

The Welsh Government's Legislative Consent Memorandum on the Criminal Justice Bill

March 2024



1. Background

The Criminal Justice Bill

1. The Criminal Justice Bill¹ (the Bill) was introduced into the House of Commons on 14 November 2023. It is sponsored by the Home Office.
2. According to its long title, it is a Bill to amend the criminal law and to make provision in the following areas:
 - criminal justice (including the powers and duties of the police) and the management of offenders;
 - confiscation and the use of monies in suspended accounts;
 - the prevention and detection of crime and disorder;
 - begging, rough sleeping and anti-social behaviour;
 - the police; and
 - for connected purposes.²
3. The Bill completed Committee stage in the House of Commons on 30 January 2024. A date for Commons Report stage is to be announced.³

The Welsh Government's Legislative Consent Memorandum

4. Standing Orders 29.1 and 29.2 provide that a legislative consent memorandum is required when a relevant UK Bill makes provision in relation to Wales for any purpose within the legislative competence of the Senedd or which modifies the Senedd's legislative competence.
5. On 22 November 2023, Jane Hutt MS, the Minister for Social Justice and Chief Whip (the Minister), wrote to the Rt Hon Elin Jones MS, the Llywydd, stating that it would not be possible to lay a legislative consent memorandum in respect of the Bill within the two-week period set out in Standing Order 29.2(i), for the following reasons:

¹ Criminal Justice Bill, as introduced (HC Bill 10)

² Criminal Justice Bill

³ Criminal Justice Bill, Stages

“My officials have been engaging with officials in the Home Office and the Ministry of Justice, which has included the sharing of outlines of the measures expected to be introduced as part of the Bill. However, officials only had sight of the final version of the Bill in full less than twenty four hours prior to it being introduced.

The Bill comprises 17 parts and is 156 pages long. From our initial analysis, it appears the Bill touches upon areas of devolved competence. However, given the breadth of the Bill and the lack of advance sight of it in full it has not yet been possible to fully consider the devolution consequences of what is being proposed.”⁴

6. On 29 January 2024, the Minister laid before the Senedd a Legislative Consent Memorandum (the Memorandum) in respect of the Bill.⁵

7. The Business Committee agreed that the Legislation, Justice and Constitution Committee should report on the Memorandum by 22 March 2024.⁶

Provision for which the Senedd's consent is required

8. The Welsh Government's assessment, as set out in paragraphs 12 to 14 of the Memorandum, is that clauses 11 and 12 of the Bill (which relate to encouraging or assisting serious self-harm) make relevant provision for the purpose of Standing Order 29.1, and therefore require the consent of the Senedd.

9. The Welsh Government is of the view that a number of other clauses of the Bill also require the Senedd's consent. The Minister notes that the clauses in question do not make relevant provision for the purpose of Standing Order 29; however, the clauses “impose reserved obligations and functions on Devolved Welsh Authorities”.⁷ In light of this, in the Minister's view:

“... there is an impact on devolved matters for the purposes of the Sewel Convention and section 107(6) of GOWA 2006, and the consent of the Senedd is therefore required.”⁸

⁴ Letter from the Minister for Social Justice and Chief Whip to the Llywydd, 22 November 2023

⁵ Welsh Government, [Legislative Consent Memorandum, Criminal Justice Bill](#), 29 January 2024

⁶ Business Committee, [Timetable for consideration: Legislative Consent Memorandum on the Criminal Justice Bill](#), February 2024

⁷ Memorandum, paragraph 15

⁸ Memorandum, paragraph 16

10. The Welsh Government's view is that the following clauses and schedules of the Bill contain provision which meets this test:

- clause 30 (Assessing and managing risks posed by controlling or coercive behaviour offenders);
- clauses 38 to 40, 42, 43, 46, 47, 51 to 53, 55, 56, 59 to 61, 63 and 64 (Nuisance begging and nuisance rough sleeping);
- clauses 65 to 71 and Schedule 8 (Anti-social behaviour proposals); and
- clause 72 (Crime and Disorder Strategies).

11. The UK Government's view is that the legislative consent process would be engaged in relation to Wales for clauses 11 of and 12 of the Bill as they "relate to matters within the legislative competence of Senedd Cymru".⁹

12. The UK Government is of the view that the legislative consent process would also be engaged in relation to Wales for clauses 38 to 47, 51 to 60, 63, 64, 67, 69, 71 and 72.¹⁰ The Minister states in the Memorandum that the UK Government is seeking a legislative consent memorandum for these clauses to the extent that they "confer reserved powers onto Devolved Welsh Authorities".¹¹

13. According to the Minister, the UK Government does not "currently" agree with the Welsh Government that consent is required for clauses 30, 61, 65, 66, 68 and 70 of the Bill. The Minister states in respect of the UK Government:

"They are currently reviewing this position and there is a possibility that the UK Government view on the need for consent for these clauses may change."¹²

14. The Minister also states that if the UK Government's view on these clauses does change, "this will be addressed through supplementary LCMs as necessary."¹³

⁹ UK Government, [Criminal Justice Bill, Explanatory Notes](#), paragraph 163

¹⁰ UK Government, Criminal Justice Bill, Explanatory Notes, Annex B – Territorial extent and application in the United Kingdom

¹¹ Memorandum, paragraph 33

¹² Memorandum, paragraph 34

¹³ Memorandum, paragraph 34

The Welsh Government's position

15. The Minister recommends that the Senedd's consent should be given in respect of clauses 11, 12, 65, 66 and 70 of the Bill.¹⁴ The Minister sets out her reasons for making this recommendation at paragraphs 35 to 42 of the Memorandum.

16. The Minister does not recommend that consent be given in respect of clauses 30, 38 to 40, 42, 43, 46, 47, 51 to 61, 63, 64, 67, 69, 71 or 72 "until further discussions have been held with UK Government."¹⁵ The Minister sets out her reasons for making this recommendation at paragraphs 43 to 72 of the Memorandum.

¹⁴ Memorandum, paragraph 74

¹⁵ Memorandum, paragraph 75

2. Committee consideration

17. We considered the Memorandum at our meeting on 26 February 2024.¹⁶

18. At our meeting on 11 March 2024, we considered a joint letter we had received from homeless charities and housing organisations which operate in Wales in relation to the Bill's clauses in respect of nuisance begging and nuisance rough sleeping.¹⁷

Our view

Time between the introduction of the Bill and the laying of the Memorandum

19. We note that the Minister wrote to the Llywydd on 22 November 2023 to explain that, given that Welsh Government officials only had sight of the final version of the Bill in full less than 24 hours prior to it being introduced, and given the breadth of the Bill, the Memorandum would be laid outside of the two-week deadline provided in Standing Order 29.2(i).

20. We are disappointed to learn of the limited engagement by the UK Government ahead of the Bill's introduction. We see this as another example of poor engagement by the UK Government with the Welsh Government in relation to legislation which impacts an area of devolved competence.¹⁸

21. We note that the Memorandum was subsequently laid nearly 11 weeks after the Bill's introduction, and does not set out the reason or reasons for this delay.

22. We acknowledge the reasons provided by the Minister in her letter to the Llywydd for the anticipated laying of the Memorandum outside of the two-week Standing Order deadline. However, we believe that the Minister should have provided an explanation to the Senedd within the Memorandum for this long delay, which has resulted in less time for its scrutiny.

¹⁶ [Legislation, Justice and Constitution Committee](#), 26 February 2024

¹⁷ [Joint letter from homeless charities and housing organisations which operate in Wales](#), March 2024

¹⁸ See, for example, our [report on the Welsh Government's Legislative Consent Memoranda on the on the Levelling-up and Regeneration Bill](#), February 2023; our [report on the Welsh Government's Legislative Consent Memoranda on the Retained EU Law \(Revocation and Reform\) Bill](#), February 2023; and our [report on the Welsh Government's Legislative Consent Memorandum on the Victims and Prisoners Bill](#), July 2023.

Recommendation 1. The Minister should explain why the Memorandum was laid nearly 11 weeks after the Bill's introduction.

Provisions requiring legislative consent

23. We note that there are areas of disagreement between the Welsh Government and the UK Government as to which clauses of the Bill require the Senedd's consent.

24. We note the Welsh Government's assessment of the provisions within the Bill which require the consent of the Senedd, as set out in the Memorandum.

25. We agree with the Welsh Government's assessment that clauses 11 and 12 of the Bill make relevant provision for the purposes of Standing Order 29.1, and therefore require the consent of the Senedd.

Conclusion 1. We consider that clauses 11 and 12 of the Bill, as set out in the Memorandum, 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.

26. We note that the Welsh Government identifies other clauses in the Bill which it believes require the consent of the Senedd.

27. We further note that the Welsh Government accepts that these clauses do not make relevant provision for the purposes of Standing Order 29, and the Senedd's Standing Orders do not provide an "express basis" for Senedd consent for such provisions. However, it believes that they require consent as that they "impose reserved obligations and functions on Devolved Welsh Authorities" and therefore "impact on devolved matters" for the purposes of the Sewel Convention and section 107(6) of the *Government of Wales Act 2006* (the 2006 Act).

28. It is however unclear to us how the clauses identified impact on devolved matters, in line with section 107(6) of the 2006 Act, since – as the Welsh Government expressly states in the Memorandum – the clauses impose functions and obligations on devolved Welsh authorities in respect of *reserved* matters.

29. As the clauses identified do not therefore make relevant provision for the purposes of Standing Order 29, and do not appear either to require consent for the purposes of section 107(6) of the 2006 Act, it is unclear to us on what basis each of those clauses require the consent of the Senedd.

Conclusion 2. We do not believe that clauses 30, 38 to 40, 42, 43, 46, 47, 51 to 53, 55, 56, 59 to 61, 63 to 65, 71, 72, and Schedule 8 of the Bill, as set out by the Welsh Government in the Memorandum, contain relevant provision for the purposes of the purposes of Standing Order 29.1.

Conclusion 3. The Senedd's consent is not required for clauses 30, 38 to 40, 42, 43, 46, 47, 51 to 53, 55, 56, 59 to 61, 63 to 65, 71, 72 and Schedule 8 of the Bill.

30. We acknowledge that our view on which clauses of the Bill require consent differs in places from the views of the Welsh Government and the UK Government.

31. Within our report on the Welsh Government's Legislative Consent Memoranda on the Leasehold and Freehold Reform Bill, we noted that the Welsh Government and the UK Government could be applying two different tests when considering whether the Senedd's consent is required for provisions in that Bill. We therefore recommended that the Business Committee may wish to review Standing Order 29.1 as part of its ongoing work in relation to the legislative consent process.¹⁹

32. We believe that our consideration of this Memorandum and the differing views that we highlight on which of the Bill's provisions require consent may raise issues that are relevant to the Business Committee's ongoing work. We therefore intend to draw these issues to its attention.

Clauses making provision in respect of nuisance begging and nuisance rough sleeping

33. We note that clauses 38 to 40, 42, 43, 46, 47, 51 to 53, 55, 56, 59 to 61, 63 and 64 of the Bill, as set out in the Memorandum, make provision in respect of nuisance begging and nuisance rough sleeping.

34. We note that the Minister states in the Memorandum:

- these provisions will apply in relation to Wales;²⁰
- the main purpose of these provisions relates to the maintenance of public order and anti-social behaviour – as such, the reservations at

¹⁹ Legislation, Justice and Constitution Committee, [Report on the Welsh Government's Legislative Consent Memoranda on the Leasehold and Freehold Reform Bill](#), March 2024

²⁰ Memorandum, paragraph 23

Sections B5 (paragraph 40) and B6 (paragraph 43) of Schedule 7A to the *Government of Wales Act 2006* are engaged;²¹ and

- the provisions are included in the Memorandum as they confer reserved functions on relevant local authorities in Wales.²²

35. As the Minister states in the Memorandum, the Welsh Government is not in a position to recommend consent in respect of these clauses. It believes the approach taken by the UK Government will likely prevent people who are likely to be affected by the provisions from engaging with services designed to help them.²³

36. As previously stated, the UK Government is of the view that Senedd consent is required for clauses 38 to 47, 51 to 60, 63, 64, 67, 69, 71 and 72 of the Bill, which contain provision in respect of nuisance begging and nuisance rough sleeping.

37. Furthermore, as we have previously stated, because these clauses do not make provision for a purpose within the legislative competence of the Senedd, they do not meet the requirement for Senedd consent under Standing Order 29.1.

38. However, we acknowledge that homeless charities and housing organisations have raised with us their “grave concerns” regarding the impact of these clauses, as they are:

“... dehumanising and could not be further from the general direction of travel in Wales, as outlined in the Ending Homelessness National Action Plan and recently published White Paper on Ending Homelessness.”²⁴

39. They also state:

“... these clauses within the Bill will cause people who are sleeping rough to be displaced into less safe areas. In addition, it will create a break down in trust between people forced to sleep on the streets and the organisations and authorities that can provide them with support. ...”

²¹ Memorandum, paragraph 25

²² Memorandum, paragraph 26

²³ Memorandum, paragraphs 47-54

²⁴ Joint letter from homeless charities and housing organisations which operate in Wales, March 2024

The proposed Bill also seems to be at stark odds with the Wales Safer Communities Network, which seeks a multi-agency and collaborative approach to reducing crime and increasing community safety.”²⁵

40. They conclude in their letter:

“... we support the concerns outlined within the Welsh Government's recently published Legislative Consent Memorandum and agree that “rather than a punitive approach to rough sleeping behaviour, [...] psychologically-informed environments and trauma-informed responses should underpin all interactions with those rough sleeping.

We urge the Committee to also take a firm stance on these highly problematic aspects of the Bill, which fail to address the underlying causes of homelessness and instead serve to perpetuate street sleeping.”²⁶

41. Although the concerns raised relate to matters outside the remit of this Committee, we believe that the UK Government should address them. We have therefore written to the Rt Hon James Cleverly MP, the Home Secretary, to bring these concerns to his attention.²⁷

²⁵ Joint letter from homeless charities and housing organisations which operate in Wales, March 2024

²⁶ Joint letter from homeless charities and housing organisations which operate in Wales, March 2024

²⁷ [Letter to the Home Secretary](#), 19 March 2024