

Agenda Supplement – Legislation, Justice and Constitution Committee

Meeting Venue:	For further information contact:
Video Conference via Zoom	P Gareth Williams
Meeting date: 10 January 2022	Committee Clerk
Meeting time: 13.30	0300 200 6565
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Remote – Supplementary pack

Please note the documents below are in addition to those published in the main Agenda and Reports pack for this Meeting

3.10 SL(6)108 – The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 22) Regulations 2021

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[Regulations](#)

[Explanatory Memorandum](#)

Attached Documents:

LJC(6)-01-22 – Paper 16a – Welsh Government response

12 Supplementary Legislative Consent Memorandum (Memorandum No. 4) on the Police, Crime, Sentencing and Courts Bill

14.55 – 15.05

(Pages 2 – 51)

Attached Documents:

LJC(6)-02-22 – Paper 57 – Supplementary Legislative Consent Memorandum
(Memorandum No. 4) – Police, Crime, Sentencing and Courts Bill

LJC(6)-02-22 – Paper 58 – Legal advice note



Agenda Item 3.10

Government Response: The Health Protection (Coronavirus Restrictions) (No. 5) (Wales) (Amendment) (No. 22) Regulations 2021

Merit Scrutiny point 3: Welsh Government Response

The summary impact assessment that was issued for the COVID pass has been updated in light of the changes to the provision of natural immunity. The updated version will be published shortly.

Merit Scrutiny point 4: Welsh Government Response

Welsh Government and the UK Government agree that the unpredictable nature of natural immunity makes it unsuitable as a certification measure compared with vaccination and testing. The strength of the protective immune response to COVID-19 varies greatly from person to person, and although it is highly likely an individual will be protected from severe disease or death for a period post recovery from first infection, the duration of this protection will vary and the ability for these individuals to still transmit the virus has not yet been quantified.

Sage 99 noted that:

- There remain many uncertainties about the biological parameters of Omicron including the combination of transmissibility and immune escape which give it a growth advantage over Delta in the UK. Evidence continues to suggest a significant degree of immune escape, and much higher levels of reinfections are being seen with Omicron (8% to 9%) than Delta (around 1%).

A link to the paper is attached <https://www.gov.uk/government/publications/sage-99-minutes-coronavirus-covid-19-response-16-december-2021/sage-99-minutes-coronavirus-covid-19-response-16-december-2021>.

The COVID pass provisions relating to natural immunity and evidence of vaccination (including the formal definition of fully vaccinated) will continue to be kept under review as case rates change and as the vaccination programme continues to be implemented.

Agenda Item 12

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NUMBER 4)

POLICE, CRIME, SENTENCING AND COURTS BILL

1. This supplementary legislative consent memorandum (LCM) is laid under Standing Order (“SO”) 29.2.SO29 which prescribes that an LCM 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. The Bill is an amalgamation of three separate Bills, it has a total of 179 clauses, runs to 304 pages and includes 20 Schedules. Legislative consent is considered to be required for 46 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 and following the May 2021 Senedd Election. A supplementary LCM (Memorandum No 2) was laid on 5 November following an amendment to clause 17. A further supplementary LCM (Memorandum No 3) was laid on 20 December in response to the 91 amendments tabled by the UK Government on 1 December for consideration at House of Lords Report Stage, 15 of which require the consent of the Senedd.
3. The UK Government laid a further 19 amendments on 4 January 2022 for consideration at House of Lords Report Stage, one of these requires the consent of the Senedd. This supplementary LCM (Memorandum No 4) sets out the Welsh Government’s position on this clause. For ease of reference, it also sets out all of the remaining clauses of the Bill which I consider require the Senedd’s consent and which have been the subject of previous LCMs. This means that all of the clauses which I consider require the Senedd’s consent are set out in one document.
4. 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)

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.

Structure of this Memorandum

9. Paragraphs 10-17 of this Memorandum set out recent changes to the Bill for which consent is required, to ensure that Members of the Senedd have a full view of the relevant changes. This section describes the relevant changes, but does not set out the Welsh Government position. Following this, paragraphs 18 onwards set out the Welsh Government position on every relevant clause in the complete Bill as amended – this includes a summary of our existing position from previous Memorandums, as well as our position on the new amendments laid on 4 January. This means that Members can use the summary from paragraph 18 onwards as a complete overview of the Welsh Government position on the Bill as amended.

Changes to the Bill as of 4 January 2022 for which consent is required

10. **Increase in penalty for offences related to game etc [to be inserted after clause 55]**

This clause proposes to increase penalties under the Night Poaching Act 1828, and the Game Act 1831 in order to further deter hare coursing, which is often carried out on another person's land without permission unlike other forms of organised hunting. It further amends the Game Laws (Amendment) Act 1960 so that a vehicle can be forfeited no matter how many people are committing the Game Acts offences (at present this is only available where the offence is committed by five or more people).

This amendment is within the competence of the Senedd and thus requires a LCM.

Changes to the Bill as referenced in Supplementary LCM (Memorandum No 3) of 20 December for which consent is required

11. Amendments to Functions relating to Serious Violence ('the Serious Violence Duty')

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

The amendments to clauses 7 and 8 require specified authorities to publish the strategy required by clause 7 and ensures that such strategy does not include material that 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.

Clause 9 Power to authorise collaboration etc. with other persons

The amendments to clause 9 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.

Clause 12 Preventing and reducing serious violence

The amendments to clause 12 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.

Clause 15 Disclosure of information

The amendments to clause 15 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.

Clause 16 Supply of information to local policing bodies

The amendments to clause 16 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.

Clause 18 Guidance

The amendment to clause 18 requires guidance issued by the Secretary of State relating to the exercise of functions under the serious violence duty to be laid before Parliament.

Clause 19 Amendments to the Crime and Disorder Act 1998

The amendments to clause 19 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.

Clause 22 Index of defined expressions

The amendments to clause 22 add “health or social care authority” and “patient information” to the index of defined expressions.

I laid an LCM in respect of all of the above clauses, as well as clauses 10, 11, 13, 14, 17, 20 and 21 on 28 May because they impact on devolved matters and Devolved Welsh Authorities. I laid a supplementary LCM (Memorandum No 2) on 5 November in respect of clauses 9, 17 and 18.

The clauses, amended as detailed above, also impact on devolved matters and Devolved Welsh Authorities. Therefore, the supplementary LCM (Memorandum No 3) was laid on 20 December in respect of the clauses as amended.

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

The amendments to clauses 31 and 65 require any guidance issued by the Secretary of State under those clauses to be laid before Parliament.

I laid an LCM in respect of these clauses on 28 May because they impact on devolved matters. The amendments to the clauses are consequential and thus impact on devolved matters. Therefore, the supplementary LCM (Memorandum No 3) was laid on 20 December in respect of these clauses as amended.

13. Clauses 36 Extraction of information from electronic devices: investigation of crimes etc, and Clause 42 Regulations about the extraction of electronic information

The amendments to clauses 36 and 42 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 laid a LCM in respect of these clauses on 28 May 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, the supplementary LCM (Memorandum No 3) was laid on 20 December in respect of these clauses as amended.

14. Clause 56 Imposing conditions on public processions, Clause 57 Imposing conditions on public assemblies, and Clause 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 laid a LCM in respect of these clauses on 28 May as they impact on devolved matters. The impact on devolved matters remains the same as a result of these amendments. Therefore, the supplementary LCM (Memorandum No 3) was laid on 20 December in respect of these clauses as amended.

15. 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 laid a LCM in respect of this clause on 28 May as it makes provisions relating to devolved matters involving environmental protection and Local Authorities. The impact on devolved matters remains the same as a result of these amendments. Therefore, the supplementary LCM (Memorandum No 3) of 20 December was laid in respect of this clause as amended.

Other amendments

16. Given the complexity of the Bill and the volume of UK Government amendments laid, the following amendment was omitted from previous supplementary LCMs.

17. **Clause 38 Requirements for voluntary provision and agreement**

This newly inserted clause stipulates when a person is considered to have voluntarily provided an electronic device for the purpose of clauses 36 and 37. This new clause is ancillary to clauses 36 and 37 in respect of which I laid a LCM on 28 May.

Therefore, a LCM is also required for clause 38.

Welsh Government Position on the Bill as amended – summary

18. A similar table to the one set out below was included in the supplementary LCM ((Memorandum No 3) of 20 December. Due to time pressures in order to lay that supplementary LCM and the complexity and volume of amendments laid which required analysis, some clauses were omitted in error. The full set of clauses which have been assessed as being within competence of the Senedd are now contained in the tables in paragraphs 19 and 20.

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

Clause 1	Clause 17	Clause 29	Clause 43
Clause 2	Clause 18	Clause 30	Increase in penalty for offences related to game etc [to be inserted after clause 55]
Clause 7	Clause 19	Clause 31	Clause 61
Clause 8	Clause 20	Clause 32	
Clause 9	Clause 21	Clause 33	
Clause 10	Clause 22	Clause 34	
Clause 11	Clause 23	Clause 35	
Clause 12	Clause 24	Clause 36	
Clause 13	Clause 25	Clause 37	
Clause 14	Clause 26	Clause 38	
Clause 15	Clause 27	Clause 41	
Clause 16	Clause 28	Clause 42	

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

Clause 47	Clause 62	Clause 65
Clause 56	Clause 63	
Clause 57	Clause 64	

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

21. **Clause 1 Police Covenant Report**

Here, I am setting out my position in relation to this clause. Clause 1 has not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates, nor the amendments laid on 1 December.

The Welsh Government is supportive of the introduction of a Police Covenant. Clause 1 confers on the Secretary of State to publish an annual report on the Police Covenant and present this to Parliament. The annual report on progress against the covenant is likely to relate to devolved matters to Wales, such as health services. A LCM was laid in respect of this clause on 28 May in which I recommended the Senedd gives consent to this clause.

I continue to recommend the Senedd gives consent to clause 1.

22. Clause 2 Increase in penalty for Assault on Emergency Worker

Here, I am setting out my position in relation to this clause. Clause 2 has not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates, nor the amendments laid on 1 December.

Assaults on emergency workers are reprehensible. The Welsh Government is therefore supportive of clause 2 which amends s.1 of the Assaults on Emergency Workers (Offences) Act 2018, increasing the penalty from 12 months to 2 years. A LCM was laid in respect of this clause on 28 May in which I recommended the Senedd gives consent to this clause.

I continue to recommend the Senedd gives consent to clause 2.

23. Clauses 7-22 - Serious Violence Duty

Here I am setting out my position in relation to the package of clauses known as the serious violence duty clauses, namely all of clauses 7-22. These clauses have not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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 (Memorandum No 2) in respect of that amendment on 5 November 2021. The impact of that amendment was to alter my view and therefore, 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.

Clauses 7, 8, 9, 12, 15, 16, 18, 19 and 22 are amended as detailed in paragraph 11 and a supplementary LCM (Memorandum No 3) was laid in respect of those clauses as amended on 20 December, in which I recommended that the Senedd gives consent to those clauses as amended.

I continue to recommend that the Senedd gives its consent to the package of Serious Violence Duty clauses, clauses 7-22.

24. Clauses 23-35 Offensive Weapons Homicide Reviews

Here I am setting out my position in relation to the package of clauses known as the Offensive Weapons Homicide Review, namely all of clauses 23-35. These clauses have not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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. On this basis in the LCM laid on 28 May, I recommended that consent was given to clauses 23-35.

Clause 31 is amended as detailed in paragraph 12 and a supplementary LCM (Memorandum No 3) was laid in respect of this clause on 20 December, in which I recommended that the Senedd gives consent to this clause as amended.

I continue to recommend the Senedd gives consent to the package of clauses related to Offensive Weapons Homicide Reviews (clauses 23-35).

25. Clause 36 Extraction of information from electronic devices: investigation of crimes etc, Clause 37 Application of section 36 to children and adults without capacity, Clause 38 Requirements for voluntary provision and agreement, Clause 41 Code of practice about the extraction of information, Clause 42 Regulations about the extraction of confidential information, and Clause 43 Authorised Persons

Here, I am setting out my position in relation to these clauses. These clauses have not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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. Therefore, a LCM was laid on 28 May in respect of clauses 36, 37, 41-43 in which I recommended the Senedd gives consent to this clause.

I continue to recommend that consent is given to clauses 37, 41 and 43.

Clauses 36 and 42 are amended as detailed in paragraph 13 and a supplementary LCM (Memorandum No 3) was laid in respect of these clauses on 20 December in which I recommend the Senedd gives consent to clauses 36 and 42. I continue to recommend that the Senedd gives consent to clauses 36 and 42.

The newly inserted clause 38 is detailed in paragraph 17. I recommend the Senedd gives consent to clause 38.

26. Increase in penalty for offences related to game etc [to be inserted after clause 55]

Here I am setting out my position in relation to this clause. It was inserted by the amendments laid on 4 January.

The inclusion of the clause which increases the penalty for offences related to game etc which is to be inserted after clause 55, is detailed in paragraph 10.

The way we treat our animals is an important reflection of our society's values. As well as being an issue of animal welfare, offending in order to facilitate hare coursing can also have a wider impact. This can include vandalism of property, loss of income for farmers and landowners, theft, intimidation and road traffic issues including the driving of unlicensed and uninsured vehicles. Whilst hare coursing is currently very rare in Wales, the Welsh Government believes many of the criminals taking part in hare coursing in England would move their events to Wales if England only legislation was brought in.

Therefore, I recommend the Senedd gives consent to this clause.

27. Clause 61 Intentionally or recklessly causing public nuisance

Here I am setting out my position in relation to this clause. This clause has not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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. For this reason, a LCM was laid in respect of this clause on 28 May in which I recommended the Senedd gives consent to this clause.

Clause 61 is amended as detailed in paragraph 15 and a supplementary LCM (Memorandum No 3) was laid in respect of this clause on 20

December, in which I recommend the Senedd gives consent to this clause.

I continue to recommend 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)

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

Here I am setting out my position in relation to this clause. Clause 47 has not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates, nor the amendments laid on 1 December.

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. For this reason, a LCM was laid in respect of this clause on 28 May in which I recommended the Senedd withheld consent to this clause.

I continue to recommend the Senedd withholds consent for this clause.

29. Clause 56 Imposing conditions on public processions, Clause 57 Imposing conditions on public assemblies, and Clause 62 Imposing conditions on one person protests

Here I am setting out my position in relation to these clauses. Clauses 56, 57 and 62 have not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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. For this reason, a LCM was laid in respect of these clauses on 28 May in which I recommended the Senedd withheld consent to them.

These clauses are amended as detailed in paragraph 14 and a supplementary LCM (Memorandum No 3) was laid in respect of these

clauses on 20 December in which, again, I recommended the Senedd withholds consent to them.

I continue to recommend the Senedd withholds consent for clauses 56, 57 and 62.

30. Clause 63 Offence relating to residing on land without consent in or with a vehicle, Clause 64 Amendments to existing powers, and Clause 65 Guidance on exercise of police powers in respect of trespassers on land etc

Here I am setting out my position in relation to these clauses. Clauses 63-65 have not been amended by the amendments laid on 4 January to which this supplementary LCM (Memorandum No 4) relates.

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. For this reason, a LCM was laid in respect of these clauses on 28 May, in which I recommended the Senedd withheld consent to them.

I continue to recommend the Senedd withholds consent to clauses 63 and 64.

Clause 65 is amended as detailed in paragraph 12 and a supplementary LCM (Memorandum No 3) was laid in respect of this clause on 20 December in which, again, I recommended the Senedd withholds consent to this clause.

I continue to recommend the Senedd withholds consent for clause 65.

Financial implications

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

Conclusion

32. There are provisions in this Bill which we welcome and are in line with our policies. In respect of such provisions, I am recommending the Senedd gives consent to those clauses, as listed in paragraph 19 for the reasons detailed further in paragraphs 21 to 27.

33. However, there are provisions in this Bill which are not in line with our policies. In respect of such provisions, I am recommending the Senedd

withholds consent to those clauses, as listed in paragraph 20 for the reasons detailed further in paragraphs 28 to 30.

Jane Hutt MS
Minister for Social Justice
[6] January 2022

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