, namely the maintenance of public order, which is a reserved matter.<sup>40</sup>

**57.** We are of the view that clause 60 (now clause 61) falls outside the devolved purpose test set out in Standing Order 29.1 and therefore does not require the consent of the Senedd.

## Clauses 61 to 63

**58.** Clauses 61 to 63 (now clauses 62 to 64) strengthen police powers to tackle unauthorised encampments, allowing them to seize vehicles where those who have been asked to leave do not do so.

---

<sup>38</sup> Letter from the Minister for Social Justice, 28 September 2020

<sup>39</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, May 2021

<sup>40</sup> Reserved by paragraph 40 of Schedule 7A to the *Government of Wales Act 2006*

---

**59.** The Bill's explanatory notes provide that "the offence applies where significant damage, disruption or distress has been caused or is likely to be caused and, without reasonable excuse, the person does not leave when asked to do so, removing their property".<sup>41</sup>

**60.** The Welsh Government's Memorandum does not explain what devolved purpose it considers the provisions relate to and in recommending that the Senedd does not give consent to these clauses it states:

*"... the proposed clauses put forward by the UK Government focus on enforcement and criminalisation, which undermine and jeopardise the semi-nomadic way of life of Gypsies, Roma and Travellers who may not have anywhere appropriate to station their trailers".<sup>42</sup>*

**61.** We asked the Minister to clarify why the Welsh Government considers that the provisions relating to unauthorised encampments require consent. The Minister's letter in response said:

*"These clauses relate to offences of residing on land without consent in or with a vehicle and powers to seize and forfeit vehicles. As the clauses relate to use of land, preventing the unlawful occupation of land and associated behaviours, there is an argument that they are within the legislative competence of the Senedd."<sup>43</sup>*

**62.** We consider the fact that the provision only provides the police with the power to direct those in unauthorised encampments to leave based on their disruptive behaviour or damage they have caused is clear evidence that the purpose of the provision relates to public order,<sup>44</sup> rather than land use.

**63.** We also note that the Welsh Government appears uncertain itself in respect of the status of these clauses because the Minister's letter to us states that "there is an argument" that the clauses related to unauthorised encampments are within the Senedd's legislative competence.

**64.** We are of the view that clauses 61 to 63 (now clauses 62 to 64) fall outside the devolved purpose test set out in Standing Order 29.1 and therefore do not require the consent of the Senedd.

**65.** We considered the correspondence from Travelling Ahead: Gypsy, Roma and Traveller Advice & Advocacy Service in relation to these clauses and acknowledge the issues of concern

---

<sup>41</sup> Police, Crime, Sentencing and Courts Bill, Explanatory Notes, May 2021, paragraph 553

<sup>42</sup> Memorandum, paragraph 15

<sup>43</sup> Letter from the Minister for Social Justice, 28 September 2021

<sup>44</sup> Reserved by paragraph 40 of Schedule 7A to the *Government of Wales Act 2006*

---

that they raised. We note that they have also raised these concerns with the UK Parliament. Unfortunately, in light of our view that these clauses do not require the Senedd's consent, they are matters for the UK Government and should be taken seriously and addressed by the UK Parliament.

### **Matters referred to by the House of Lords Delegated Powers and Regulatory Reform Committee<sup>45</sup>**

---

**66.** The Delegated Powers and Regulatory Reform Committee (DPRRC) of the House of Lords has recommended amendments to the Bill as follows in relation to clauses of the Bill for which the Welsh Government are recommending that consent be granted by the Senedd or withheld.

**67.** Clause 7 of the Bill requires specified authorities for a local government area to collaborate and plan with each other to prevent and reduce serious violence in the area. The specified authorities (as listed in Schedule 1) in Wales are chief officers of police, Local Health Boards, county and county borough councils, probation service providers, youth offending teams and fire and rescue authorities. Clause 8 permits two or more specified authorities to collaborate and plan with each other to prevent and reduce serious violence in a relevant area. The DPRRC state:

*"We are concerned that the absence of a requirement to publish means that a strategy can have legislative effect—by placing educational authorities, prison authorities and youth custody authorities under a statutory duty to do things specified in it—but without appropriate transparency.*

*Accordingly, we consider that the delegated powers in clauses 7(9) and 8(9) should be amended to require the publication of any action which is specified in a "strategy" as one that an educational authority, a prison authority or a youth custody authority must carry out".<sup>46</sup>*

**68.** Clause 31 places a duty on homicide review partners to have regard to any guidance issued by the Secretary of State. The clause has been amended to include a duty to consult the Welsh Ministers in relation to devolved Welsh authorities.

**69.** As regards clause 31(1), and also clause 18(1) (see paragraph 35), the DPRRC notes that the persons to whom the guidance is issued in each case "must have regard" to that guidance. The

---

<sup>45</sup> References to clauses in this section of the report relate to clauses in HL Bill 40

<sup>46</sup> HL Paper 65, paragraphs 13-14.

DPRRC further notes that in each case the guidance is not subject to any Parliamentary procedure and “need even not be published”.<sup>47</sup>

**70.** The DPRRC notes the reasons given for the absence of any Parliamentary procedure<sup>48</sup> attached to the issuing of the guidance but finds them unconvincing.<sup>49</sup> As a result, the DPRRC recommends that guidance under clause 18(1) and 31(1) should be subject to scrutiny (by the UK Parliament) and that the negative procedure should apply.<sup>50</sup>

**71.** As indicated above, clauses 36 to 42 provide a legal framework for data extraction from mobile phones and digital devices by an authorised person for specific purposes. The DPRRC discusses the duty in clause 41(1) to make regulations about the extraction of confidential information<sup>51</sup> and state:

*“We consider that—*

- clause 41(1) contains an inappropriate delegation of power because it leaves to regulations all provision about the exercise of the powers in clauses 36(1) and 39(1) to extract confidential information; and*
- provision about the exercise of these powers should instead be on the face of the Bill, coupled with a power to amend that provision by affirmative procedure regulations.”<sup>52</sup>*

**72.** Clauses 55 and 56 of the Bill amend sections 12 and 14 of the *Public Order Act 1986* by broadening the circumstances in which police officers have the power to impose conditions on public processions and public assemblies, respectively. Clause 55(4) includes a power to make provision about the meaning of—

- “serious disruption to the activities of an organisation which are carried on in the vicinity of” a public procession or a public assembly, and

---

<sup>47</sup> HL Paper 65, paragraphs 16-17 and 20

<sup>48</sup> HL Paper 65, paragraph 21, citing paragraphs 44, 82, 152 and 268 of the [Police, Crime, Sentencing and Courts Bill, Delegated Powers Memorandum](#), July 2021

<sup>49</sup> HL Paper 65, paragraph 22

<sup>50</sup> HL Paper 65, paragraph 24

<sup>51</sup> HL Paper 65, paragraphs 36-42

<sup>52</sup> HL Paper 65, paragraph 43

---



- b. "serious disruption to the life of the community", for the purposes of sections 12 and 14 of that Act (imposing conditions on public processions and public assemblies).

**73.** The DPRRC state:

*"We consider that the definitions of the expressions "serious disruption to the activities of an organisation" and "serious disruption to the life of the community" are of such significance that they merit the fuller scrutiny afforded to Bill provisions and should therefore appear on the face of the Bill, coupled with a power to amend those definitions by affirmative procedure regulations."<sup>53</sup>*

**74.** We draw these matters to the attention of the Senedd.

---

<sup>53</sup> HL Paper 65, paragraph 60