

National Assembly for Wales

Constitutional and Legislative Affairs Committee

November 2013

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Supplementary Legislative Consent Memorandum, Anti-Social Behaviour, Crime and Policing Bill: provision amending the Anti-Social Behaviour Orders exception in Paragraph 12, Schedule 7 to the *Government of Wales Act 2006*

Background

1. On 18 October 2013, Lesley Griffiths AM, Minister for Local Government and Government Business, laid a Legislative Consent Memorandum (“LCM”) concerning the Anti-Social Behaviour, Crime and Policing Bill (“the Bill”).
2. On 22 October 2013, the Business Committee referred it to the Constitutional and Legislative Affairs Committee for scrutiny, setting a reporting deadline for the LCM of 21 November 2013, to allow the Legislative Consent Motion to be debated in Plenary on 26 November 2013.
3. This LCM is the seventh LCM (or revised LCM) laid in the Assembly in relation to this Bill. Legislative Consent Motions have been passed by the Assembly in relation to the previous LCMs.

Anti-Social Behaviour, Crime and Policing Bill

4. The Bill was introduced in the House of Commons on 9 May 2013 and 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.
5. The Bill makes provision for condensing the current 19 different types of orders available to deal with what can be described generally as anti-social behaviour. It would condense them to 6 new types of order. The Bill provides for these 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* so as 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.

Provision for which the Assembly's consent would be required

6. This LCM concerns a provision of the Bill introduced by amendment (no. 82) passed at Commons Report stage on 14 October 2013. The provision amends Schedule 7 to the *Government of Wales Act 2006*, which sets out the legislative competence of the Assembly. Specifically, it replaces one of the exceptions from competence listed under heading 12, Local Government. Currently, that exception reads "Anti-Social behaviour orders". If the Bill is passed with the new provision in it, the exception will instead read "Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress".

Welsh Government view

7. The Welsh Government states in the LCM (paragraphs 11 and 12) that the Bill provision in question would reduce the National Assembly's legislative competence in a "significant" way.

8. Its view is that the current wording of the exception from competence – "Anti-social behaviour orders" – is confined to orders under the current *Crime and Disorder Act 1998* that are specifically called "anti -social behaviour orders" (ASBOs).

9. Assembly Legal Advisers' view is that the practical effect of this interpretation of the current exception is that:

- (a) the Assembly could not legislate to repeal the ASBO regime, or to modify it, e.g. by adding to the types of behaviour which could attract an ASBO – even if the purpose of the legislation related to devolved subjects set out in Schedule 7 such as education, housing, animal welfare, the prevention of injury, or social welfare; but

(b) at present, the Assembly could legislate to prevent or punish behaviour that causes or is likely to cause harassment, alarm or distress, provided that:

- (i) the purpose of the legislation did relate to a devolved subject such as those set out above, and
- (ii) the legislation did not affect the ASBO regime as such.

10. The Welsh Government claims (paragraph 12 of the LCM) that the Bill provision of concern would prevent the Assembly from legislating in this manner and so would significantly reduce the Assembly's legislative competence.

Consideration

11. We considered the LCM at our meeting on 11 November 2013.

12. We note that previously, the Assembly's consent has been needed for provisions in Westminster Bills because those Bills were making provision for a purpose within the Assembly's legislative competence.

13. However, this is not the case in relation to the provision under consideration here. It is not within the Assembly's competence to amend Schedule 7 to the Act (as that would mean that it could, itself, alter its own legislative competence).

14. We note, as the Welsh Government points out in paragraph 13 of its LCM, that there is a process under the *Government of Wales Act 2006* for Her Majesty to make Orders in Council, under section 109 of that Act, amending Schedule 7. Such Orders are subject to the affirmative procedure both in the Assembly and the UK Parliament.

15. We accept that the repeal of the ASBO regime requires a consequential amendment to the exception in Schedule 7 to GOWA; if this is not done, the Assembly's competence would effectively be increased, because the current exception would be toothless. **However, in our view, the drafting of the current Bill provision, inserted by amendment, substantively amends Schedule 7 in a way that significantly reduces the Assembly's competence. We therefore share the Welsh Government's view.**

16. Equally, we find there to be a lack of clarity about the UK Government's legislative intentions and in particular, what it is seeking to achieve with its amendment to Schedule 7 and the precise reasons for that change.

17. We believe that the use of the mechanism provided for in section 109 of the 2006 Act would have been a more open and transparent way of seeking to amend the National Assembly's legislative competence under Schedule 7 to the 2006 Act.

18. In light of our view that, if the Bill is passed with the provision inserted by amendment 82, the legislative competence of the National Assembly will be modified, we consider that it is appropriate for the Welsh Government to seek the Assembly's consent on this issue in accordance with Standing Order 29.1(ii).

19. In our view, the corresponding legislative consent motion, for debate in the Assembly on 26 November, should not be agreed to.