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Y Gweinidog Cyfiawnder Cymdeithasol
Minister for Social Justice



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref MA-JH-3249/21

Huw Irranca-Davies MS
Chair
Legislation, Justice and Constitution Committee

28 September 2021

Dear Huw,

Thank you for your letter of 22 September regarding the Legal Consent Memorandum: Police, Crime, Sentencing and Courts Bill.

I was pleased to have been able to present the LCM to you on Monday 20 September. I have answered your questions as set out below.

Question 1: Justification for seeking the consent of the Senedd in respect of the following clauses is provided briefly in paragraphs 9 and 10 of the Memorandum:

Clause 1 (Police Covenant);

Clause 2 (Increase in penalty for assaults on emergency workers);

Clauses 7-8, 10-16, 19-22 (Functions relating to serious violence); and

Clauses 23-35 (Offensive weapons homicide review).

Please could you provide additional detail to explain and clarify why the Senedd's consent should be sought for these provisions?

Clause 1 - 'Police Covenant'. This establishes a duty on the Secretary of State (SoS) to publish an annual report on the Police Covenant and present this to Parliament. The annual report on progress against the covenant may relate to devolved matters such as health and family support services. The clause may require the Welsh Ministers, NHS Wales or a devolved Welsh authority to provide the SoS with information on the effects of service in the police force on matters such as health and well-being, family support and any other matter the SoS considers appropriate. The UK Government acknowledges that some of the issues that will need to be addressed by the annual report on progress against the Covenant may relate to devolved matters in Wales.

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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.

Clause 2 – Increase in penalty for assault on emergency worker amends section 1 of the Assaults on Emergency Workers (Offences) Act 2018, increasing the penalty from 12 months to 2 years. The broad purpose of increasing the penalty for this offence is to protect emergency services workers (by further deterring people from committing the offence) and thereby to protect the provision of those services and individuals. This clause makes provision with regard to devolved matters because its aim includes protecting NHS workers and those working in the Fire and Rescue Service.

Clauses 7-8, 10-16, 19-22 (Functions relating to serious violence) – A new duty will be placed on specified public bodies to collaborate and plan to prevent and reduce serious violence, with a corollary duty to prepare and implement a strategy. These include devolved Welsh authorities (“DWAs”) such as Local Authorities, Local Health Boards and Fire and Rescue Authorities. The UK Government acknowledges that the provisions relating to the serious violence duty should be subject to the LCM process.

Clauses 23-35 (Offensive weapons homicide review) – Reviews will bring together local safeguarding partners to conduct a formal review of homicides where an offensive weapon has been used. The partners responsible for the review includes DWAs such as Local Authorities and Local Health Boards. The UK Government acknowledges that the provisions relating to offensive weapons homicide review should be subject to the LCM process.

Question 2: Paragraphs 13 and 14 of the Memorandum state that the Welsh Government will recommend that the Senedd refuses to give consent to clauses 9, 17 and 18 of the Bill. This is due to a concern that the provisions would allow the Secretary of State to issue directions for the purposes of enforcing the serious violence duty, which could potentially include issuing directions on devolved matters which fall within the remit of devolved Welsh authorities. Please can you clarify which devolved matters you are referring to?

The serious violence duty will place responsibilities on a number of public authorities to collaborate and plan to prevent and reduce serious violence. Some of those bodies fall within the remit of devolved Welsh authorities these are: Local Authorities, Local Health Boards, and Fire and Rescue Authorities. In addition there will be some responsibilities placed on educational establishments to collaborate.

As currently read, the Bill would allow the Secretary of State to direct these authorities to collaborate without the consent of the Welsh Ministers. The Welsh Government is hopeful that an amendment will be laid to commit the Secretary of State to gain consent from the Welsh Ministers prior to using this power where it is levied at devolved matters.

Question 3: Please can you explain why the Welsh Government believes the following clauses are within the legislative competence of the Senedd and, in addition, explain why the Senedd should give its consent to these clauses:

Clauses 36-37 and 40-41 (Extraction of information from electronic devices); and Clause 43 (Pre-charge bail).

The broad purpose of the power to extract information from an electronic device in this provision may be described as the protection or safeguarding of individuals. One of the circumstances in which this provision may be used is in protecting a child or an at-risk adult. Safeguarding issues fall within the legislative competence of the Senedd and are addressed in the Social Services and Well-being (Wales) Act 2014, for example.

Question 4: Please can you explain why clauses 38 and 39 are not mentioned in the Memorandum, given that they are part of the suite of provisions that deal with extraction of information from electronic devices (which the Welsh Government consider require consent)?

As opposed to the clauses referred to in Question 3, clauses 38 and 39 do not require a LCM as the primary purpose of these clauses relate to the reserved matters of the prevention, detection and investigation of crime.

Question 5: Please can you explain why the Welsh Government believes clause 42 (authorised persons) is within the legislative competence of the Senedd and clarify whether it considers that the Senedd should give its consent to that clause?

Given the wide ranging definitions of who can be nominated authorised persons, investigating officer and prosecution authority included in clause 42 (as set out below), it is likely that this could encompass officers and authorities that are not reserved such as Local Authorities.

We would recommend that consent is given to clause 42.

Question 6: Please can you explain why the Welsh Government considers the effect of clause 46 (Criminal damage to memorials: mode of trial) would be to increase the potential sentence for criminal damage to life imprisonment in circumstances where the defendant intended or was reckless as to danger to life? The Committee has received advice that this offence is indictable only and already therefore attracts a maximum penalty of life imprisonment under section 4(1) of the Criminal Damage Act 1971.

We agree that an offence under s.1 (2) of the Criminal Damage Act 1971 of damage to property which (intentionally or recklessly) endangers life is already indictable only and subject to life imprisonment. However the effect of s.22 and paragraph 1 of Schedule 2 to the Magistrates' Courts Act 1971, is that if the value of the damage to the property is below £5,000, whether or not life was endangered by the damage/destruction, the mode of trial (and therefore the sentence it attracts) is subject to change. The only offences under s.1 of the 1971 Act that are excluded from the effect of Schedule 2 to the 1980 Act, are offences where the damage or destruction is caused by fire.

The amendment made by clause 46 is to exclude the application of Schedule 2 to offences where (a) the damage/destruction is caused by fire and (b) any offences where the damage/destruction, is to a memorial.

Question 7: In the Memorandum, the Welsh Government recommends that the Senedd grant consent to clause 59 (Causing public nuisance), and withhold consent to clauses 61 to 63 (Unauthorised encampments). Please can you explain why the Welsh Government believes all four clauses require consent?

Unauthorised encampments

These clauses relate to offences of residing on land without consent in or with a vehicle and powers to seize and forfeit vehicles. As the clauses relate to use of land, preventing the unlawful occupation of land and associated behaviours, there is an argument that they are within the legislative competence of the Senedd.

Causing Public nuisance

Part 3, Sections 54-60 of the Bill sets out numerous provisions relating to public order directions and offences. The noise element of these sections relates to the devolved matter of environmental protection.

Section 59 provides for an offence of intentionally or recklessly causing public nuisance. This replaces the existing common law offence of public nuisance with a new statutory offence and can capture a broad range of behaviour.

Yours,

A handwritten signature in black ink that reads "Jane Hutt". The signature is written in a cursive style with a long horizontal line above the first few letters.

Jane Hutt AS/MS

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