

Jane Hutt AS/MS
Gweinidog Cyfiawnder Cymdeithasol a'r Prif Chwip
Minister for Social Justice and Chief Whip



Llywodraeth Cymru
Welsh Government

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5th July 2023

Dear Jenny,

Thank you for your letter of 22 June 2023 seeking clarification on a number of points following the Equality and Social Justice Committee's consideration of the Victims and Prisoners Legislative Consent Motion on 19 June. Please see the responses below:

Part 1: Victims of criminal conduct

An update on discussions with the UK Government in relation to clauses 1 to 4, 11, 22 and 23 and clarification as to how you anticipate these provisions may impact on devolved bodies or responsibilities.

My officials have continued to discuss these clauses with the Ministry of Justice ("MoJ"), including regular lawyer-to-lawyer conversations. Officials most recently met on Wednesday 14 June and at this meeting Ministry of Justice leads agreed to further consider our views on competence for these clauses and how they could impact on devolved bodies. A follow-up meeting on this issue will be held later in July.

We will be better placed to address this question in full once we have received a more definitive position on the clauses from the Ministry of Justice. We will continue to update the Senedd on this matter as these conversations progress and we have a more complete understanding of how these clauses would impact devolved bodies or responsibilities in practice.

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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.

In respect of clause 15, your specific concerns regarding the proposal to issue statutory guidance about independent domestic violence and sexual violence advisors and details of the amendments you would deem necessary to address those concerns.

The Bill, as introduced to the UK Parliament on 29 March 2023, includes provisions regarding Independent Domestic Violence Advisers (“IDVAs”) and Independent Sexual Violence Advisers (“ISVAs”). As drafted, clause 15 places a unilateral duty on the Secretary of State (“SoS”) to issue guidance on the roles and functions of ISVAs / IDVAs. This is despite the Welsh Government’s view that this clause falls substantially within competence.

The UK Government has stated the guidance issued will include matters such as the key functions of these roles alongside recommended minimum standards and best practice. The guidance may also include information on the way other authorities and organisation should work with ISVAs / IDVAs.

The concerns around this clause relate to the fact that this is a devolved area and the Welsh Government may issue its own guidance in this area if it was deemed appropriate to do so. Giving consent for the UK Government to publish statutory guidance about the roles would mean that the Welsh Government is not able to control what the guidance says or how the roles operate in Wales.

In 2022, the Welsh Government published its five-year Violence Against Women, Domestic Abuse and Sexual Violence (“VAWDASV”) National Strategy, which is a statutory requirement of the VAWDASV (Wales) Act 2015. The strategy is being delivered through a collaborative ‘Blueprint approach’ alongside a group of key partner organisations including the police and specialist sector. Allowing the UK Government to publish statutory guidance for IDVAs and ISVAs in Wales would undermine the Blueprint and the nature of the collaborative, partnership way of working.

The Welsh Government VAWDASV policy team has asked the MoJ for further clarification on their suggestions for potential amendments to clause 15, in order to give them full consideration. We are awaiting their response and have therefore not yet finalised our preferred position.

Views on whether you would consider adopting a similar approach to clause 15 in Wales and develop definitions and guidance on the role of independent domestic violence and sexual violence advisors.

The Welsh Government agrees with the aims of clause 15 which are to bring greater consistency and awareness to the ISVA and IDVA roles. It would be possible for the Welsh Government to issue guidance and this would be something that the blueprint structure should consider. If deemed useful and necessary, any such guidance could be the result of genuine co-production with blueprint partners which include the specialist sector and victims and survivors of gender-based abuse.

I wrote to the UK Government Minister on 19 May to advise him of the recommendation to withhold consent on clause 15 explaining that this decision was based on the fact that the landscape in Wales has evolved and we now have a formal National Partnership and Blueprint structure for delivering the aims of the VAWDASV (Wales) Act 2015. This structure is key to brokering decisions on shared aims and commitments which includes the roles and requirements of IDVAs and ISVAs and the potential to publish guidance for Wales.

Part 2: Victims of Major Incidents

An update on discussions with the UK Government in relation to clauses 24-27 and 29-31, including further information regarding how a non-statutory IPA regime in Wales could be established and why this may be preferable to the scheme proposed in Part 2 of the Bill.

We are currently engaging in discussions with the UK Government in relation to clauses 24-27 and 29-31, which introduce the role of an Independent Public Advocate ("IPA"), to highlight our concerns about how these provisions apply to Wales. In its current form, the Bill provides the UK Secretary of State with a unilateral power to appoint an IPA in the event a major incident occurs in Wales, without any input from the Welsh Ministers despite the Senedd's competence in this area.

We believe that in order to accord with our constitutional principles, the power to appoint an IPA should be for the Welsh Ministers if the major incident occurred in Wales. It is also to some extent unclear how this role will operate, and these are issues which we have been discussing with the MoJ as the sponsoring department for the legislation (including whether there is any prospect of amendment to the legislation).

Lastly, we are also disappointed that provision for an IPA should be brought forward in legislation which does not also include any provisions that would place a duty of openness and disclosure on any public authorities who may be subject to an inquiry.

As indicated in the LCM, we believe that notwithstanding this legislation, the Welsh Ministers would be able to appoint a non-statutory IPA following an incident in Wales.

In the light of these discussions, we are currently considering what options we have available in Wales, and we hope to be able to update the Committee shortly.

Confirmation as to whether the UK Government agrees with your assessment that clause 28 of the Bill does not require Senedd consent. We note the UK Government suggests that consent is required for this clause in its explanatory notes accompanying the Bill -

We have discussed this with the UK Government, who have confirmed that they agree with our assessment that clause 28 of the Bill does not need Senedd consent and that the current explanatory notes are inaccurate. They have committed to reviewing the wording in the explanatory notes which will accompany the Bill's final version to accurately reflect this.



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