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Ysgrifennydd y Cabinet dros Ddiwylliant a Chyfiawnder
Cymdeithasol
Cabinet Secretary for Culture and Social Justice



Llywodraeth Cymru
Welsh Government

Mike Hedges, MS
Chair
Legislation, Justice and Constitution Committee
Senedd Cymru

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25 June 2024

Dear Mike,

I wish to provide members of the Legislation, Justice and Constitution Committee with an update on the Victims and Prisoners Act, following the announcement of the UK General Election and in relation to the Committee's report on the Legislative Consent Memorandum (LCM) which I published on 15 April 2024.

On Friday 24 May 2024, both Houses agreed the text of the Bill and it received Royal Assent and is now an Act of Parliament.

The UK Government acknowledged during the Third Reading of the Bill, the Senedd had withheld its consent to Clause 18 (Clause 15 on introduction of the Bil) and Part 2 of the Act. In the consent debate on 17 May, the Senedd also withheld consent for clauses 1 to 4, 11, 26 and 27 of the Bill related to the Victims Code. However, the UK Government disagreed with the competence assessment for the clauses and therefore did not make reference to them during the Third Reading. I am extremely disappointed with the UK Government's decision to progress the Act without the consent of the Senedd.

The UK Government did, during the Third Reading, make one amendment which respects the Senedd consent process. Clause 18 (15 on introduction), which provides that the Secretary of State (SoS) must issue guidance about victim support roles (such as independent domestic violence advisors and independent sexual violence advisors); and that any bodies having functions relating to victims, or to the criminal justice system, must have regard to it, will not apply in Wales. I welcome this amendment, which was taken on the advice of my officials. I want to be clear we will continue to engage and support collaboration across Governments in this area, however, not at the expense of our existing frameworks and true, meaningful engagement with the Welsh specialist sector.

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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.

An additional clause (Clause 22) was added to the Act which allows victim's impact statement in the mental health tribunals to be considered in relation to discharge conditions. We do not consider this to be within the competence of the Senedd as, overarchingly, it is a criminal justice matter relating to the management of offenders. A commencement order will be required to bring the clause into force. Welsh Government officials are working with UK Government to ensure the Welsh landscape is properly represented prior to commencement of the provisions.

Additionally, implementation of the revised Victims Code will need to be considered by an incoming UK Government. My officials will continue to work with UK Government officials to ensure the devolution settlement is properly respected and Welsh devolved public services are recognised for their differences.

Until the very end of March 2024, and following extensive and constructive engagement at official level, we understood it would be likely the UK Government would offer, in view of the Senedd's competence in this area, a consent provision for the Welsh Ministers regarding the declaration of a major incident and the appointment of an Advocate for victims of major incidents arising in Wales. This position was suddenly reversed to one in which the UK Government undertook to only provide consult provisions which we had been clear did not respect the Senedd's competence and would be unacceptable. They gave no credible rationale for this position and we were surprised and disappointed that what we had worked to achieve was not possible.

During the consent debate, the Senedd gave its consent to clause 16, 17 and Part 3 of the Act which concern infected blood compensation. We will continue to work with the UK Government to progress the implementation of these parts of the Act.

I would like to take this opportunity to thank the Committee for their valuable scrutiny during this process.

I note your recommendation and conclusions and have responded to them below.

Conclusion 1. We consider that the amendments to the Bill as set out in Memorandum No. 2 fall within a purpose within the legislative competence of the Senedd, as described in Standing Order 29, and therefore require the consent of the Senedd.

I welcome the Committee's views on the amendments. The rationale for our position on which amendments engage the LCM process is set out in the LCM laid on the 19 May 2023 and the SLCMs laid on 15 April 2024 and 30 April 2024.

Conclusion 2. The Senedd would have been afforded more time for scrutiny had the Welsh Government laid a supplementary legislative consent memorandum earlier and in respect of the amendments tabled at Commons' Report Stage, and followed that with a further memorandum relating to amendments tabled at Lords' Committee Stage. Instead, the Senedd's opportunity for scrutiny of new provisions in the Bill, as well as amendments to previously known clauses, has been severely hampered.

Conclusion 3. The delay in laying the required supplementary legislative consent memoranda in relation to the Bill is not acceptable and has severely undermined the ability of the Senedd and its Members to effectively scrutinise the Bill and its impact in Wales.

Recommendation 1. The Cabinet Secretary should, no later than during the relevant consent debate for the Bill, provide full details to explain the delays in laying before the Senedd the required supplementary legislative consent memoranda for the Bill, and clarify why she considers the delays in laying the supplementary memoranda to be acceptable.

In December 2023, the UK Government wrote to us with constructive offers on some clauses, which we expected to see reflected in amendments scheduled for January 2024. It was our intent to lay a SLCM confirming what we had hoped would be a positive and final position on the Bill. However, the amendments were rescinded and instead we had to wait until April 2024 for confirmation of their approach. We have had to reconsider our position which delayed the production of our SLCMs. Therefore, it was not possible to lay a SLCM at Lords' Committee Stage. We recognise the impact the uncertain UK Government position has had on the Senedd's ability to scrutinise the Bill. This underlines the need for improved UK practice in this area to support the Sewell convention and the constitutional role of the Senedd.

During the consent debate on 7 May 2024, I set out in my opening remarks the reasons for the delay in laying the SLCM. My officials have worked hard to lay Legislative Consent Memoranda at pace across the Bill process. This was regrettably difficult because of the turbulent passage of the Bill and the uncertainty around the UK Government position. I accept this has meant the Senedd have not had adequate time to scrutinise a Bill with far-reaching implications for Wales. However, we moved as fast as we could at each stage in the Bill process, in the face of issues outside our control.

I am copying this letter to all Members of the Senedd and Jenny Rathbone MS, Chair of the Equality and Social Justice Committee.

Yours sincerely

A handwritten signature in black ink that reads "Lesley Griffiths". The signature is written in a cursive, flowing style.

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Cabinet Secretary for Culture and Social Justice