

# **The Welsh Government's Legislative Consent Memorandum on the Victims and Prisoners Bill**

July 2023



# 1. Background

## The Victims and Prisoners Bill

1. The Victims and Prisoners Bill<sup>1</sup> (the Bill) was introduced into the House of Commons and had its first reading on 29 March 2023. It is sponsored by the Ministry of Justice.

2. The Explanatory Notes to the Bill as introduced state that the Bill:

*“contains measures in relation to:*

*- Victims of criminal conduct*

*- Victims of major incidents*

*- Reforms to the parole system*

*- Restrictions on marriage for prisoners who are imprisoned under whole life orders.”<sup>2</sup>*

3. The long title to the Bill states that it is a Bill to:

*“Make provision about victims of criminal conduct and others affected by criminal conduct; about the appointment and functions of individuals to act as independent public advocates for victims of major incidents; about the release of prisoners; about the membership and functions of the Parole Board; to prohibit certain prisoners from forming a marriage or civil partnership; and for connected purposes.”*

4. The Bill had its Second Reading on 15 May 2023 and is now in Committee stage. A programme motion agreed by the House of Commons requires proceedings in the Public Bill Committee to be concluded by 13 July 2023.

## The Welsh Government's Legislative Consent Memorandum

5. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to

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<sup>1</sup> The Victims and Prisoners Bill, as introduced (Bill 286)

<sup>2</sup> The Victims and Prisoners Bill, Explanatory Notes, March 2023, paragraph 343

Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.

**6.** On 11 April 2023, Jane Hutt MS, Minister for Social Justice and Chief Whip (the Minister), wrote to the Llywydd stating:

*“My officials have been engaging with officials in the Ministry of Justice on the clauses expected to be introduced as part of the Bill. However, officials had not had sight of the final version of the Bill, late changes to the Bill or Explanatory Notes prior to it being introduced, or that the Bill title and provisions had been changed to ‘Victims and Prisoners Bill’. A number of additional provisions have also been included within the Bill since a draft copy was initially published. (...)*

*From our initial analysis, it appears the Bill touches upon areas of devolved competence. However, due to very limited prior consultation by the UK Government it has not yet been possible to fully consider the devolution consequences of what is being proposed.”<sup>3</sup>*

**7.** The Minister confirmed that she intended to lay a Legislative Consent Memorandum as soon as the Welsh Government had a clear picture of the devolution consequences of the proposed legislation, noting that this would be outside the normal two-week Standing Order 29 deadline.<sup>4</sup>

**8.** The Minister also stated that the Bill “is not expected to move through Parliament at pace”.<sup>5</sup>

**9.** On 19 May 2023, the Minister laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.<sup>6</sup>

**10.** The Business Committee agreed that the Legislation, Justice and Constitution Committee, and the Equality and Social Justice Committee, should report on the Memorandum by 14 July 2023.<sup>7</sup>

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<sup>3</sup> Letter from the Minister for Social Justice and Chief Whip to the Llywydd, 11 April 2023

<sup>4</sup> Letter from the Minister for Social Justice and Chief Whip to the Llywydd, 11 April 2023

<sup>5</sup> Letter from the Minister for Social Justice and Chief Whip to the Llywydd, 11 April 2023

<sup>6</sup> Welsh Government, Legislative Consent Memorandum on the Victims and Prisoners Bill, May 2023

<sup>7</sup> Business Committee, Timetable for consideration: Legislative Consent Memorandum on the Victims and Prisoners Bill, May 2023

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

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**11.** The Welsh Government's assessment is that the following provisions in the Bill require the Senedd's consent, as set out in paragraphs 9 to 20 of the Memorandum:

- clauses 1 to 4, 11, 22 and 23 (Victims of criminal conduct);
- clause 15 (Guidance about independent domestic violence and sexual violence advisors);
- clauses 24 to 27 and 29 to 31 (Victims of major incidents).

**12.** Paragraphs 21 and 22 of the Memorandum and Annex A of the Explanatory Notes to the Bill provide details of the UK Government's assessment of the territorial extent and application of the Bill.

**13.** The UK Government's opinion is that the legislative consent process would be engaged, in relation to Wales, for clauses 15 and 24 to 31 of the Bill.

**14.** At paragraph 22 of the Memorandum, the Minister states:

*"The UK Government has not yet been able to provide a view on whether consent is required for clauses 1 to 4, 11, 22 and 23 (Victims' code and ancillary clauses) prior to the laying of this LCM. The Welsh Government will continue to engage with the UK Government as it considers this issue and its position."*

## Delegated powers

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**15.** The Bill contains a range of delegated powers to be conferred on the Secretary of State, including powers to make regulations, and duties to issue a Code of Practice and statutory guidance.

**16.** A summary of the powers contained in the clauses within the scope of the Memorandum are as follows:

- clause 2(1) - a duty on the Secretary of State to issue a code of practice as to the services to be provided to victims (the 'Victims' Code');
- clause 2(4) - a regulation-making power for the Secretary of State to make further provision about the Victims' Code, including about matters that the Code must include;

- clause 3(7) - a regulation-making power for the Secretary of State to bring the Victims' Code into operation once the draft Code has been laid in Parliament;
- clause 11(1) - a duty on the Secretary of State to issue guidance about the discharge of duties by various criminal justice bodies, police bodies and police and crime commissioners under clauses 6 to 10;
- clause 15(1) - a duty on the Secretary of State to issue guidance about independent domestic violence advisors and independent sexual violence advisors;
- clause 31(1) - a power for the Secretary of State to issue general guidance to an Independent Public Advocate ("IPA") appointed by the Secretary of State under clause 24(1).

**17.** Clause 26(3) of the Bill also includes a power for a lead IPA to give directions to other advocates about the exercise of their functions in respect of a major incident.

**18.** The Bill does not require consultation with the Welsh Ministers or Senedd before these powers can be exercised, nor does the Bill provide for the Welsh Ministers or Senedd to approve the use of the powers. Clause 3(4) does contain a general requirement for the Secretary of State to publish a draft of the Victims' Code and to specify a period to allow for representations about that draft to be made.

### **The Welsh Government's position**

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**19.** At paragraphs 23 to 25 of the Memorandum the Minister sets out the Welsh Government's view on clause 15 in the Bill. The Minister states:

*"This clause makes provision with regard to welfare and safeguarding, which are devolved matters. On that basis, our view is that any guidance on this issue in Wales should be issued by the Welsh Government rather than the UK Government, in line with our devolved responsibilities. The Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) Blueprint partnership provides an opportunity to develop our own definitions, and the existence of statutory*

*guidance from the UK Government which applies in Wales could be confusing and restrictive.”<sup>8</sup>*

**20.** At paragraph 25 of the Memorandum the Minister adds:

*“My officials have held constructive and collaborative discussions with their UK Government counterparts regarding clause 15. The recommendation to withhold consent is a reflection that the landscape has evolved in Wales, and the inception of the National Partnership and Blueprint structure for delivering the aims of the Violence Against Women, Domestic Abuse and Sexual Violence (VAWDASV) (Wales) Act 2015.”<sup>9</sup>*

**21.** The Minister states that the Welsh Government will be pursuing further conversations regarding an amendment to the Bill “at a later stage following further engagement with [the Ministry of Justice] MoJ and the specialist VAWDASV sector in Wales.”<sup>10</sup>

**22.** At paragraphs 26 of the Memorandum the Minister comments on clauses 1 to 4, 11, 22 and 23 of the Bill. The Minister states that the Welsh Government is:

*“...currently waiting for the MoJ to respond to questions on the legal status of the Victim's Code in Wales, and the risks that it could set out responsibilities and expectations which are within the competence of the Senedd.”<sup>11</sup>*

**23.** The Minister adds that, until the MoJ is able to address the Welsh Government's concerns, she is not in a position to recommend consent on these clauses.<sup>12</sup>

**24.** Regarding clauses 24 to 27 and 29 to 31, which relate to the appointment of an IPA, the Minister states:

*“As drafted, the Bill states that appointing an IPA is purely a matter for the Secretary of State and does not reflect the fact that these provisions (save for clause 28) are within the legislative competence of the Senedd. We also believe that*

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<sup>8</sup> Memorandum, paragraph 23. See also paragraph 24.

<sup>9</sup> See also Memorandum, paragraph 29.

<sup>10</sup> Memorandum, paragraph 25

<sup>11</sup> Memorandum, paragraph 26

<sup>12</sup> Memorandum, paragraph 26. See also paragraph 30.

*notwithstanding this legislation, the Welsh Ministers would be able to appoint a non-statutory IPA following an incident in Wales under existing powers. The benefits for Wales of inclusion within these provisions are therefore currently unclear.”<sup>13</sup>*

**25.** The Minister adds that the Welsh Government needs to explore this issue further with the UK Government before it will be in a position to make a recommendation with regard to consent on these clauses.<sup>14</sup>

## 2. Committee consideration

**26.** We considered the Memorandum at our meeting on 19 June 2023.<sup>15</sup> We agreed our report on 26 June 2023.<sup>16</sup>

### Our view

#### Provisions requiring legislative consent

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**27.** We note the Welsh Government's assessment of the provisions within the Bill that require the consent of the Senedd, as set out in the Memorandum.

**28.** We agree with the Welsh Government's assessment that clauses 1 to 4, 11, 15, 22 to 27, 29 to 31 of the Bill require the consent of the Senedd.

**Recommendation 1.** We consider that the clauses of the Bill set out in the Memorandum fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

**29.** As regards clause 28 of the Bill, while we note and agree with the Minister's view that the Senedd's consent is not required for this clause, it is our understanding that the UK Government's assessment of the provisions in the Bill which engage the legislative consent process includes clause 28.<sup>17</sup>

**Recommendation 2.** The Minister should clarify if the Welsh Government has held any discussions with the UK Government about clause 28 of the Bill and why

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<sup>13</sup> Memorandum, paragraph 27

<sup>14</sup> Memorandum, paragraph 27. See also paragraph 30.

<sup>15</sup> ~~Legislation, Justice and Constitution Committee~~, 19 June 2023

<sup>16</sup> ~~Legislation, Justice and Constitution Committee~~, 26 June 2023

<sup>17</sup> See The Victims and Prisoners Bill, Explanatory Notes, March 2023, Annex A

there appears to be a difference in opinion as to whether the Senedd's consent should be sought for this clause.

### **The Welsh Government's approach and intergovernmental working**

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**30.** We note that the Welsh Government has been engaged in intergovernmental working with the MoJ on the Bill, and that a draft 'Victims Bill' was published for pre-legislative scrutiny in May 2022.

**31.** However, we also note the Minister's concerns that the Bill introduced into the UK Parliament is "considerably wider in scope than the draft Bill published in 2022".<sup>18</sup> We further note that the Welsh Government "did not have sight of the final Bill or explanatory notes prior to the Bill being introduced" and was not informed that the scope of the Bill had widened to include provisions about the parole system, the Parole Board or preventing prisoners serving a whole life order from entering into a marriage or civil partnership (these provisions form the entirety of Part 3 of the Bill).<sup>19</sup>

**32.** We note from the Memorandum that the Welsh Government does not consider that the provisions in Part 3 of the Bill require the Senedd's consent. However, given the intergovernmental working which had clearly been in operation for over a year prior to the Bill's introduction, it is unclear why there appears to have been a breakdown in information sharing and intergovernmental consultation towards the latter stages of the Bill drafting process.

**Recommendation 3.** The Minister should confirm or correct our understanding that the Welsh Government was not aware of the provisions included in Part 3 of the Bill about the parole system, the Parole Board or preventing prisoners serving a whole life order to enter into a marriage or civil partnership until the Bill was introduced to the UK Parliament.

**Recommendation 4.** If the Welsh Government was not made aware of the provisions in the Bill about the parole system, the Parole Board or preventing prisoners serving a whole life order to enter into a marriage or civil partnership until the Bill was introduced to the UK Parliament, the Minister should clarify how and when these provisions were drawn to the attention of the Welsh Government by the UK Government and what explanation the UK Government provided about their inclusion.

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<sup>18</sup> Memorandum, paragraph 8

<sup>19</sup> Memorandum, paragraph 8



## **Delegated powers**

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**33.** As highlighted above in paragraphs 15 to 18, we note that the Bill includes a number of delegated powers for the Secretary of State which may be exercised in devolved areas.

**34.** Specifically in relation to clause 15, we acknowledge the Minister's concerns that statutory guidance from the UK Government about independent domestic violence advisors and independent sexual violence advisors which will apply in Wales may cause confusion given the Welsh Government has its own National Partnership and Blueprint structure for delivering the aims of the *Violence Against Women, Domestic Abuse and Sexual Violence (Wales) Act 2015*.