



Report on the Legislative Consent Memorandum for provisions relating to the introduction of community protection notices, public spaces protection orders, closure notices, and amendments to the Dangerous Dogs Act 1991

Background

1. On 23 and 24 May 2013, the Welsh Ministers laid four Legislative Consent Memoranda for the Anti-social Behaviour, Crime and Policing Bill¹, which is currently before the UK Parliament.
2. This Memorandum was laid by the Minister for Natural Resources and Food on 23 May.
3. On 4 June 2013, the Business Committee referred the Memorandum to the Communities, Equality and Local Government Committee for consideration and agreed a reporting deadline of 19 September 2013.
4. The Committee considered the Memorandum on 19 June.
5. The Environment and Sustainability Committee has undertaken some work on the LCM and on the broader issue of the control of dogs. A letter from the Chair of that Committee is attached at Annex A of this report.

Anti-Social Behaviour, Crime and Policing Bill (“the Bill”)

6. The Bill is sponsored by the Home Office. The UK Government’s policy objectives for the Bill are to create new and simpler powers to tackle anti-social behaviour, encourage responsible dog ownership, tackle the use of illegal firearms by gangs and organised crime groups, make forced marriage illegal and improve professional standards of the police.

¹ <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html>

7. The Bill makes provision for condensing the current 19 orders to 6 new orders to deal with anti-social behaviour; provides victims of anti-social behaviour with the ability to ensure action is taken; allows for the mandatory repossession of secure and assured tenancies where the tenant is in breach of one of the new orders; amends the Dangerous Dogs Act 1991 to extend its provisions to private property; increases the maximum penalty for the import and export of firearms; creates a new offence of possession for sale or transfer of firearms; makes forced marriage illegal; creates a new College of Policing, and also makes provisions relating to the financial controls on chief constables and extending the powers and remit of the Independent Police Complaints Commission.

Main effect of the provisions in the Bill for which consent is sought

8. As regards this LCM, consent is sought for provisions of the Bill as follows:-

- Part 4, Chapter 1 – Community Protection Notices;
- Part 4, Chapter 2 – Public Spaces Protection Orders;
- Part 4, Chapter 3 – Closure of Premises Associated with Nuisance or Disorder;
- Part 7 – Amendments to the Dangerous Dogs Act 1991.

Community Protection Notices

9. The Bill introduces a power for an authorised person to issue a Community Protection Notice (CPN). An “authorised person” means: a constable, a police community support officer, a local authority or a person (e.g. a registered social landlord) designated by a local authority.

10. A CPN may be issued where an authorised person is satisfied that an individual or body is behaving in a way that has a persistent or continuing detrimental effect on the quality of life of those in the locality, and that the behaviour is unreasonable.

11. A CPN may require the person to whom it is addressed to refrain from specified activities, or to take reasonable steps to achieve specified results.

12. Paragraph 143 of the explanatory notes which accompany the Bill, confirms that CPNs are intended to cover all behaviour which is detrimental to the local community’s quality of life. The provisions which relate to CPNs do not include any regulation-making powers for Welsh Ministers.

13. At Paragraphs 10 and 11 of the LCM, the Welsh Government provides examples of how CPNs could be used. In particular, a CPN could be used to deal with problems caused by irresponsible dog owners, such as persistent dog-barking and out-of-control dogs.

14. It is not clear how useful CPNs will be in relation to noisy dogs; such problems can already be dealt with by a local authority as a statutory nuisance under Part 3 of the Environmental Protection Act 1990. The Bill specifically provides that a CPN cannot be issued in relation to any matter that constitutes a statutory nuisance. In addition, as it is the conduct of the dog owner (and not the dog) which must be unreasonable, it is not clear how CPNs will address out-of-control dogs, where the owner is acting reasonably.

15. Provisions in Part 7 of the Bill (see below) also deal with dangerous dogs.

Public Spaces Protection Orders

16. The Public Spaces Protection Order (PSPO) is intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life. It will impose conditions on the use of that area. The order will replace designated public place orders, gating orders and dog control orders. The Bill provides local authorities with a power to make a PSPO in relation to a public space, if the local authority concerned is satisfied, on reasonable grounds, that activities carried on in a public place will have a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on that may have such an effect. It must also be satisfied that the activities are, or are likely to be, persistent or continuing in nature, unreasonable, and justify the restrictions imposed by the notice.

17. Clause 61 specifies types of highway which may not be subject to a PSPO. The Welsh Ministers will additionally be able to specify in regulations additional categories of highway which will not be subject to the PSPO regime. The regulations will be subject to the negative procedure in the Assembly. Part 8A of the Highways Act 1980 includes similar powers for the Welsh Ministers to prescribe additional categories of highways to which a 'gating order' (a similar concept to a PSPO) will not apply. The Welsh Government states at paragraph 18 of the LCM that the power has never been utilised in Wales.

Closure of Premises associated with Nuisance or Disorder

18. The Bill introduces a new single power, replacing four of the current powers available to the police or local authority when dealing with the closure of premises. The single power would be applicable to licensed premises and private residential properties. Police officers (of at least the rank of inspector) or a local authority, will be able to issue a closure notice in relation to particular premises. The circumstances where they may do so are where they are satisfied that (i) the use of those premises has resulted or is soon likely to result in nuisance to members of the public, or (ii) that there has been or is soon likely to be disorder near those premises and (iii) that a notice is necessary to prevent the nuisance or disorder. A closure notice has the effect of restricting access to premises for up to 48 hours. Where a notice is issued, an application must be made to a magistrates' court for a closure order which may last up to a maximum of three months (or six months if subsequently extended on application to the court). The order will restrict access to premises according to the terms set out in the order. An application may be made to a magistrate for its discharge, or an appeal may be made to the Crown Court against a decision to make (or against a refusal to make) an order.

Competence – Part 4

19. It is the view of the Welsh Government that Part 4 Chapters 1, 2 and 3 generally fall within the Assembly's legislative competence under Part 1 of Schedule 7 to the Government of Wales Act 2006 ("GOWA") in relation to subjects listed under headings 1 (Agriculture, forestry, animals, plants and rural development), 6 (Environment), 9 (Health and health services) 12 (Local Government) and 15 (Social Welfare).

20. However, CPNs and PSPOs are broad based and may stray into policy areas which are non-devolved. The Welsh Government acknowledges, therefore, that not all of the provisions in Part 4 fall squarely within the legislative competence of the Assembly.

21. The provisions are aimed at tackling anti-social behaviour. There is an exception in Schedule 7 to GOWA for "Anti-social behaviour orders" (see heading 12 "Local Government"). It is clear that the Assembly does not have competence to amend or repeal the current ASBO regime in relation to Wales. However, it can be argued that the Assembly has competence to legislate to tackle anti-social behaviour generally, so long as it does so in a way which relates to one or more of the subjects in Schedule 7. On this view,

a Legislative Consent Motion would be needed, because Part 4 of the Bill relates to various subjects in Schedule 7 (as listed above).

22. The UK Government, (see paragraph 86 of the explanatory notes) considers that Chapters 1 and 2 of Part 4 (CPNs and PSPOs) fall within the legislative competence of the Assembly, but that Chapter 3 (closure orders) does not.

Amendments to the Dangerous Dogs Act 1991 ('DDA 1991')

23. The LCM confirms that amendments to the DDA 1991 are proposed to extend the criminal offence in relation to a 'dog dangerously out of control' to cover private property, whereas the current law covers only public places. The power of a police officer to seize a dangerously out-of-control dog on private property is extended, and the Bill also makes it an aggravated criminal offence for a dangerously out-of-control dog to injure an assistance dog. An enhanced defence of self-defence will be available to a householder in the event that a trespasser to a private dwelling house encounters a dog. These amendments are set out in Clause 98 of the Bill.

24. Clause 99 of the Bill amends the 1991 Act in relation to the test which the court must consider when assessing whether a dog is dangerous and therefore liable to be destroyed. The amendments clarify the requirement that, when deciding whether a dog poses a threat to public safety, a court must consider (i) the character of the owner or keeper and (ii) the temperament of the dog and its past behaviour. The court may also consider any other relevant circumstances. If the court decides that the dog would pose a danger to public safety, this constitutes a reason for making an order for destruction as opposed to a 'contingent destruction order' (where the dog is only destroyed if the terms of the contingent order are breached).

Competence – Part 7

25. It is the view of the Welsh Government that the amendments fall within the Assembly's legislative competence under Part 1 of Schedule 7 to the GOWA in relation to subjects listed under headings 1 (Agriculture, forestry, animals, plants and rural development), 9 (Health and health services) and 15 (Social Welfare).

26. The UK Government does not appear to agree that Part 7 of the Bill falls within the Assembly's competence (see paragraph 86 of the explanatory notes). This contradicts DEFRA's earlier consultation 'Promoting more responsible dog ownership' which did not extend to Scotland, Northern

Ireland or Wales on the basis that “*the Parliament in Scotland and Assemblies in Wales and Northern Ireland have powers to make legislation in relation to dangerous dogs*”.

Advantages of utilising the Bill

27. The Welsh Government states at paragraph 34 of the LCM that it is appropriate to deal with the provisions in a UK Bill in order to ensure a consistent approach to tackling anti-social behaviour across Wales and England. The Welsh Government also accepts that some provisions may not lie entirely within the Assembly’s competence.

28. On 2 May 2013, the Minister for Natural Resources and Food issued a written statement on the Draft Control of Dogs (Wales) Bill. In it the Minister explained:-

“It has become clear to me as I have reviewed this work and have listened to the consultation responses that there may be benefits to working with the UK Government to take forward our proposals on a Wales and England basis. I have reviewed the provisions of the draft Anti-Social Behaviour Bill published by the Home Office and, whilst I accept many of the criticisms made of this draft bill, I nevertheless believe that it may provide a useful vehicle to fulfil our ambitions. To this end I will seek agreement with the Home Office that, if this bill is taken forward, then I will seek regulation-making powers for Wales which will allow us to shape the proposed legislation in such a way as to meet both our objectives and also the wider aims of the Home Office. Therefore I have, for the moment, suspended further work on the Control of Dogs (Wales) Bill.”

29. The LCM does not make clear why, in relation to these particular provisions, it would be advantageous to use the Bill. The Committee notes that, until recently, the Welsh Government proposed to bring forward its own Bill.

Our view

30. We draw the issues outlined in this report to the attention of the Assembly in advance of its debate on the Legislative Consent Memorandum.

Y Pwyllgor Amgylchedd a Chynaliadwyedd Environment and Sustainability Committee

Chrisitine Chapman AM
Chair of the Communities, Equality
and Local Government Committee
National Assembly for Wales

28 August 2013

Dear Christine

Control of Dogs

The issues surrounding the legislative approach that the Welsh Government intends to utilise in relation to the control of dogs have been of interest to the Environment and Sustainability Committee. I understand that the Communities, Equality and Local Government Committee has been considering a legislative consent memorandum that relates to provisions in the UK Government's Anti-social Behaviour, Crime and Policing Bill concerning, inter alia, the control of dogs.

Given the overlap in our work in this area, I set out below the work that we have undertaken in this area in the hope that it is of interest.

On 11 July 2013, we took evidence from stakeholders to explore the Welsh Government's change in approach to legislating for the control of dogs. We took evidence from the Royal Society for the Prevention of Cruelty to Animals (RSPCA), the Association of Chief Police Officers (ACPO), the Communication Workers' Union (CWU) and the British Veterinary Association (BVA).

Whilst recognising the benefits of an England and Wales approach, stakeholders expressed the view that the Welsh Government's original dog-specific legislative approach could better address the control of dogs than the UK Government's more general legislative approach (through the utilisation of broader anti-social behaviour legislation).

A full transcript of the meeting is available at:

<http://www.senedd.assemblywales.org/documents/s19431/11%20July%202013.pdf> (From page 27 in the PDF version).

On 15 July 2013, I wrote to the Minister for Natural Resources and Food with a number of questions:

'In relation to the control of dogs, I have posed four questions for written answer that I hope you are in a position to respond to within the next few weeks, if not before the session on 24 July.

Control of dogs

The Committee is interested in exploring whether your current approach to delivering this policy will meet the aspirations that your draft Bill was drafted to achieve. We took evidence from stakeholders on 11 July 2013 and you may wish to be aware of the issues that were raised during that meeting.

Whilst a general question in this area is possible on 24 July, I set out below four questions to which I would appreciate a written response. If possible, I would be grateful for a response by Friday 2 August 2013.

Paragraph 31 of the Legislative Consent Memorandum provides that it is the Welsh Government's view that the provisions of Part 7 of the Anti-social behaviour, crime and policing Bill ('the Bill') are within the Assembly's competence. This does not appear to be a view shared by the UK Government (See paragraph 86 of the Explanatory Notes accompanying the Bill). Can you confirm:

- a) Whether you have had any discussions with the UK Government in relation to the Assembly's competence to legislate in relation to Dangerous Dogs;
- b) Whether the motion will seek consent in relation to Clause 99 of the Bill which has been drafted in response to the *Sandhu* judgment. Whilst the Memorandum refers to Section 7 of the Bill, no mention is made of section 99;
- c) Whether in your view the Assembly has the necessary competence to introduce an exemption in relation to a "householder case" such as is contained in Clause 98 (2) (b) of the Bill; and
- d) Why you consider it appropriate to utilise the Bill rather than bringing forward separate legislation.'

On 24 July 2013, during our general scrutiny session with the Minister for Natural Resources and Food, Julie Morgan raised control of dogs legislation with the Minister.

The transcript for this meeting is available at:

<http://www.senedd.assemblywales.org/documents/s19567/24%20July%202013.pdf> (see columns 11-23, from page 3 in the PDF version).

Further to this oral evidence session, the Minister responded to the Committee's written questions on 7 August 2013. His letter is available at: <http://tinyurl.com/nowd4zm>

The Environment and Sustainability Committee has not concluded its consideration of this issue. However, I believe that the evidence we have taken to date may be of interest to you and your Committee when reporting on the legislative consent memorandum referred to above.

Yn gywir

A handwritten signature in black ink, appearing to read 'D. Elis-Thomas'.

Lord Dafydd Elis-Thomas AM
Chair - Environment and Sustainability Committee