

Report on the Legislative Consent Memorandum/Supplementary LCM for the Armed Forces Bill

October 2021

1. Background

1. This report considers both the original Legislative Consent Memorandum (the LCM) and the Supplementary Legislative Consent Memorandum (the SLCM) for the Armed Forces Bill. The LCM was laid on 28 May 2021 and the SLCM was laid on 30 June 2021.
2. In July 2021, the Business Committee referred both LCMs to the Equality and Social Justice Committee and the Legislation, Justice and Constitution Committee for consideration.
3. The reporting deadlines for the LCM and the SLCM are 14 October and 21 October 2021 respectively. We considered our report on 4 October 2021.

2. The LCMs

4. Paragraphs 3 to 5 of the LCM summarise the Bill and its policy objectives. Paragraphs 6 to 10 summarise the provisions for which consent is sought. Paragraphs 11 to 15 set out the Welsh Government's views on the provisions being made in a UK Bill, rather than via Senedd legislation.
5. Two further amendments were made to the Bill and these made provision which fall within the legislative competence of the Senedd. Therefore an updated, supplementary LCM was laid by the Welsh Government on 30 June 2021.



6. Paragraphs 3 to 5 of the SLCM summarise the Bill and its policy objectives. Paragraphs 6 to 13 provide an update on the changes made to the Bill during the amending stages. Paragraphs 14 to 19 set out the Welsh Government’s position on the changes made to the Bill.

7. Both LCMs state that there are no financial implications for Wales in relation to the Bill (see paragraphs 16 and 20 for the LCM and SLCM respectively).

3. Provisions in the Bill for which consent is sought

8. The Senedd’s consent is being sought for clause 8 of the Bill as introduced. Clause 8 makes provisions relating to the Armed Forces Covenant by amending Part 16A of the Armed Forces Act 2006 (“the 2006 Act”).

9. Clause 8 inserts new sections 343AA to 343AF of Part 16A of the 2006 Act, which place a duty on specified bodies and persons exercising relevant housing, education and healthcare functions in England, Wales, Scotland and Northern Ireland to **have due regard to the Armed Forces Covenant**. The relevant sections inserted by clause 8 of the Bill to the 2006 Act, insofar as they apply to Wales are set out below:

- a) Section 343AB. Subsection (1) imposes a duty on specified persons and bodies in Wales which exercise a relevant function to have ‘due regard’ to the principles of the Armed Forces Covenant. These are the same principles as set out in section 343A(3), namely:
- the unique obligations and sacrifices made by the Armed Forces;
 - to the principle that it is desirable to remove disadvantages from Service in, or former Service in the Armed Forces, and
 - to the principle that special provision may be justified for the effect that Service in the forces may have had on individuals.

A relevant function is defined in new section 343AB(2) as a relevant housing, education or healthcare function, which are devolved areas. The meaning of these functions are set out in subsections (4) to (6) with reference to the relevant legislation. The public bodies in Wales to whom the due regard duty will apply are local authorities, governing bodies of maintained school, Local Health Boards, Special Health Authorities and National Health Service trusts. These bodies are listed in subsection (3).

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- b) Section 343AE provides that the Secretary of State may issue guidance in relation to the due regard duty and the relevant public bodies must have regard to guidance issued. Before issuing such guidance, the Secretary of State must consult the Welsh Ministers so far as the guidance relates to devolved Welsh functions. However, new section 343AE(5) provides that if the Secretary of State considers the revisions to the guidance are insubstantial, the Secretary of State has the power to publish revised guidance without consulting the Welsh Ministers in the first instance.
- c) Section 343AF provides the Secretary of State with a regulation making power to extend the due regard duty to additional persons and bodies in Wales, or to specify additional relevant functions that are to be caught by the duty. Before making such regulations the Secretary of State must consult the Welsh Ministers, so far as the regulations contain provisions that are within 'Welsh devolved competence'. This is defined as being a provision which would fall within the Senedd's legislative competence or one which could be made in subordinate legislation by the Welsh Ministers acting alone. The regulations will be subject to the affirmative procedure.

10. The SLCM provides that the Senedd's consent is required in relation to two amendments made to clause 8 of the Bill. Both these amendments were requested by the Welsh Government's Deputy Minister for Social Partnership in order to ensure that the health bodies that will be subject to the due regard duty in Wales reflect the policy intention.

4. Reasons for making these provisions

11. Paragraphs 11 to 15 and paragraph 17 of the LCM set out the Welsh Government's views on the provisions being made in a UK Bill.

12. The Welsh Government agrees that the provisions in Clause 8 of the Bill "will help improve overall delivery of public services in relation to the Armed Forces Community in Wales."

13. Furthermore the Welsh Government states its support for the Bill on the grounds that:

- *It will allow provisions to come into force at the same time across the UK.*
- *A UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness among service deliverers and policy makers of the unique obligations and circumstances facing the Armed Forces Community.*

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- *It will build understanding of how the circumstances facing the Armed Forces community can affect their requirements of, and ability to access, key public services.*

14. The SLCM reiterates this view in relation to the updated provisions in the Bill as amended.

5. Committee consideration and conclusion

15. We considered the LCM and the SLCM at our meeting on 4 October 2021.

16. The Chair wrote to the Deputy Minister for Social Partnership as part of our consideration of the LCMs in September. A copy of the correspondence is provided as Annex A.

17. The Deputy Minister responded on 1 October 2021 and provided detailed answers to our questions. The response is provided as Annex B.

18. The response outlines the Welsh Government's reasons for supporting the new duty to have "due regard to the Armed Forces Covenant" and in particular states that "the "due regard" duty will be similar to other public sector duties to have "due regard" such as the public sector equality duty in the Equality Act 2010."

19. Similarly, the Deputy Minister emphasises the importance of statutory guidance in ensuring that public bodies know what is expected of them when the duty comes into effect.

20. We agree that clear guidance, alongside effective monitoring of the implementation of the Act will be vital to its success. It is essential therefore the Welsh Government is meaningfully engaged in the production of the guidance. Furthermore the Welsh Government should ensure that the Senedd, and this Committee, are kept up to date with progress on the setting of guidance and implementation of the Act more generally.

21. In terms of legislative consent, we note the provisions for which consent is being sought. We also note the Welsh Government's reasons for making provision for Wales in the Bill, rather than via Senedd legislation and, based on these, we have no objection to the agreement of the Motion.

Annex A

Y Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol

Equality and Social Justice Committee

Hannah Blythyn MS
Deputy Minister for Social Partnership

Senedd Cymru

Bae Caerdydd, Caerdydd, CF99 1SN
SeneddCydraddoldeb@senedd.cymru
senedd.cymru/SeneddCydraddoldeb
0300 200 6565

Welsh Parliament

Cardiff Bay, Cardiff, CF99 1SN
SeneddEquality@senedd.wales
senedd.wales/SeneddEquality
0300 200 6565

Dear Hannah,

20th September 2021

Dear Hannah,

Legislative Consent Memorandum: Armed Forces Bill

The Legislative Consent Memorandum on the Armed Forces Bill notes that despite the Armed Forces Covenant having been in force for nearly 10 years: "there is legitimate concern that some members of the Armed Forces community still face disadvantage when accessing public services." To inform our work on the LCM I would be grateful for a response to the following questions:

- Does the Welsh Government have a view on whether the proposed due regard duty goes far enough?
- How will the Welsh Government ensure that Welsh public bodies subject to the new duty take effective and meaningful steps to support the Armed Forces community?
- What representations has the Welsh Government made to the UK Government to ensure that the armed forces themselves play a greater role in supporting the Armed Forces community in Wales?

The Committee will be considering its draft report on the LCM at its meeting on 4 October 2021. I would be grateful if a response could be provided by this date if possible to inform the Committee's deliberations.

Please note that the Business Committee have set a reporting deadline of 14 October 2021.

Yours sincerely,

A handwritten signature in black ink on a light yellow background. The signature reads "Jenny Rathbone" in a cursive script.

Jenny Rathbone MS

Chair of the Equality and Social Justice Committee

Annex B

Hannah Blythyn AS/MS
Y Dirprwy Weinidog Partneriaeth Gymdeithasol
Deputy Minister for Social Partnership



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref
Ein cyf/Our ref

Jenny Rathbone MS
Chair
Equality and Social Justice Committee

1 October 2021

Dear Jenny

Thank you for your letter of 20 September regarding the Legislative Consent Memorandum (LCM) on the Armed Forces Bill. I am grateful for the Committee's work on this issue as we seek to improve still further support for the Armed Forces community in Wales.

I will address the three questions you raised in order below.

1. Does the Welsh Government have a view on whether the proposed due regard duty goes far enough?

The Welsh Government has had ongoing engagement with UK Government and colleagues from Scotland and Northern Ireland on the plans for the Armed Forces Bill since January 2020. There has also been considerable consultation with and debate within the Armed Forces sector through the UK Select committee on the Armed Forces Bill.

It is unclear from the question whether the committee is asking if the proposed due regard duty '*goes far enough*' in relation to the *functions* within the Bill (currently health, housing and education) or the *bodies* within the scope of the new duty. I will therefore outline our position in relation to both these elements as both have been the subject of much debate during the entire process, as can be seen in the UK Government Select committee evidence sessions. I will then outline our position on the nature of the Covenant due regard duty itself.

Functions within the Bill

We recognise that members of the Armed Forces community may face difficulties in areas other than health, education and housing. For example, my officials have raised the issue of social care not being included within the scope of the Bill during the planning process.

Canolfan Cyswllt Cyntaf / First Point of Contact Centre:
0300 0604400

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1SN

Gohebiaeth.Hannah.Blythyn@llyw.cymru
Correspondence.Hannah.Blythyn@gov.wales

Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Some of the major charities and representative bodies have also requested that other areas be included within the scope based on their experiences.

The UK Government has ultimately determined the policy areas within scope of the Bill and provision has been made so that additional areas can be added at a later date. In the draft statutory guidance document, in relation to the 3 policy areas included, it states that *'these three strands of policy also comprise the foundation of successful lives and are commonly raised areas for concern by members of the Armed Forces Community'*.

The Welsh Government publishes an Annual Report on the Armed Forces Covenant which outlines progress and actions being taken across a broad range of policy areas including health, education, housing, finance, employment, criminal justice and commemoration.

Bodies within the scope of the Bill

This is a UK Government Bill and they have determined the public bodies to be included, in consultation with all partners with the focus of the legislation being on *'local – and, as appropriate, regional - service provision'*. We have worked with them closely in relation to specifying the appropriate bodies in Wales.

As a Government, we already have well-established procedures in place to ensure scrutiny of our delivery against the Covenant including the Armed Forces Expert Group, the Welsh Government Covenant Annual Report and an Annual Statement to the Senedd.

As I said in my evidence to the Select committee, the question about expansion of that scope to other Government Departments or devolved Governments is something that would need to be explored through ongoing consultation. To date we have received no indication that the UK Government wishes to pursue that option, although additional bodies (and functions) can be specified by the Secretary of State.

Covenant duty

As a Government we are aware of the different views expressed during the process of developing this legislation, on the impact and efficacy of the proposed new Covenant duty.

In practice the “due regard” duty will be similar to other public sector duties to have “due regard” such as the public sector equality duty in the Equality Act 2010. We have emphasised that statutory guidance, along with training and resources, will be vital in ensuring that bodies within scope fully understand what is expected of them and how they might meet that duty. As a Government we will work with partners such as the WLGA and Local Health Boards to support all providers in upholding the duty. We will also monitor any implications for our own systems and processes.

2. How will the Welsh Government ensure that Welsh public bodies subject to the new duty take effective and meaningful steps to support the Armed Forces community?

It is important we recognise that public bodies in Wales are already taking effective and meaningful steps to support the Armed Forces community. They have delivered a significant level of support for the Armed Forces community, embracing the principles of the Armed Forces Covenant and delivering real change in people's lives. They continue to do so within the governance and support structures we have established, in often challenging times particularly through the COVID-19 pandemic.

Support for the Armed Forces community is in many cases embedded in the work of these bodies and evidenced by numerous activities and initiatives. These include dedicated

Armed Forces Champions in Local Authorities / Local Health Boards, Armed Forces fora that bring together key stakeholders to deliver support and dedicated Welsh Government funded Armed Forces Liaison Officers (AFLOs) covering all Local Authorities in Wales. The AFLOs are unique to Wales and they are working with the Welsh Government and Ministry of Defence (MOD) to promote awareness of the Bill and the due regard duty and support partners in engaging with the process. The AFLOs work across their Local Authorities to support delivery of the Covenant, engaging with staff, delivering training, and ensuring policies take account of the Armed Forces community locally. Such work we believe will complement the aims of the Bill.

Building awareness of the Covenant principles and the Armed Forces community is central to the work of the Welsh Government, other public bodies and charity partners and I believe it will stand us in good stead when the duty to have due regard to the principles of the Covenant comes into force.

The collaborative approach that is being taken to developing the statutory guidance that will accompany the legislation, involving all Local Authorities, Local Health Boards and charity partners across Wales, will also help to ensure public bodies are aware of the Covenant duty and can take steps to ensure they are upholding the Covenant principles.

The Welsh Government will not be responsible for ensuring a public body has taken *'effective and meaningful steps to support the Armed Forces community'*. In any dispute over whether the Covenant Duty has been complied with by a public authority, a member of the public may submit their complaint(s) to that authority, following the authority's standard complaints process. Where it is not possible to resolve the matter through the established complaints process, a complainant may seek to challenge any alleged non-compliance with the Covenant Duty, by making an application to judicially review the actions of the public body.

You will have noted that the Bill does not mandate the provision of specific services for the Armed Forces Community, nor does it mandate any particular delivery outcomes. It is designed to ensure that the relevant decision-makers consider the issues facing the Armed Forces Community in these key areas that affect their day-to-day lives.

3. What representations has the Welsh Government made to the UK Government to ensure that the Armed Forces themselves play a greater role in supporting the Armed Forces community in Wales?

We owe our Armed Forces a debt of gratitude for the work they do and I know the Committee will share my admiration for their dedication and sacrifice. This has been especially evident during the pandemic where our Armed Forces have supported the NHS, local communities and other partners.

I hold regular meetings with the UK Government and our Tri Service leads in Wales who are part of the Armed Forces Expert Group. This includes engagement with the MOD and its transition services. In November an employment event will be held in Wales for Service leavers and veterans organised by the Welsh Government, MOD, Career Transition Partnership and charity partners demonstrating the support from the Armed Forces to the community in Wales.

160th (Welsh) Brigade run a wide range of engagement activity including working with young people and cadets, supporting service children through the Regional Schools Engagement officers (RSLOs) and supporting community events for the Armed Forces including during Remembrance and the Poppy Appeal.

Regimental associations are also active across Wales, supporting veterans and working with the other Armed forces charities to provide holistic support including funding and peer support.

The Armed Forces charitable sector in Wales deliver a wide range of support and engage widely with the Armed Forces sector to coordinate activity and promote their services.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Hannah Blythyn'.

Hannah Blythyn AS/MS

Y Dirprwy Weinidog Partneriaeth Gymdeithasol
Deputy Minister for Social Partnership