

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)

DOMESTIC ABUSE BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 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 Domestic Abuse Bill 2019-21 (“the Bill”) was introduced in the House of Commons on 3 March 2020. The Bill can be found at: https://publications.parliament.uk/pa/bills/lbill/58-01/124/5801124_en_1.html .

Policy Objective(s)

3. The purpose of the Bill is to raise awareness and understanding of domestic abuse and its impact on victims, to further improve the effectiveness of the justice system in providing protection for victims of domestic abuse and bringing perpetrators to justice, and to strengthen the support for victims of abuse and their children provided by other statutory agencies.

Summary of the Bill

4. The Bill is sponsored by the Home Office and the Ministry of Justice.
5. The Bill makes the following provisions:
 - **Part 1** provides for a statutory definition of domestic abuse which underpins other provisions in the Bill.
 - **Part 2** creates the office of Domestic Abuse Commissioner, sets out the functions and powers of the Commissioner and imposes a duty on specified public authorities to cooperate with the Commissioner.
 - **Part 3** provides for a new civil preventative order regime - the Domestic Abuse Protection Notice (“DAPN”) and Domestic Abuse Protection Order (“DAPO”).
 - **Part 4** places new duties on tier one local authorities in England in respect of the provision of support to domestic abuse victims and their children in refuges and other safe accommodation.
 - **Part 5** confers on victims of domestic abuse automatic eligibility for special measures in the criminal courts; and prohibits perpetrators of certain offences from cross-examining their victims in person in the family courts in England and Wales (and vice versa) and gives family courts the power, in certain circumstances, to appoint a legal representative to conduct the cross-examination on behalf of the prohibited person.

- **Part 6** extends the extraterritorial jurisdiction of the criminal courts in England and Wales, Scotland and Northern Ireland to further violent and sexual offences.
- **Part 7** makes miscellaneous and general provision. In particular, this Part enables domestic abuse offenders to be subject to polygraph testing as a condition of their licence following their release from custody; places the guidance supporting the Domestic Violence Disclosure Scheme on a statutory footing; ensures that persons with secure or assured lifetime tenancies are granted a secure lifetime tenancy where the new tenancy is being granted by a local authority for reasons connected to domestic abuse; and confers a power on the Secretary of State to issue statutory guidance.

Update on position since the publication of the first Legislative Consent Memorandum

6. The Welsh Government laid a Legislative Consent Memorandum on 3 August 2020, based on the Bill as introduced into Parliament on 3 March 2020.
7. The Memorandum confirmed the Welsh Government is supportive of the Bill as introduced.
8. We stated in the previous Memorandum that we believe that clause 73, (as drafted), significantly encroaches on the executive functions of the Welsh Ministers and the legislative competence of the Senedd. We said that officials would work closely with the UK Government to seek an amendment to the clause to ensure it accurately reflects and respects the devolution settlement.
9. We welcome the amendment tabled by the UK Government on 7 January 2021 which will ensure the Secretary of State's (SoS) power to issue guidance is respectfully limited to matters which are reserved. The amendment to clause 73 will prevent the SoS from issuing guidance that relates to 'Welsh devolved matters'.

Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

10. We have reached agreement with the UK Government with regards to clause 73 as stated above. Consequently we do not believe this clause requires the Senedd's consent.
11. Clause 3, as referenced in the original Memorandum, is also no longer required as it is linked with clause 73.

Welsh Government position on the Bill as amended

12. We welcome the UK Government's amendment to clause 73 of the Bill. This will ensure that the SoS is not able to issue guidance to Welsh Local

Authorities and other public bodies in Wales that would encroach on devolved matters.

13. For instances that guidance would relate to non-devolved matters (eg police and social justice) we will work closely with the UK Government, where the Welsh Government is a statutory consultee, to ensure that guidance is mindful of the devolved landscape in Wales.
14. The rationale for including clauses 65, 66 and 68 within the original Memorandum remain the same as previously detailed. We have subsequently written to the Legislation, Justice and Constitution Committee and the Equality, Local Government and Communities Committee, on 16 December 2020, to further clarify our position with regards to these clauses. We stated that 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.

Financial implications

15. While there are no direct financial implications for the Welsh Government or Senedd Cymru arising from the powers under the Bill, there may be future financial implications for Wales in terms of the overall effect should a differing approach be taken.

Conclusion

16. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as the Bill covers both devolved and non-devolved matters. In terms of coherence, the Welsh Government considers that legislating via a UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness of domestic abuse matters.

Jane Hutt, MS
Deputy Minister and Chief Whip
January 2021