

Report on the Legislative Consent Memorandum / Supplementary LCM for the Domestic Abuse Bill

23 February 2021

1. Background

1. On 3 August 2020, the Deputy Minister and Chief Whip laid a Legislative Consent Memorandum (“the LCM”) for the Domestic Abuse Bill currently before the UK Parliament. A Supplementary LCM (“the SLCM”) was laid on 20 January 2021.
2. On 14 September 2020, the Business Committee referred the LCM to the Equality, Local Government and Communities Committee (“the Committee”) and the Legislation, Justice and Constitution Committee for consideration. The Business Committee set a reporting deadline of 5 November 2020. We initially considered the LCM at our meeting on 28 September. On 26 January 2021, the Business Committee agreed to extend the reporting deadline to 25 February 2021.
3. The LCM and Supplementary LCM will be debated in Plenary on 2 March 2021.

2. The LCM and Supplementary LCM

4. Paragraphs 3 to 5 of the LCM summarises the Bill and its policy objectives. Paragraph 6 sets out the provisions in the Bill for which consent is sought. Paragraphs 8 to 12 set out the Welsh Government’s views on the provisions being made in a UK Bill, rather than via Senedd legislation.
5. In the Supplementary LCM, paragraphs 6 to 9 set out an update on the position since the publication of the original LCM. As a result of negotiations



between the UK and Welsh Government and subsequent amendments tabled by the UK Government, consent is no longer sought for clauses 3 and 73. As a result, we do not detail these clauses in the next section, even though they were listed in the original LCM.

3. Provisions in the Bill for which consent is sought

6. The Senedd's consent is being sought for clauses 65, 66 and 68 because they relate to a devolved area, domestic abuse.

7. Clause 65 legislates for the principle (established in the case of *R. v. Brown* [1993] 2 All ER 75), that consent to serious harm for sexual gratification would not be a defence and, by extension, nor would consent apply where such sexual activity resulted in the victim's death.

8. Clause 66 is one of the Part 6 clauses inserted into the Bill in furtherance of the UK's ratification of the 'Council of Europe Convention on Combatting Violence Against Women and Domestic Violence' (the "Istanbul Convention") by the United Kingdom. Clause 66(1) of the Bill extends the scope of particular offences against the person so that:

- if such an offence is committed outside of the UK by a UK national or a person who is habitually resident in the UK, and
- the act constitutes an offence under the law in force in that country, and if it were done in England and Wales, would constitute an offence in England and Wales,

then the person is also guilty in England and Wales of that offence. The offences covered by clause 66(1) are: murder, manslaughter, offences under sections 18, 20 or 47 (offences relating to bodily harm or injury) of the Offences Against the Person Act 1861 and offences of administering poison under sections 23 or 24 of that Act.

9. Clause 68, like clause 66, is included as furtherance of the UK's ratification of the Istanbul Convention. Clause 68 of and part 1 of Schedule 2 to the Bill amends the Protection from Harassment Act 1997, the Sexual Offences Act 2003 and the Serious Crime Act 2015 so as to achieve the same effect as clause 66(1) in relation to the offences of putting people in fear of violence, stalking involving fear of violence or serious alarm or distress, certain sexual offences listed in Schedule 2 to

the Sexual Offences Act 2003, and coercive or controlling behaviour in an intimate or family relationship.

4. Reasons for making these provisions

10. Paragraphs 8 to 12 of the LCM set the Welsh Government's rationale for making these provisions via UK legislation rather than through Senedd legislation. They state that in relation to clause 65 as it is making "significant and important changes" it is "imperative that it is implemented across the jurisdiction of England and Wales at the same time." In relation to clauses 66 and 68, the Welsh Government is reliant on the UK Government ratifying provisions of the Istanbul Convention.

5. Committee consideration and conclusion

11. Following our initial consideration of the LCM, we wrote jointly with the Legislation, Justice and Constitution Committee seeking greater clarity on issues of legislative competence. Correspondence from the Deputy Minister dated 16 December 2020 stated:

"It remains my position that consent is required for clauses 65, 66 and 68 and Part 1 of Schedule 2 because they fall within the legislative competence of the Senedd. They contain modifications to criminal offences which could be made, in part, by the Senedd. Legislation to observe and implement international obligations, such as those required for the Istanbul convention also fall within the competence of the Senedd where necessary legislation falls within devolved areas."

12. This position was restated in the SLCM in paragraph 14. We note this, and agree that it requires the legislative consent in relation to clauses 65, 66 and 68. We also note the Welsh Government's reasons for making provision in a UK Bill, rather than Senedd legislation, and based on this, have no objection to the agreement of the Motion.