

**National Assembly for Wales**  
Constitutional and Legislative  
Affairs Committee

**Report on the Gender-based  
Violence, Domestic Abuse and  
Sexual Violence (Wales) Bill**

**November 2014**



Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales

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## **The Constitutional and Legislative Affairs Committee**

The Committee was established on 15 June 2011 with a remit to carry out the functions of the responsible committee set out in in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee.

### **Current Committee membership**



**David Melding (Chair)**  
Deputy Presiding Officer  
Welsh Conservatives  
South Wales Central



**Suzy Davies**  
Welsh Conservatives  
South Wales West



**Alun Davies**  
Welsh Labour  
Blaenau Gwent



**William Powell**  
Welsh Liberal Democrats  
Mid and West Wales



**Simon Thomas**  
Plaid Cymru  
Mid and West Wales

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## The Committee's Key Conclusions and Recommendations

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**Conclusion 1:** We commend the Welsh Government for the balance it has struck between the information contained on the face of the Bill and that which is left to subordinate legislation. (Page 13)

**Conclusion 2:** We welcome the Minister's commitment to reflect on definitions contained in the Bill; in our view this should be with a view to ensuring that they do not undermine the effectiveness of the legislation. (Page 13)

**Recommendation 1:** We recommend that the Minister should table an amendment to the Bill such that the affirmative procedure is applied to the making of national indicators under section 8. (Page 15)

**Recommendation 2:** We recommend that the Minister should table an amendment to the Bill to make it a requirement that the Welsh Ministers provide guidance under section 12. (Page 17)

**Recommendation 3:** We recommend that the Minister gives serious consideration to the points we raise about the Ministerial Adviser role and addresses them during the Stage 1 debate on the general principles of the Bill. (Page 19)

**Recommendation 4:** We recommend that the negative procedure is applied to orders made in accordance with section 22(4)(b). (Page 19)

# 1. Introduction

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## *The Committee's remit*

1. The remit of the Constitutional and Legislative Affairs Committee (“the Committee”) is to carry out the functions of the responsible committee set out in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or the Welsh Ministers.
2. Within this, the Committee considers the political and legal importance and technical aspects of all statutory instruments or draft statutory instruments made by the Welsh Ministers and reports on whether the Assembly should pay special attention to the instruments on a range of grounds set out in Standing Order 21.
3. The Committee also considers and reports on the appropriateness of provisions in Assembly Bills and UK Parliament Bills that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General.

## *Introduction and consideration of the Bill*

4. On 30 June 2014, the then Minister for Local Government and Government Business, Lesley Griffiths AM introduced the Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill (“the Bill”) and accompanying Explanatory Memorandum.<sup>1</sup>
5. On 9 July 2014, Lesley Griffiths AM wrote<sup>2</sup> to the Chair of the Communities, Equality and Local Government Committee, Christine Chapman AM (copied to the Chair of this Committee) enclosing a statement on the policy intent of regulations and other subordinate legislation made under the Bill and three draft guidance documents.
6. Following a Cabinet reshuffle in September 2014, Leighton Andrews AM, Minister for Public Services (“the Minister”) was authorised as the Member in charge of the Bill by the First Minister.

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<sup>1</sup> Welsh Government, *Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill - Explanatory Memorandum incorporating the Regulatory Impact Assessment and Explanatory Notes*, June 2014

<sup>2</sup> Letter from Lesley Griffiths AM to Christine Chapman AM, *Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill*, 9 July 2014

7. The National Assembly's Business Committee referred the Bill to the Communities', Equality and Local Government Committee for consideration, setting the deadline of 14 November 2014 for reporting on its general principles.

8. We considered the Bill on 29 September 2014.

## 2. Background

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### *Purpose of the Bill*

9. The Explanatory Memorandum explains that the Bill:

“The Bill places duties on the Welsh Ministers, County and County Borough Councils (“Local Authorities”) and Local Health Boards to prepare and publish strategies aimed at ending gender-based violence, domestic abuse and sexual violence. The Bill further provides a power to the Welsh Minister to issue guidance to relevant authorities on how they should exercise their functions with a view to contributing to ending gender-based violence, domestic abuse and sexual violence. The Bill also contains provision for the appointment of a Ministerial Adviser.”<sup>3</sup>

10. It adds that:

“The overarching objective of the Bill, is to improve the Public Sector response in Wales to gender-based violence, domestic abuse and sexual violence. It is intended to provide a strategic focus on these issues and ensure consistent consideration of preventive, protective and supportive mechanisms in the delivery of services.”<sup>4</sup>

11. The Explanatory Memorandum also states that:

“The Welsh Government’s principal policy aim in this area is to reduce the rates of gender-based violence, domestic abuse and sexual violence in Wales. The Bill supports this aim by seeking an improved public sector response to gender-based violence, domestic abuse and sexual violence. The main aims of the Bill are to improve arrangements to:

- (a) promote awareness of, and to prevent, protect and support victims of gender-based violence, domestic abuse and sexual violence;

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<sup>3</sup> Explanatory Memorandum, paragraph 2

<sup>4</sup> Explanatory Memorandum, paragraph 6

- (b) strengthen the strategic leadership and accountability for gender-based violence, domestic abuse and sexual violence; and
- (c) improve consistency, quality and join-up of service provision in Wales.”<sup>5</sup>

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<sup>5</sup> Explanatory Memorandum, paragraph 33

### 3. Legislative Competence

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#### ***Background***

12. The Explanatory Memorandum states that the Assembly has the competence to make provision in the Bill by virtue of paragraphs 5 (Education and training), 9 (Health and health services), 12 (Local government) and 15 (Social welfare) of Part 1 of Schedule 7 to the *Government of Wales Act 2006*.

#### ***Evidence***

13. When asked about any discussions that had taken place with the UK Government, the Minister explained that his officials had held discussions over several months. He added:

“We have also now had a letter ... from the Secretary of State confirming the issues around the Minister of Crown functions. There are no issues as far as the Wales Office is concerned, and therefore that will enable us to tidy up one aspect of the Bill subsequently.”<sup>6</sup>

14. The Minister wrote to us on 16 October 2014 confirming that the Minister of Crown consents had been obtained from the Secretary of State for Wales and that accordingly he would table amendments at Stage 2 of the Bill to remove from section 4(4) reference to the exclusion of Minister of the Crown functions.<sup>7</sup>

#### ***Our view***

15. We note that no issues have been raised with the Minister regarding the Assembly’s ability to make this legislation under Schedule 7 to the *Government of Wales Act 2006*.

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<sup>6</sup> Constitutional and Legislative Affairs (“CLA”) Committee, RoP [paragraph 15], 29 September 2014

<sup>7</sup> Letter from Leighton Andrews AM, Minister for Public Services, *Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill*, 16 October 2014

## 4. General observations

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### *Need for legislation*

16. In considering the Bill and the need for primary legislation to undertake its objectives, we asked the Minister if the Welsh Government already has sufficient powers to undertake the policy actions set out in the Bill and therefore whether the Bill was needed.

17. The Minister responded:

“I think that there is a very definite need for the Bill ... What the Bill does is provide a consolidated framework for all of our activities related to gender-based violence, domestic abuse and sexual violence. It also provides for specific duties on local authorities and health boards, and it gives specific powers to Ministers and to the ministerial adviser. I think that these are important duties and powers to have, and I think that they will also, as a consequence, elevate public attention to the problems with which this Bill is seeking to grapple.”<sup>8</sup>

18. The Minister went on to say that the specific duties and powers created by the Bill:

“... would not otherwise be there in the form that they are drawn. I think that the Bill is necessary, and I think that it will help us to establish a proper framework for the development of both national and local strategies on these issues.”<sup>9</sup>

19. We also asked why the general well-being powers given to local authorities in the *Local Government Act 2009* are not considered sufficient to deal with the intentions of this Bill. The Minister said:

“I think that what this really is about is the preparation of local strategies in relation to gender-based violence, domestic abuse and sexual violence. The wellbeing responsibility is a fairly broadly drawn one. I think we all recognise the need to have a greater focus on this area of public concern ... What is

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<sup>8</sup> CLA Committee, RoP [paragraph 11], 29 September 2014

<sup>9</sup> CLA Committee, RoP [paragraph 13], 29 September 2014

important is that we ensure that we have a real focus on these issues, and this gives us the power to compel that to happen.”<sup>10</sup>

### ***Definitions***

20. Section 21 provides definitions of terms used in the Bill. We sought to understand why some definitions in the Bill (for example ‘gender-based violence’) are framed widely. The Minister told us:

“... we would not want the local strategies—or, indeed, the national strategy—to be circumscribed by too narrow a definition in these areas. I think that what we have put down in the Bill gives clarity to the organisations with which we will be working, and, I think, gives clarity to us. I think that they are, broadly speaking, definitions that would be understood more widely in the community.”<sup>11</sup>

21. The Minister went on to say:

“I think that these are issues ... that we can explore as the Bill makes progress. If a case is made to me to suggest that the definitions are too broad, I would certainly want to hear that.”<sup>12</sup>

22. We questioned the Minister specifically on whether the definition of gender-based violence would include male-on-male fighting and the application to children of the definition of financial abuse. The Minister said:

“I am happy to reflect on that. I suppose that there are broad policy questions that we will need to consider as we take the Bill through, in relation to whether we have sufficiently reflected in the Bill issues to do with coercive behaviour, for example. Some of these definitions are actually very difficult to draw, as I think you will appreciate.”<sup>13</sup>

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<sup>10</sup> CLA Committee, RoP [paragraph 79], 29 September 2014

<sup>11</sup> CLA Committee, RoP [paragraph 20], 29 September 2014

<sup>12</sup> CLA Committee, RoP [paragraph 22], 29 September 2014

<sup>13</sup> CLA Committee, RoP [paragraph 34], 29 September 2014

### *Our view*

23. One of the issues that we seek to scrutinise when considering Bills is the balance between the information included on its face and what is left to subordinate legislation.

24. We note that the Bill contains one power to make subordinate legislation and therefore welcome the emphasis the Bill has in placing the detail and policy objectives on its face.

**Conclusion 1: we commend the Welsh Government for the balance it has struck between the information contained on the face of the Bill and that which is left to subordinate legislation.**

25. We sought to understand why definitions in the Bill are framed widely, given the potential for broad definitions to impact on the effectiveness of the legislation and in particular undermine its objectives. We note the views of the Minister.

**Conclusion 2: we welcome the Minister's commitment to reflect on definitions contained in the Bill; in our view this should be with a view to ensuring that they do not undermine the effectiveness of the legislation.**

## 5. Powers to make subordinate legislation – observations on specific powers

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### *Introduction*

26. The Bill contains 23 sections and five powers: one power to make subordinate legislation, two powers to issue directions, one power to issue guidance and another to make commencement orders. They are summarised in Part 5 of the Explanatory Memorandum. Further information about the provisions is contained in the Welsh Government’s statement of policy intent for the regulations.<sup>14</sup>

### *Our view*

27. We are generally content with the delegated powers contained in the Bill, subject to our views below, which also cover other matters of interest to us.

### *Section 8 – National indicators*

28. Section 8 places a duty on the Welsh Ministers to publish national indicators “which may be used to measure progress towards the achievement of the purpose of this Bill.”<sup>15</sup> Although no procedure applies to the indicators, section 8(1)(a) requires the Welsh Ministers to lay a copy before the Assembly.

29. When asked if he saw the Assembly playing a role in the making of these indicators, the Minister said:

“There is already a formal process under local government legislation for laying Orders in respect of national indicators, and I think that that is the procedure that we will follow. However, there are a number of places through which the Assembly can make representations on national indicators... Clearly, national indicators may change from time to time in the light of experience. Finally, of course, the Minister is always under scrutiny, either before a committee or in the Chamber.”<sup>16</sup>

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<sup>14</sup> Welsh Government, *Gender-based Violence, Domestic Abuse and Sexual Violence (Wales) Bill – Policy intent of regulations and other subordinate legislation made under the Bill*, July 2014

<sup>15</sup> Explanatory Memorandum, Annex 1- Explanatory Notes, paragraph 16

<sup>16</sup> CLA Committee, RoP [paragraph 39], 29 September 2014

30. We asked the Minister to clarify if the Assembly could look at the indicators, for example on an annual basis, to review the delivery and impact of the legislation. The Minister said:

“Well, I think that there will be ample opportunity. Clearly, in the drawing up of a national strategy, we would want to consult on that. There would be an opportunity there for Assembly committees to scrutinise that, and there would be opportunity for debates on that and, clearly, if we produce an annual report, there will be an opportunity to debate that, as well. I think that I might want to find Government time to discuss an annual report in this area, because part of the important leadership role of Government is to raise awareness of these issues.”<sup>17</sup>

### ***Our view***

31. As part of the process of holding the Welsh Government to account for its actions, we believe that the Assembly should have a role in scrutinising and ultimately having a say in national indicators that are chosen in accordance with section 8. In our view, this approach would be in line with that proposed by the Welsh Government and endorsed by the Assembly in respect of the *Local Government Wales Measure 2009*; it provides for local government performance indicators to be specified by order, subject to annulment by the Assembly.

32. Given that the indicators are likely to be the means by which progress towards achieving the purpose of the Bill is measured, we believe they should be endorsed by the Assembly.

**Recommendation 1: we recommend that the Minister should table an amendment to the Bill such that the affirmative procedure is applied to the making of national indicators under section 8.**

### ***Section 12 – Power to issue statutory guidance***

33. Section 12 allows but does not require the Welsh Ministers to issue guidance to a “relevant authority” on how the authority should contribute to the purpose of the Bill. The guidance may amongst other things, address:

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<sup>17</sup> CLA Committee, RoP [paragraph 42], 29 September 2014

- steps an authority may take to increase awareness of gender-based violence, domestic abuse and sexual violence;
  - circumstances in which it is appropriate for staff of the relevant authority to ask a person if they are suffering from or at risk of gender-based violence, domestic abuse or sexual violence; and
  - the action it is appropriate to take (to ‘ask and act’);
- training for staff of relevant authority;
- the sharing of information by (or between) relevant authorities; and
- co-operation between relevant authorities or between relevant authorities and others.

34. The Welsh Government’s letter of 9 July contained 3 pieces of draft guidance that it was considering publishing under the power in section 12.

35. We asked the Minister why the provision in section 12 does not explicitly require the Welsh Ministers to issue guidance to relevant authorities.

36. The Minister responded:

“I think that this is normal legal terminology that we tend to use in clauses such as this, is it not? It is clear that we will be issuing statutory guidance to relevant authorities. That was one of the purposes of having the Bill, but I think, in general terms, we have always used the term, ‘may’”.<sup>18</sup>

37. In a response to a question about the consequences of not introducing the guidance when you have an opportunity to do so, the Minister said he did “not have any intention of not introducing the guidance.”<sup>19</sup>

### ***Our view***

38. We note the Minister’s intention but believe that all future Ministers should be subject to a duty to provide the guidance.

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<sup>18</sup> CLA Committee, RoP [paragraph 46], 29 September 2014

<sup>19</sup> CLA Committee, RoP [paragraph 74], 29 September 2014

**Recommendation 2: we recommend that the Minister should table an amendment to the Bill to make it a requirement that the Welsh Ministers provide guidance under section 12.**

***Section 17 – Ministerial Adviser on Gender-based Violence, Domestic Violence and Sexual Violence***

39. Section 17 requires the Welsh Ministers to appoint a Ministerial Adviser on gender-based violence, domestic abuse and sexual violence in accordance with terms specified by Ministers.<sup>20</sup>

40. The Explanatory Memorandum explains that the statutory Ministerial Adviser role is the first of its kind in the UK.<sup>21</sup>

41. The Minister expanded on the rationale for this role:

“What we are looking for here is someone with experience in the field to provide a real focus on leading on the national and local strategies and providing a context for those local strategies to be drawn up, the power to intervene when necessary—when things are not being carried out in the way that we would wish—and someone who is seen to be independent, to a degree, of Government, which is important too”.<sup>22</sup>

42. In 2012, the Welsh Government commissioned a task and finish group to produce a report to inform the content, delivery and enforcement of the Bill. The report<sup>23</sup> recommended the creation of an independent commissioner and so we asked the Minister why he decided against that approach. He said:

“Well, we have a number of roles in Wales that are identified under the title of commissioner—the Children’s Commissioner for Wales and the Commissioner for Older People in Wales are two good examples. I think that they are broad roles in terms of their definition, and what we want is for the ministerial adviser to be a very focused role. The White Paper, as I referred to earlier, did raise this issue in the context of having a

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<sup>20</sup> Explanatory Memorandum – Annex 1- Explanatory Notes, paragraph 20

<sup>21</sup> Explanatory Memorandum, paragraph 34

<sup>22</sup> CLA Committee, RoP [paragraph 83], 29 September 2014

<sup>23</sup> Task and Finish Group Report, *The Welsh Government’s proposed ‘Ending Violence Against Women and Domestic Abuse (Wales) Bill’: Recommendations from the Task and Finish Group*, 24 August 2012

ministerial adviser, and there was broad support for that position.”<sup>24</sup>

43. He added that:

“It is important to understand that the ministerial adviser, under this Bill, will have very significant powers to compel, for example, local authorities or other public bodies to provide information on how they are carrying out their work in this area. I think that that is a power that is an important one. I think it is a power that will be unprecedented, probably, within this field within the UK.”<sup>25</sup>

44. In explaining why the powers would be vested with the Adviser and not the Welsh Ministers, the Minister said:

“Well, there are powers that the Ministers will have under this Bill. So, I do not see that there is any problem for us in that we will have powers that can run alongside. However, I think that it is valuable that the ministerial adviser has specific powers that will indicate that this strategy is being taken forward in a way that people outside can have confidence in that it is not simply because the Ministers themselves are requesting this information.”<sup>26</sup>

45. The Minister also confirmed that the appointment would be made under the Nolan principles.<sup>27</sup>

### ***Our view***

46. We note the views of the Minister.

47. However, we consider that statutory posts of the nature identified by the Minister carry significant weight. In our view, such a post should be subject to a statutory appointments process and a statutory specific term of appointment and would be more in keeping with that an independent commissioner or similar. However, we have not been in a position to test this view in any detail.

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<sup>24</sup> CLA Committee, RoP [paragraph 85], 29 September 2014

<sup>25</sup> CLA Committee, RoP [paragraph 87], 29 September 2014

<sup>26</sup> CLA Committee, RoP [paragraph 89], 29 September 2014

<sup>27</sup> CLA Committee, RoP [paragraph 98], 29 September 2014

48. Nevertheless, we would encourage the Minister to reflect on whether a Ministerial Adviser, as set out in the Bill, is the most appropriate way to describe a role that carries with it significant powers, particularly in light of the recommendations of the task and finish group referred to in paragraph 42 above.

**Recommendation 3: we recommend that the Minister gives serious consideration to the points we raise about the Ministerial Adviser role and addresses them during the Stage 1 debate on the general principles of the Bill.**

### ***Section 22 - Commencement***

49. Section 22 contains a power to commence provisions of the Bill by order, to which no procedure would apply.

50. The Minister told us:

“... in respect of commencement, we are obviously operating within the terms of the letter that the First Minister has sent to this committee in the past on commencement issues. What we are specifically speaking about here are temporary provisions that may need to apply—. Let me give you an example. As you understand, we are going through a process of local government reform at the present time. Now, it could be that, during the passage of this Bill, we see a move towards voluntary mergers; it may be that we have to stagger the implementation or make changes in implementation. So, it is important for us to get this right as we are coping with a potentially changing landscape.”<sup>28</sup>

### ***Our view***

51. We note the Minister’s views. However, it remains our view that commencement orders that commence provisions other than by simply naming a date of commencement (by virtue of making transitory or transitional provision) should be subject to scrutiny and the negative procedure.

**Recommendation 4: we recommend that the negative procedure is applied to orders made in accordance with section 22(4)(b).**

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<sup>28</sup> CLA Committee, CLA Committee, RoP [paragraph 100], 29 September 2014