

National Assembly for Wales

Children, Young People and Education Committee

November 2014

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Legislative Consent Memorandum for the Serious Crime Bill: Amendments relating to Child Cruelty

Background

1. On 11 November 2014, the Minister for Health and Social Services (the Minister) laid a Legislative Consent Memorandum¹ (the Memorandum) in relation to the Serious Crime Bill² currently before the UK Parliament. The Memorandum relates to clauses in the Bill as amended at Report stage in the House of Lords on 14 October.

2. On 18 November 2014, the Business Committee agreed to refer the Memorandum to the Children, Young People and Education Committee (the Committee) for consideration. In referring the Memorandum, the Business Committee set a reporting deadline of 4 December 2014.

3. A Legislative Consent Motion (the Motion) relating to the Memorandum is scheduled for debate in plenary on 9 December.

The Bill

4. The Serious Crime Bill (the Bill) was introduced in the House of Lords on 5 June 2014. The principal policy objective of the Bill is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.

5. The Bill is in six parts:

- Part 1 makes provision in respect of the recovery of property derived from the proceeds of crime.
- Part 2 makes amendments to the Computer Misuses Act 1990.
- Part 3 provides for a new offence of participating in the activities of an organised crime group and strengthens the arrangements for protecting the public from serious crime and gang-related activity provided for in Part 1 of the Serious Crime Act 2007 and Part 4 of the Policing and Crime Act 2009 respectively.

¹ [Legislative Consent Memorandum](#)

² Serious Crime Bill: <http://services.parliament.uk/bills/2014-15/seriouscrime.html>

- Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents.
- Part 5 amends the law in relation to the offences of child cruelty and female genital mutilation, provides for female genital mutilation protection orders and creates a new offence of possession of “paedophile manuals”.
- Part 6 provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers Parliamentary approval (as required by section 8 of the European Union Act 2011) for two draft Council Decisions under Article 352 of the Treaty of the Functioning of the European Union. Part 6 also contains minor and consequential amendments to other enactments and general provisions, including provisions about territorial application and commencement.

Provision in the Bill for which consent is sought

6. Paragraphs 5 to 7 of the LCM describe the provisions for which consent is sought. Consent of the Assembly is sought to enable Part 5 clauses 65(1) to 65(6) of the Serious Crime Bill to apply to Wales as well as England. Clauses 65(1) to 65(6) make amendments to section 1 of the Children and Young Persons Act 1933, which deals with child cruelty.

7. Part 5, Clauses 65(1) to (4) seeks to ensure that the ill-treatment aspect of the child cruelty offence includes ill-treatment that is psychological as well as physical. The offence is amended so that it will be an offence to treat a child in a manner likely to cause unnecessary suffering or injury to health (including both physical and psychological suffering or injury). The language of the offence is also modernised so that the word “misdemeanour” is substituted by “offence”.

8. Part 5, Clauses 65(5) and (6) make further amendments to section 1 of the Children and Young Persons Act 1933 to extend the offence of child cruelty where a child under three years old is suffocated. At present the offence includes circumstances where a child is suffocated when in bed with a person aged over sixteen who is drunk. The offence is extended to include circumstances where the person over sixteen is under the influence of a prohibited drug. It also removes the requirement for the suffocation to occur in bed. The scope of the offence is therefore widened. These sub clauses were inserted following amendments tabled by Lord Bates on 11 October and agreed at Report stage on 14 October.

Legislative Competence

9. The Memorandum correctly identifies the Assembly's legislative competence under 'protection and well-being of children' under the social welfare heading (heading 15) in Part 1 of Schedule 7, to the Government of Wales Act 2006 ("GOWA 2006") as being relevant.

Appropriateness of the legislative approach

10. As set out in the Memorandum, the Welsh Government believes that it is appropriate to deal with these provisions in the UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. In addition, the Welsh Government states that given the inter-connected nature of the relevant Welsh and English administrative systems, this is the most effective and appropriate way to proceed.

11. It will also ensure that non-devolved partners of the Police and Courts will be able to work together effectively to deliver a strong child protection framework. Additionally, if the changes listed in paragraphs 6 to 8 were not made in relation to Wales it would mean that the offence of child cruelty would be far narrower in scope for the Courts in Wales to interpret than in England.

Committee consideration and conclusion

12. The Committee considered the Memorandum on 19 November 2014 and agreed to report to the Assembly with a view to assisting Assembly Members with their consideration of the legislative consent motion on 9 December 2014.

13. Legal advice provided to the Committee has confirmed that the Bill will make provision in relation to Wales, for a purpose within the Assembly's legislative competence. However, due to the tight timescales set for consideration of the Memorandum, the Committee has had insufficient time to gather a full range of evidence to support its conclusions.

14. On the basis of the Memorandum presented, and legal advice received, the Committee has no concerns with the approach being taken through the Serious Crime Bill, and draws no issues to the attention of the Assembly.

15. In reporting, we have also sought to add some value to the Assembly's consideration of the legislative consent motion by providing background information to Assembly Members, which is set out at Annex 1.

Background

The Bill completed its House of Lords stages on 5 November 2014 and is due to have its second reading debate in the House of Commons (date yet to be announced).

Context

There have been increasing calls for a reform of the law on child neglect in England and Wales. The current criminal offence of child neglect is set out in the *Children and Young Persons Act 1933*.

The clauses in the Bill for which consent is being sought are relevant to a Private Members Bill which Mark Williams MP for Ceredigion sought to introduce. The proposed Private Members Bill sought to introduce a new alternative criminal offence via the *Child Maltreatment Bill 2013-14*. His Bill was based on proposals developed by a panel of advisors convened by the charity Action for Children. Further information can be found in this [Research Service Blog](#).

Mark Williams argued that the existing law on child neglect was out-dated and that the understanding of the harm caused by childhood neglect has developed significantly in the past 80 years, especially in regard to emotional neglect and the non-physical consequences of neglect. Further information and the case put forward for changing the law can be found on the [Action for Children website](#).

The UK Government had previously argued that changing the law was unnecessary. However in October 2013, Damien Green MP, Minister of State for Policing, Criminal Justice and Victims, asked officials to undertake a targeted consultation on the adequacy of the existing offence of child cruelty.

Charities representing children and young people

Charities representing children and young people's interests broadly welcome the clauses in the Bill relating to child cruelty, although they are lobbying to make some additional changes to these provisions. In particular Action for Children, who have been active in lobbying for a change in the law, 'strongly welcome' Clause 65. Some of their calls were incorporated into the Bill at Committee stage in the House of Lords. They are now seeking assurances from the UK Government that guidance and directions for the offence will be updated to sufficiently address concerns around the inclusion of the definition of 'wilfully' in Section 1 of the Children and Young Persons Act.