

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO 2)**

### **ARMED FORCES BILL**

1. This supplementary 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 Cymru 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 Armed Forces Bill (“the Bill”) was introduced in the House of Commons on 26 January 2021. The Bill was made subject to a carry-over motion on 8 February and reintroduced on 12 May. On 16 June the UK Government tabled thirty one amendments in total and two of these make provision which fall within the legislative competence of the Senedd (Section 13 below). Commons Committee stage took place on 23 June 2021 and. The Bill can be found at:  
[Armed Forces Bill - Parliamentary Bills - UK Parliament](#)

#### **Policy Objectives**

3. The UK Government’s stated policy objectives are:
  - To renew the Armed Forces Act 2006 (“AFA 2006”) and, in so doing, continue in force the primary legislation governing the Armed Forces;
  - To maintain the effectiveness of the service justice system so that it continues to meet the needs of the Armed Forces; and
  - To further incorporate the Armed Forces Covenant into law.

#### **Summary of the Bill**

4. The Bill is sponsored by the Ministry of Defence (MOD).
5. The Bill makes provisions in relation to the following matters:
  - Continuation of the AFA 2006;
  - Service courts, summary hearings and jurisdiction;
  - Service in the Armed Forces;
  - Service police: complaints, misconduct etc;
  - Sentencing and rehabilitation; and
  - Posthumous pardons

## **Update on position since the publication of the first Legislative Consent Memorandum**

6. The Welsh Government laid a Legislative Consent Memoranda on 18 February 2021, based on the Bill as introduced into Parliament on 26 January 2021. Following the 2021 Senedd elections and the reintroduction of the Bill on 12 May following the commencement of the new Parliamentary session, a new LCM was laid by the Deputy Minister for Social Partnership on 28 May.
7. The memoranda confirmed the Welsh Government is supportive of the Bill as introduced.
8. The Welsh Government sought amendments to the Bill in order to ensure that the health bodies that will be subject to the due regard duty in Wales reflect the policy intention. We therefore welcome the inclusion of Amendments 1 and 2 which address these issues and ensure a consistent policy approach.
9. The previous drafting would apply the due regard duty to those special health authorities (“SHAs”) that have been established under section 22 of the NHS (Wales) Act 2006. This would include the NHS Business Services Authority and NHS Blood and Transplant which were established in relation to Wales under that section, but which are England and Wales bodies, having been established jointly with the Secretary of State in the exercise of his equivalent powers.
10. Our policy position is that only SHAs established by the Welsh Ministers and exercising only functions in Wales (i.e. Health Education and Improvement Wales and Digital Health and Care Wales) should be captured by the duty. It is not intended that any jointly established SHAs - including the NHS BSA and NHS Blood and Transplant should be within scope of the duty.
11. We understand that the policy intention in England is not to include any SHAs within scope of the duty, including those jointly established with the Welsh Ministers. The provisions of the Bill relating to the duty as it will apply in England reflect this.
12. In order to ensure that those jointly established SHAs are not brought within scope of the duty in relation to Wales, the technical amendments outlined below have been agreed with the UK Government. The effect of the amendments is that SHAs established under section 22 of the NHS (Wales) Act 2006 remain subject to the due regard duty in Wales, other than “cross-border” SHAs – i.e. those which have been established by the Welsh Ministers under that provision jointly with the Secretary of State in the exercise of equivalent statutory powers.

## Changes to the Bill since the publication of the first Legislative Consent Memorandum for which consent is required.

13. The following amendments which make provision in relation to Wales and are within the legislative competence of the Senedd, have been made to the Bill during Commons Committee stage:

- **“Amendment 1** - Clause 8, page 11, line 23, at end insert “other than a cross-border Special Health Authority”

*This amendment and amendment 2 exclude cross-border Special Health Authorities from the scope of section 343AB of the Armed Forces Act 2006.*

- **Amendment 2** - Clause 8, page 12, line 10, at end insert—

*““cross-border Special Health Authority” means a Special Health Authority which is established under the National Health Service Act 2006 and the National Health Service (Wales) Act 2006 by virtue of—*

*(a) paragraph 1(2) of Schedule 2 to the National Health Service (Consequential Provisions) Act 2006, or  
(b) the power under section 28 of the National Health Service Act 2006 and the power under section 22 of the National Health Service (Wales) Act 2006 being exercised together;”*

*This amendment and amendment 1 exclude cross-border Special Health Authorities from the scope of section 343AB of the Armed Forces Act 2006.”*

These amendments were agreed and now form part of the Bill.

## Welsh Government position on the Bill as amended

14. The Welsh Government acknowledges all of the amendments laid at the Commons Committee stage.

15. I requested amendments 1 and 2 in order to ensure that the health bodies that will be subject to the due regard duty in Wales reflect the policy intention as outlined above.

16. Additionally, I wrote to the Minister for Defence People and Veterans requesting an amendment that would require the **consent** of Welsh Ministers to be obtained by the Secretary of State for Defence prior to any changes to the scope of the bodies or functions subject to the due regard duty. The UK Government have rejected that request on the basis that there is an existing commitment to **consult** on any changes to broaden the scope of the due regard duty to include other bodies and functions in the future. The UK Government also state that any such changes ‘*would only*

*happen where this is benefit in doing so after consultation with key stakeholders, such as the Welsh Government, and after due Parliamentary process had been conducted’.*

17. The remaining amendments relate to areas outside of the devolved competence of the Senedd such as the operation of the Defence Council, Service Complaints Ombudsman and provisions in relation to the other devolved nations. An opposition amendment to widen the scope of the due regard duty to Government departments was defeated.

### **Statutory guidance**

18. The UK Government are now consulting with the Armed Forces sector in Wales on the content of the statutory guidance that will accompany the Bill. Welsh Government officials are participating in this process.

### **Follow up from fifth Senedd Committees reports on the Legislative Consent Memorandum on the Bill**

19. Further to the scrutiny of the Legislative Consent Memorandum laid on 8 February by the former Legislation, Justice and Constitution Committee and its recommendation that I should pursue amendments to the effect that the Secretary of State is required to obtain the consent of the Welsh Ministers before issuing or revising guidance or broadening the scope of the due regard duty, I wrote to the Minister for Defence People and Veterans on the issue. As stated above, this request has been rejected.

### **Financial implications**

20. There are no financial implications for Wales in relation to the UK Government’s Armed Forces Bill.

### **Conclusion**

21. We remain committed to the UK-wide approach of the Armed Forces Bill to improve overall delivery of public services in relation to the Armed Forces Community in Wales and across the UK.
22. I remain of the view that the Bill will allow provisions to come into force at the same time across the UK and that a UK-wide Bill is the most effective and proportionate legislative vehicle for raising awareness among service deliverers and policy makers of the unique obligations and circumstances facing the Armed Forces Community.
23. I support these UK Government amendments to the Bill.

**Hannah Blythyn MS**  
**Deputy Minister for Social Partnership**  
**30 June 2021**