

**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(MEMORANDUM NUMBER 3)**

POLICE, CRIME, SENTENCING AND COURTS BILL

1. This supplementary legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 which prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru if a UK Parliamentary Bill makes provision in relation to Wales for any purpose within, or which modifies the legislative competence of the Senedd.
2. The Police, Crime, Sentencing and Courts Bill (“the Bill”) was introduced in the House of Commons on 9 March 2021. Legislative consent is considered to be required for several of the clauses within the Bill. An LCM was laid on 22 March and subsequently on 28 May, when the Bill was reintroduced into Parliament. A supplementary LCM (Memorandum No 2) was laid on 5 November following an amendment to the Serious Violence Duty provisions (clause 17), this means the Secretary of State (SoS) must obtain consent of the Welsh Ministers prior to directing a devolved Welsh authority in Wales. The clauses referred to in this supplementary LCM refer to the Bill as amended on 24 November, which can be found at: [newbook.book \(parliament.uk\)](https://www.newbook.book.parliament.uk)
3. The UK Government tabled a total of 91 amendments to the Bill on 1 December for consideration at House of Lords Report Stage, 15 of which require the consent of the Senedd. This supplementary LCM (Memorandum No 3) sets out the Welsh Government’s position on the amendments, which I consider impacts on devolved matters and also reaffirms the Welsh Government’s position on the remaining clauses of the Bill which I consider require the Senedd’s consent.
4. This memorandum has been laid as soon as possible after the tabling of these amendments allowing for a full analysis of their effect.

Policy Objective(s)

5. The UK Government’s stated policy objectives are to make the country safer by empowering the police and courts to take more effective action against crime and lead a fair justice system. This includes specific commitment to: protect and empower the police by enshrining the Police Covenant into law; pass the Bill; and introduce “a new court order to target known knife carriers, making it easier for officers to stop and search those convicted of knife crime”.
6. On courts and sentencing the Bill includes commitments to: empower the courts to tackle crime; ensure a fair justice system by introducing tougher sentencing for the worst offenders and ending automatic halfway release from prison for serious crimes. It also aims to toughen community

sentences, for example by tightening curfews, making those convicted do more hours of community payback, turn people away from crime and end the cycle of reoffending.

Summary of the Bill

7. The Bill is sponsored by the Ministry of Justice.
8. The Bill makes provision;
 - for the police and other emergency workers to make provision about collaboration between authorities to prevent and reduce serious violence;
 - for new offences and for the modification of existing offences;
 - about the powers of the police and other authorities for the purposes of preventing, detecting, investigating or prosecuting crime or investigating other matters;
 - about the maintenance of public order;
 - about the removal, storage and disposal of vehicles; to make provision in connection with driving offences;
 - about cautions;
 - about bail and remand;
 - about sentencing, detention, release, management and rehabilitation of offenders;
 - about secure 16 to 19 Academies; and
 - in connection with, procedures before courts and tribunals; and for connected purposes.

Changes to the Bill since the publication of the previous Supplementary Legislative Consent Memorandum (Memorandum No 2) for which consent is required.

9. Amendments to Functions relating to Serious Violence - '**Serious Violence Duty**'

Amendments to Clause 7 (Duties to collaborate and plan to prevent and reduce serious violence) and Clause 8 (Powers to collaborate and plan to prevent and reduce serious violence)

These amendments require specified authorities to publish the strategy required by clause 7 and ensures that such strategy does not include material which might jeopardise the safety of any person, that might prejudice the prevention or detection of crime or the investigation of an offence, or compromise security. They also make further provision about the publication or dissemination of the strategy.

Amendment to Clause 9 (Power to authorise collaboration etc. with other persons)

These amendments ensure that Regulations made by the Secretary of

State under clause 9 do not allow the disclosure of patient information or the disclosure of personal information by a health or social care authority.

Amendments to Clause 12 (Preventing and reducing serious violence)

These amendments expands the definition of serious violence to include domestic abuse as defined in the Domestic Abuse Act 2021 and sexual offences as defined in the Sexual Offences Act 2003.

Amendments to Clause 15 (Disclosure of information)

These amendments ensure that any disclosure of information authorised by clause 15 does not authorise the disclosure of patient information or the disclosure of personal information by a health or social care authority.

Amendments to Clause 16 (Supply of information to local policing bodies)

These amendments limit the information that may be requested by a local policing body under the clause to information held by the person to whom the request is made. The amendments also ensure that there cannot be disclosure of patient information or the disclosure of personal information by a health or social care authority.

Amendment to Clause 18 (Guidance)

This amendment requires guidance issued by the Secretary of State relating to the exercise of functions under the serious violence duty to be laid before Parliament.

Amendments to Clause 19 (Amendments to the Crime and Disorder Act 1998)

These amendments expand the definition of serious violence to include domestic abuse as defined in the Domestic Abuse Act 2021 and sexual offences as defined in the Sexual Offences Act 2003 and makes subsequent modifications to the Crime and Disorder Act 1998.

Amendment to Clause 22 (Index of defined expressions)

These amendments add “health or social care authority” and “patient information” to the index of defined expressions.

I previously laid an LCM (28 May) in respect of all of the above clauses because they impact on devolved matters and Devolved Welsh Authorities. The amendments, as detailed, also impact on devolved matters and Devolved Welsh Authorities. Therefore, this supplementary LCM is laid in respect of these clauses as amended.

10. Amendments to Clause 31 (Offensive Weapons Homicide Review - Guidance), and Clause 65 (Unauthorised Encampments - Guidance on exercise of police powers in respect of trespassers on land etc)

The amendments for the above clauses requires any guidance issued by the Secretary of State under those clauses to be laid before Parliament.

These clauses have already been included in the LCM laid on 28 May 2021 as they impact on devolved matters. The amendments to the clauses are consequential and thus impact on devolved matters. Therefore, this supplementary LCM is laid in respect of these clauses as amended.

11. Amendment to Clauses 36 (Extraction of information from electronic devices: investigation of crimes etc), 40 (Extraction of information from electronic devices: investigations of death) and 42 (Regulations about the extraction of electronic information)

Amendments are made to clauses 36, 40 and 42 that make provision relating to the extraction of confidential information when extracting information. These amendments replace the duty on the Secretary of State in clause 42 to make Regulations as to such provisions.

I previously laid an LCM (28 May) in respect of these clauses as they impact on devolved matters and Devolved Welsh Authorities. The impact on devolved matters remain the same as a result of these amendments. Therefore, this supplementary LCM is laid in respect of these clauses as amended.

12. Amendments to Clauses 56 (Imposing conditions on public processions), 57 (Imposing conditions on public assemblies) and 62 (Imposing conditions on one-person protests)

The amendments to clauses 56, 57 and 62 place the definition of serious disruption on the face of the Bill, instead of giving the Secretary of State a power to define it in Regulations. The SoS retains a power to amend the definition in Regulations. These amendments do not make change to the substance of the provision, it merely moves the requirement to define serious disruption from Regulations to the face of the Bill itself.

I previously laid an LCM (28 May) in respect of these clauses as they impact on devolved and that impact remains the same as a result of these amendments. Therefore, this supplementary LCM is laid in respect of these clauses as amended.

13. Amendments to Clause 61 (Intentionally or recklessly causing public nuisance)

The amendments to clause 61 clarify the offence of public nuisance by making it explicit that public nuisance will only be committed where serious harm is caused to the public or a section of the public.

I previously laid an LCM (28 May) in respect of this clause on the basis that it makes provisions relating to devolved matters involving environmental protection and Local Authorities. The impact on devolved matters remain the same as a result of these amendments. Therefore, this supplementary LCM is laid in respect of these clauses as amended.

Welsh Government Position on the Bill as amended - summary

14. All clauses in the Bill to which I recommend the Senedd gives consent:

Clause 7	Clause 17	Clause 61
Clause 8	Clause 18	
Clause 9	Clause 19	
Clause 10	Clause 20	
Clause 11	Clause 21	
Clause 12	Clause 22	
Clause 13	Clause 31	
Clause 14	Clause 36	
Clause 15	Clause 40	
Clause 16	Clause 42	

15. All clauses in the Bill to which I recommend the Senedd withholds consent:

Clause 47	Clause 62
Clause 56	Clause 63
Clause 57	Clause 65

Welsh Government Position on the Bill as amended – clauses to which I recommend the Senedd gives consent (for reference)

16. Serious Violence Duty (clauses 7-22)

The clauses to which this supplementary LCM relates are clauses 7, 8, 9, 12, 15, 16, 18, 19 and 22, the amendments to those clauses are detailed in paragraph 9. However, here due to the complexity and size of the Bill, I am reaffirming my position in relation to the package of clauses known as the serious violence duty clauses, namely all of clauses 7-22.

The Welsh Government is supportive of the provision to require authorities within a local government area to collaborate with each other to prevent and reduce serious violence. The amendment to expand the definition of serious violence to include domestic abuse means that local authorities, the police, fire and rescue authorities, specified criminal justice agencies and health authorities will be required to include domestic abuse and sexual offences in their serious violence strategies under the Serious Violence Duty.

In the LCM laid on 28 May, I recommended that consent was given to clauses 7, 8, 10-16 and 19-22. Furthermore, in that same LCM, I recommended that the Senedd withheld its consent to clauses 9, 17 and 18 due to the lack of protection afforded to Devolved Welsh Authorities. However, following discussions with UK Government, we secured an amendment to clause 17. I laid a supplementary LCM in respect of that amendment on 5 November 2021. In that supplementary LCM I recommended the Senedd gives its consent to clauses 9, 17 and 18 on

the basis that the amendment to clause 17 sufficiently safeguarded the devolved nature of those provisions.

As a result of the amendments referred to in this supplementary LCM, I continue to recommend that the Senedd gives its consent to the package of Serious Violence Duty clauses, clauses 7-22.

17. Offensive Weapons Homicide Review (Clause 31 – Guidance)

This clause is amended as detailed in paragraph 10 and here I am setting out my position in relation to this clause as amended.

The new Offensive Weapons Homicide reviews will bring together local safeguarding partners to conduct a formal review of the circumstances surrounding the death and the use of offensive weapons. This provides opportunity to learn important lessons and to take a collaborative approach to prevent future deaths involving offensive weapons, such as knives and guns. This clause includes a duty to consult the Welsh Ministers in relation to devolved Welsh authorities, regarding any guidance issued by the Secretary of State and therefore are recommending the Senedd give consent to clause 31.

18. Extraction of information from electronic devices (clause 36 - Extraction of information from electronic devices: investigation of crimes etc), (clause 40 - Extraction of information from electronic devices: investigations of death) and (clause 42 -Regulations about the extraction of electronic information)

This clause is amended as detailed in paragraph 11 and here I am setting out my position in relation to this clause as amended.

The extraction of information from electronic devices provisions, aims to protect children and vulnerable adults, this aligns with the aims and provisions of the Social Services and Well-being (Wales) Act 2014. These clauses impact on devolved matters because authorised persons for the purpose of these clauses include Devolved Welsh Authorities. I recommend the Senedd gives consent to these clauses.

19. Public Order (clause 61 - Intentionally or recklessly causing public nuisance)

This clause is amended as detailed in paragraph 13 and here I am setting out my position in relation to this clause as amended.

Whilst public order is a reserved matter the noise elements in these clauses relate to environmental health matters, which are devolved to the Senedd and Welsh Ministers. We support the clause in relation to protecting residents from increased noise pollution. Therefore, I will be recommending the Senedd gives consent to clause 61.

Welsh Government Position on the Bill as amended – clauses to which I recommend the Senedd withholds consent (for reference)

20. Clause 47 – Criminal damage to memorials: mode of trial

Clause 47 has not been amended by the amendments laid on 1 December to which this supplementary LCM relates. However, I am reaffirming my position in relation to clause 47 here.

I am setting out below the reasoning I provided in the LCM laid on 28 May in relation to which my view remains unchanged.

Whilst sentencing and courts is a reserved matter, monuments, memorials and culture are devolved. We consider that creating the possibility of an individual being tried in the Crown Court and being imprisoned for up to 10 years (or, where the defendant intended or was reckless regarding the engagement of life, for life) for criminal damage worth under £5000 is disproportionate. This clause amends the procedure for dealing with criminal damage to memorials, which, in our view, is within the competence of the Senedd and therefore I am recommending the Senedd withholds consent for this clause.

21. Clause 56 & 57 – Public Order – Imposing conditions on processions and imposing conditions on public assemblies & Clause 62 One person protest

These clauses are amended as detailed in paragraph 12 and here I am setting out my position in relation to these clauses as amended.

Whilst public order is a reserved matter the noise elements in these clauses relate to environmental health matters, which are devolved to Welsh Government. We support the clause in relation to protecting residents from increased noise pollution, however this is the responsibility of Welsh Government. Whilst the Welsh Government does not have powers to direct the police in relation to noise levels, it does have overall responsibility for noise abatement and is responsible for directing local authorities on this matter. The legislation is not clearly defined and it is therefore difficult to assess its implications on the responsibilities of Devolved Welsh Authorities. Therefore, I am recommending the Senedd withholds consent for these clauses.

22. Clause 63 & 65 – Unauthorised Encampments

Clause 63 has not been amended by the amendments laid on 1 December to which this supplementary LCM relates. However, I am reaffirming my position in relation to clause 63 here.

Clause 65 is amended as detailed in paragraph 10 and here I am setting out my position in relation to this clause as amended.

The Welsh Government's approach to managing unauthorised encampments is unchanged. We focus on engagement with communities

and investment for adequate provision of authorised sites and enabling local authorities to meet the accommodation needs (residential and transit) of Gypsy and Traveller communities. This area of work is prioritised again in the Race Equality Action Plan, which contains a specific goal on better addressing accommodation needs of these communities. Therefore, I continue to recommend the Senedd withholds consent to clauses 63 and 65.

Financial implications

23. There may be financial implications but this will not be clear until the measures in the Bill are implemented.

Conclusion

24. There are provisions in this Bill which Welsh Government welcomes and are in line with Welsh Government policies. In respect of such provisions, I am recommending the Senedd gives consent to those clauses, as listed in paragraph 14 for the reasons detailed further in paragraphs 16-19.

25. However, there are provisions in this Bill which are not in line with Welsh Government policies. In respect of such provisions, I am recommending the Senedd withholds consent to those clauses, as listed in paragraph 15 for the reasons detailed further in paragraphs 20-22.

Jane Hutt MS
Minister for Social Justice
20 December 2021