

LEGISLATIVE CONSENT MEMORANDUM

CRIMINAL JUSTICE BILL

1. This legislative consent memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes that a legislative consent memorandum must be laid, and a legislative consent motion may be tabled, before Senedd Cymru¹ 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 Criminal Justice Bill (“the Bill”) was introduced in the House of Commons on 14 November 2023. The Bill can be found at: [Criminal Justice Bill - Parliamentary Bills - UK Parliament](#)
3. On 22 November, I wrote to the Llywydd explaining that it had not been possible to lay this legislative consent memorandum within the normal two-week SO29 deadline.
4. My officials have been engaging with officials in the Home Office and the Ministry of Justice on the Bill, which has included the sharing of outlines of the measures expected to be introduced as part of the Bill. However, my officials only had sight of the final version of the Bill in full less than twenty-four hours prior to it being introduced.
5. The Bill comprises 17 parts and is 156 pages long and addresses a wide range of subjects. Given the breadth of the Bill and the lack of advance sight of it in full, it was not possible to fully consider the devolution consequences of the proposals within the normal two-week laying deadline. I am now in a position to lay a Memorandum which presents a fuller picture of the proposals in the Bill and how they interface with devolved matters.
6. The Memorandum covers two categories of provisions which both require consent from the Senedd, albeit for different reasons. The first category of provisions require consent as they make “relevant provision” for the purposes of Senedd Standing Order 29. The second category of provisions require consent as they confer reserved functions on Devolved Welsh Authorities. This distinction is set out in more detail below.

Policy Objective(s)

7. The UK Government’s stated policy objectives for the Bill are to keep communities safe by:

¹ Please note in accordance with Welsh Government policy we refer to the legislature in Wales as “Senedd Cymru” on first use and “the Senedd” thereafter unless the context stipulates otherwise.

- a. strengthening the law to protect the public from violence and intimidation;
- b. tackling violence against women and girls;
- c. enabling law enforcement agencies to respond to changing technology deployed by criminals;
- d. equipping law enforcement agencies with the necessary powers to address emerging crime types and threats;
- e. introducing tougher sentencing;
- f. enhancing the management of offenders; and
- g. strengthening public confidence in policing.

Summary of the Bill

- 8. The Bill is sponsored by the Home Office. In practice it is a joint Bill between the Home Office and Ministry of Justice.
- 9. The Criminal Justice Bill contains a wide range of provisions impacting on different areas of the criminal justice system. It makes provision in the following areas:
 - Offences relating to things used in serious crime, theft or fraud.
 - Offences encouraging or assisting serious self-harm.
 - Offences relating to intimate photographs or films and voyeurism.
 - Criminal liability of bodies corporate and partnerships.
 - Powers of the police.
 - Sentencing.
 - Transfers of prisoners to foreign prisons.
 - Management of offenders.
 - Proceeds of crime and other property connected with criminal behaviour.
 - Serious crime prevention orders.
 - Nuisance begging.
 - Nuisance rough sleeping.
 - Anti-social behaviour.
 - Crime and disorder strategies.
 - The police.
- 10. The Bill includes a wide range of measures impacting on areas such as knife crime, drug testing on arrest, anti-social behaviour, serious and organised crime, Violence Against Women Domestic Abuse and Sexual Violence, prison capacity and the sentencing process. It also includes the successor legislation for the Vagrancy Act 1824, and a new duty of candour for policing.

Engagement with the UK Government

- 11. My officials have engaged with officials in the Home Office and Ministry of Justice on the clauses expected to be introduced as part of the Bill. This engagement has largely been positive, although the Welsh Government

did not have sight of the final Bill or Explanatory Notes until less than 24 hours prior to the Bill being introduced.

Provisions in the Bill for which consent is required – as they make relevant provision for Wales

Clauses 11-12: Encouraging or assisting serious self-harm

12. Clause 11 creates an offence of intentionally doing an act capable of encouraging or assisting the serious self-harm of another person by any means, including through direct assistance such as giving a person a blade with which to self-harm. Clause 12 makes provision supplementary to Clause 11.
13. Unlike the offence in section 184 of the Online Safety Act 2023, which it replaces, the new offence proposed in clause 11 and 12 is not limited to encouraging or assisting serious self-harm by means of verbal or electronic communications, publications or correspondence.
14. The clauses make provision in relation to Wales for the purpose of deterring and punishing conduct that encourages or assists serious self-harm. That more general purpose is within the legislative competence of the Senedd and therefore consent is required for the purpose of Senedd Standing Order 29, in so far as the offence extends to and applies in Wales.

Provisions in the Bill for which consent is required – as they confer reserved functions on Devolved Welsh Authorities

15. The Bill includes a range of clauses which relate to reserved matters and do not make “relevant provision” for the purpose of Senedd Standing Order 29, but still impose reserved obligations and functions on Devolved Welsh Authorities. These clauses are set out below.
16. The Senedd’s Standing Orders do not provide an express basis for Senedd consent for such provisions. However, in my 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.

Clause 30 - Assessing and managing risks posed by controlling or coercive behaviour offenders

17. Clause 30 would expand the requirement for Multi-Agency Public Protection Arrangements (MAPPA) to apply to those found guilty of coercive or controlling behaviour. Certain public authorities are required by sections 325 to 327B of the Criminal Justice Act 2003 to make arrangements for the assessment and management of particular types of offenders, in their relevant areas. In practice these arrangements are referred to as “MAPPA”, or Multi-Agency Public Protection Arrangements.

18. The requirements apply to the police, Probation Service, and also a number of devolved bodies such as local authorities, health authorities, registered social landlords, etc. Those authorities must co-operate with all other relevant authorities in those arrangements.
19. This provision would add the offence of ‘controlling or coercive behaviour in an intimate or family relationship’ to the list of offences which MAPPA arrangements must apply to. Currently, relevant authorities may apply their arrangements to that offence, under the discretion under section 325(2)(b) (where it is deemed that an offender poses a risk to the public).
20. The provision relates to “the management of ... persons ... convicted of offences (whether or not detained in a relevant institution)”, under paragraph 175(2), Section L11, Head L of Schedule 7A to GOWA 2006. Furthermore, it relates to the prevention of crime (which is reserved under paragraph 39, section B5, Head B, Part 2, Schedule 7A to GOWA 2006).
21. The provision confers reserved functions on relevant devolved Welsh authorities in Wales, and it is included within this Memorandum on that basis.

Clauses 38-40, 42-43, 46-47, 51-53, 55-56, 59-61 & 63-64 – Nuisance begging and nuisance rough sleeping

22. Clauses 38-40, 42, 43, 46, 47 would grant local authorities and police officers powers to address nuisance begging, including the power to make nuisance begging directions, prevention notices, and to apply for prevention orders. Clauses 51-53, 55, 56, and 59-61 would grant local authorities and police officers similar powers to address nuisance rough sleeping. Police officers currently have much broader powers under the Vagrancy Act 1824. Clause 63 would introduce a supplementary power for authorities to require a person’s details in order to issue directions etc. Clause 64 sets out other supplementary detail.
23. The provisions will apply in relation to Wales.
24. Rough sleeping and begging was previously legislated for by the Vagrancy Act 1824. The UK Government has committed to repealing the 1824 Act if these provisions come into force.
25. The main purpose of these provisions relates to the maintenance of public order and anti-social behaviour (ASB). Therefore, the reservations at Sections B5 (paragraph 40) and B6 (paragraph 43) of Schedule 7A to GoWA are engaged. Any connection with housing is considered to be no “more than loose or consequential”. Consequently, these provisions fall outside of the legislative competence of the Senedd and an LCM does not need to be laid in relation to them. However, given that they confer

functions (albeit reserved functions) on relevant local authorities in Wales, they may be considered to “regard... devolved matters” (as per the Sewel Convention) and/or fall within the expectation in the DGN that consent will normally be sought.

26. The provision confers reserved functions on relevant local authorities in Wales, and it is included within this Memorandum on that basis.

Clauses 65-71 and Schedule 8 – Anti-social behaviour proposals

27. Clauses 65-71 contain a variety of initiatives on anti-social behaviour. The provisions would:

- a) Lower the existing threshold for a court to attach a power of arrest to a Part 1 Anti-social Behaviour, Crime and Policing Act 2014 injunction.
- b) Allow police officers to issue section 35 directions excluding a person from an area for up to 72 hours, up from 48 hours.
- c) Allow police officers and local authorities to issue section 77 closure notices for 48 hours, rather than 24 hours, and, if a senior officer or member of staff signs such a notice, the maximum would be increased to 72 hours, from 48 hours.
- d) Allow a police officer or a local authority to issue a section 43 community protection notice to a person aged 10 and over. Currently, the lower age limit is 16 years old.
- e) Extend powers to make Public Space Protection Orders to senior police officers – they can currently only be made by local authorities under Chapter 2 of Part 4 of the 2014 Act.
- f) Give registered social housing providers the power to issue a closure notice in relation to premises that they own or manage – they can currently be issued only by senior police officers or a local authority.
- g) Increase the upper limit of a fine under a fixed penalty notice from £100 to £500.
- h) Allow ‘accredited persons’ under the Police Reform Act 2002 (commonly referred to as “community safety accreditation scheme officers”) to issue fixed penalty notices. Such persons can be accredited by a chief officer of police; they typically include roles such as park wardens, security guards, and train guards.
- i) Create a duty for Police and Crime Commissioners to promote awareness of anti-social behaviour case reviews in their area, create a route for victims to query decisions, carry out reviews of the response to anti-social behaviour in certain circumstances, make and publicise the procedures for such reviews and notify applicants of the outcome of reviews and any recommendations made.

- j) Require relevant bodies (including local authorities) to report on various statistics in relation to complaints they receive about anti-social behaviour.
28. The purpose of the clauses is to modify existing measures to prevent and disrupt anti-social behaviour, and to improve accountability arrangements for the monitoring and improving of relevant authorities' approaches to addressing anti-social behaviour within their relevant areas. Consequently, they relate to the subject matter of Parts 1 to 4 and 6 of the Anti-social Behaviour, Crime and Policing Act 2014 for the purposes of that reservation under paragraph 43, Section B6, Head B, Part 2, Schedule 7A to GOWA 2006, and are reserved on that basis. Consequently, these provisions fall outside of the legislative competence of the Senedd and an LCM does not need to be laid in relation to them. However, given that they confer functions (albeit reserved functions) on relevant local authorities in Wales, they may be considered to "regard... devolved matters" (as per the Sewel Convention) and/or fall within the expectation in the DGN that consent will normally be sought.

Clause 72 – Crime and Disorder Strategies

29. Clause 72 relates to crime and disorder strategies. Under the Crime and Disorder Act 1998, these strategies must be formulated and implemented by responsible authorities for a particular local government area, which includes the police, the fire and rescue authority, local authority, local health boards and the Probation Service. This grouping of authorities is commonly referred to as a "community safety partnership". In Wales, such strategies must cover a number of matters, some devolved (for example the misuse of drugs and alcohol) and some reserved (for example serious violence).
30. Clause 72 would insert an additional power for Police and Crime Commissioners (PCCs) to make recommendations about the formulation and implementation of their respective crime and disorder strategy. Such recommendations must support the delivery of the police and crime objectives set out in the police and crime plan issued by the PCC. The responsible authorities must take the recommendations into account when formulating and implementing the strategy. If they do not implement the recommendations, they must report that fact, and the reasons for doing so, back to the PCC.
31. The purpose of the provision is to strengthen the role of PCCs and assist in the delivery of their police and crime plans. Consequently, it primarily relates to the reserved matter of police and crime commissioners under paragraph 42, Section B5, Head B, Part 2, Schedule 7A to GOWA 2006. To the extent that they relate to promoting the delivery of police and crime plans, they are also reserved under paragraphs 40 ('the prevention, detection and investigation of crime'), 41 ('the maintenance of public order') and 41 ('policing') of GOWA 2006.

32. The provision confers reserved functions on relevant local authorities, local health boards and fire and rescue services in Wales and are included within this Memorandum on that basis.

UK Government view on the need for consent

33. The UK Government agree that consent is required for clauses 11 and 12 about encouraging or assisting self-harm. They are also seeking an LCM for 38–47, 51–60, 63, 64, 67, 69, 71 and 72 to the extent that these clauses confer reserved powers onto Devolved Welsh Authorities.

34. The UK Government does not currently agree that consent is required for clauses 30, 61, 65-66, 68 and 70. 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. This will be addressed through supplementary LCMs as necessary.

Clauses where consent is recommended

Clauses 11-12 – Encouraging or assisting serious self-harm

35. Welsh Ministers are satisfied that the proposals are consistent with the Welsh Government policy to reduce suicide and self-harm in Wales. Compared to the provisions in the Online Safety Act, the new replacement offence benefits from being more comprehensive.

36. This is an area where Welsh Ministers could make provisions using our existing powers, as opposed to consenting to a UK Government Bill. However, as the safety and wellbeing of people is a shared responsibility that falls to both the UK Government and the Welsh Government, we are content that a UK-wide Bill is the most effective and proportionate legislative vehicle for this purpose, and that in this case it is helpful to have a linked UK-wide approach across the Online Safety Act and this Bill.

Clauses 65, 66, 68 and 70 – Anti-social behaviour initiatives

37. Clause 65 would lower the threshold for a court to attach a power of arrest to an injunction under the Anti-social Behaviour, Crime and Policing Act 2014. These injunctions, as set out under Part 1 of the Act, are civil powers to manage anti-social behaviours. They can be made on application from reserved authorities (such as the police) as well as a number of devolved Welsh authorities (such as local authorities and housing providers).

38. Currently, the court must be satisfied that the behaviour includes or could include use or threatened use of violence, or there is a risk of serious harm to persons before attaching a power of arrest to an injunction. The change would remove this requirement and allow courts to attach the power of arrest whenever they are satisfied that it is appropriate.

39. Clause 66 would strengthen anti-social behaviour directions and orders under the Anti-social Behaviour, Crime and Policing Act 2014 by:
- a) Allowing police officers to issue section 35 directions (excluding a person from an area) for up to 72 hours, up from 48 hours.
 - b) Allowing police officers and local authorities to issue section 77 closure notices for 48 hours, rather than 24 hours.
 - c) If a senior officer or member of staff signs a section 77 notice, increasing the maximum duration from 48 to 72 hours.
40. Clause 68 would extend powers to make Public Space Protection Orders to the police. These Orders prohibit specified activities (such as drinking alcohol), and/or require certain things to be done by people engaged in particular activities, within a defined public area. Currently only local authorities can make these orders, although they do so on the basis of consultation with the police.
41. Clause 70 would strengthen fixed penalty notices by:
- a) Increasing the upper limit of a fine from £100 to £500.
 - b) Allowing 'accredited persons' under the Police Reform Act 2002 (often known as "community safety accreditation scheme officers") to issue this type of fixed penalty notice. This typically includes people such as park wardens, security guards, and train guards.
42. The Welsh Government have discussed these proposals with the Welsh Local Government Association (WLGA) and the Wales Safer Communities Network who are supportive. On that basis, I am satisfied that consent is appropriate, to the extent that these provisions modify the functions of devolved Welsh authorities.

Clauses where there are key matters of concern to be resolved before consent can be recommended

Clause 30 – Assessing and managing risks posed by controlling or coercive behaviour offenders

43. Multi-Agency Public Protection Arrangements (MAPPA) require the police, prison and probation service to work together to manage certain offenders. Devolved Welsh authorities including health boards, local authorities and registered social landlords have a duty to cooperate with MAPPA under the Criminal Justice Act (2003). Mental health or learning disability services may also be the lead agency for a MAPPA in some specific circumstances.
44. This provision would add the offence of 'controlling or coercive behaviour in an intimate or family relationship' to the list of offences which MAPPA arrangements must apply to. Currently it is only discretionary as to

whether controlling and coercive behaviour is covered by a MAPPA, and this change would make it mandatory.

45. Welsh Ministers believe managing those convicted of controlling or coercive behaviour under MAPPA is a potentially welcome approach which aligns with the goals of the Welsh Government's VAWDASV Strategy. It should encourage agencies to work together to understand and address the causes of coercive and controlling behaviour.
46. It will be important to ensure the resource implications of expanding the scope of MAPPA in this way for devolved Welsh authorities are effectively understood and acted upon by the UK Government. We have asked the UK Government to provide some further information on the likely scope and implications of the changes so we can ensure both the Welsh Government and partners are fully sighted on the practical impact of the proposal, and we are not in a position to recommend consent until this information is received.

Clauses 38-40, 42, 43, 46, 47 – Nuisance Begging

47. Welsh Ministers have concerns with these proposals. It is welcome that these proposals are more targeted than the 1824 Vagrancy Act, which they are designed to replace. On our engagement with the UK Government, they have also stated that the measures should be seen as a last resort once preventative routes have been exhausted. However, we believe the proposals are likely to prevent vulnerable people engaging with the services they need to support them away from begging in practice rather than addressing the complex underlying causes of this activity.
48. Additionally, the definition of nuisance begging provided in Clause 49 of the Bill is very wide-ranging - for instance all begging within 10 meters of a cashpoint is classed as nuisance begging and would potentially leave such a person liable to directions, notices, or orders to move on (failure to comply with which would be a criminal offence). We would want to emphasise the potential vulnerability of those engaged in begging as the most important priority in these situations, unless real harm is being caused.
49. Welsh Ministers believe it would be more helpful to focus on evidence-informed approaches which help us understand and address the underlying causes of begging, rather than criminalising the activity.
50. We are continuing to engage with the UK Government on this issue. However, until they are able to address our concerns, we are not in a position to recommend consent on these clauses.

Clauses 51 to 61, 63 & 64 – Nuisance Rough Sleeping

51. Welsh Ministers have concerns with these proposals. As with the proposals on nuisance begging, it is welcomed that the proposals are more targeted than the 1824 Vagrancy Act. In our engagement with the UK Government, they have also stated that the measures should be seen as a last resort once preventative routes have been exhausted. However, we believe this approach will prevent opportunities for vulnerable people who are rough sleeping to engage with services, which are often the only safe route to leave the circumstances which have forced them to sleep rough.
52. Our view is creating a 'move on' power to address rough sleeping where it causes damage, disruption or distress is unlikely to bring about any positive difference in behaviour. It may exacerbate the situation, leading to missed opportunities to assist individuals in accessing the support they need.
53. Rather than a punitive approach to rough sleeping behaviour, we believe psychologically-informed environments and trauma-informed responses should underpin all interactions with those rough sleeping. This recognises people will be influenced by their traumatic experiences, socioeconomic circumstances and previous experiences of services which are often negative.
54. We are continuing to engage with the UK Government on this issue. However, until they are able to address our concerns, we are not in a position to recommend consent on these clauses.

Clause 67 – Allowing Community Protection Notices to be issued to children as young as 10 years old

55. Community Protection Notices were introduced in the Anti-social Behaviour, Crime and Policing Act 2014. They set certain rules such as requiring someone to stay away from a particular place, stop spending time with certain people or attend a support group. They can be issued by police officers and local authorities (as well as persons designated by a local authority for that purpose).
56. Being issued with a Community Protection Notice is not a criminal offence. However, breaching a Notice could lead to a detention order or a fine of up to £2,500.
57. After discussing the proposal to lower the age limit from 16 to 10 with partners, Welsh Ministers have concerns that there could be a stigmatising or criminalising impact of lowering the age limit. We are also not currently content that the proposal aligns with our commitment to the UN Convention on the Rights of the Child and the recommendations in the UN Committees Concluding Observations 2023 Report.
58. Rather than extending the use of Community Protection Notices to younger children, we think it would be more effective to develop more

trauma and evidence-informed approaches to working with children to address the causes of anti-social behaviour.

59. We are continuing to engage with the UK Government on this issue. However, until our concerns are adequately addressed, we are not in a position to recommend consent on this clause.

Clause 69 – Giving registered social housing providers the power to issue closure notices

60. Closure notices can be issued by senior police officers or a local authority to prohibit access to a premises and prevent nuisance or disorder for up to 48 hours. Clause 69 would give registered social housing providers the power to issue a closure notice in relation to premises that they own or manage.
61. Welsh Ministers believe this proposal could undermine efforts to reduce street homelessness, and potentially traumatise the vulnerable people who rely on these facilities.
62. The majority of households living in temporary accommodation, particularly hotels and B&Bs, are single person households. Evidence suggests this is often as a result of a relationship breakdown followed by an inability to find housing. This proposal would further reduce the availability of housing to this cohort and would run counter to the central purpose of supported housing: to help people manage and overcome the trauma associated with homelessness and the causes of homelessness.
63. We are continuing to engage with the UK Government on this issue. However, until our concerns are adequately addressed, we are not in a position to recommend consent on this clause.

Clause 71 – Strengthening the Anti-social Behaviour case review process

64. The detail of these proposals, including the proposed duty for local authorities to provide data on anti-social behaviour to Police and Crime Commissioners (PCCs), was not shared in full before the legislation was introduced in November. Additionally, we are still confirming how this duty will work in practice and the extent of any burden on local authorities with the UK Government.
65. On that basis, we will not be in a position to recommend consent until we have had adequate time to discuss the proposals with partners here in Wales. The WLGA and Wales Safer Communities Network are considering the proposals with their members, and we are continuing to discuss the proposals with the UK Government.

Clause 72 – Creating a new power for Police and Crime Commissioners to make recommendations on Community Safety Partnership strategies

66. This clause would create a new power for PCCs to make recommendations about the formulation and implementation of Community Safety Partnership (CSP) crime and disorder strategies. CSPs are made up of a mixture of reserved and devolved authorities for a particular area. The recommendations given by the PCC must support the objectives in their Police and Crime Plan.
67. Under the clause, CSP members must take account of the recommendations. If they do not implement the recommendations, they must report back to the PCC and explain their rationale.
68. We have spoken to the Wales Local Government Association (WLGA) and Wales Safer Communities Network about these proposals. On the basis of these conversations Welsh Ministers are concerned the proposals would undermine the role of PCCs as equal participants in Community Safety Partnerships, replacing the current model where partners including PCCs come together as peers with a less helpful 'top-down' structure. PCCs should already be involved in CSP crime and disorder strategies as active members of the Partnerships and should not need to make separate recommendations.
69. We are also concerned the proposals would introduce additional administrative burden for CSPs, who already have an existing responsibility to have regard to the objectives in the Police and Crime Plan set by PCCs. The regulatory framework should empower CSPs in their work as opposed to burdening them with unnecessary requirements.
70. In Wales as opposed to England, PCCs are also statutory invitees to the Public Service Boards in Wales under the Well-being of Future Generations Act, which creates another avenue for joint working between PCCs and partners.
71. Our view is the UK Government should focus on optimising how existing duties and responsibilities in this area work, as opposed to creating new requirements and making the landscape unnecessarily complicated.
72. We are continuing to engage with the UK Government on this issue. However, until our concerns are adequately addressed, we are not in a position to recommend consent on this Clause.

Financial implications

73. There are no financial implications to this Bill at this time.

Conclusion

74. In my view it is appropriate to recommend consent in respect of Clauses 11-12, 65, 66, 68 and 70 of the Bill.

75. In my view it is not appropriate to recommend consent for Clauses 30, 38 to 40, 42, 43, 46, 47, 51-61, 63, 64, 67, 69, 71 or 72 until further discussions have been held with UK Government.

Jane Hutt MS
Minister for Social Justice and Chief Whip
29 January 2024