

REVISED LEGISLATIVE CONSENT MEMORANDUM

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL

PROVISIONS RELATING TO THE INTRODUCTION OF COMMUNITY PROTECTION NOTICES, PUBLIC SPACES PROTECTION ORDERS, CLOSURE NOTICES, AND AMENDMENTS TO THE DANGEROUS DOGS ACT 1991

This Memorandum is a revision of the Memorandum laid on 23 May. It differs from the earlier Memorandum as it has been revised to explain the amendments to the test of dangerousness under the Dangerous Dogs Act 1991 and to clarify that the Assembly's consent is sought in relation to Clause 99 of the Bill. These provisions are within the National Assembly's legislative competence. This clarification is to provide Assembly Members with further information to assist Members with their scrutiny of the Memorandum. In accordance with Standing Order 29.3(v), this revised Memorandum sets out how and why the new Memorandum differs from the previous one. The relevant clarifications are set out at new paragraph 30A below.

1. This 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 the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.
2. The Anti-social Behaviour, Crime and Policing Bill (the "Bill") was introduced into the House of Commons on 9 May 2013. The Bill can be found at: [Bill Documents – Anti-social Behaviour, Crime and Policing Bill 2013-14 – UK Parliament Website](#)

Summary of the Bill and its Policy Objectives

3. 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
4. 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 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 importation and exportation 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.

Provisions in the Bill for which consent is sought

Part 4 Chapter 1 – Community Protection Notices

5. The Bill introduces a power for an authorised person, that is, a constable, a police community support officer, a local authority or a person (e.g. a registered social landlord) designated by a local authority, to issue a Community Protection Notice (CPN).
6. 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. This extends to owners or occupiers of premises, in that, subject to certain conditions, behaviour on or affecting those premises, will be treated as conduct of the owner or occupier.
7. A CPN may require the person to whom it is issued, to stop doing specified things, to do specified things, or to take reasonable steps to achieve specified results. A person issued with a CPN may appeal against it to a magistrates' court.
8. Failure to comply with a CPN is an offence, and an authorised person may issue a fixed penalty notice in relation to it. In addition, where a person issued with a notice fails to comply, a local authority may take remedial action to ensure that the failure is remedied, and a court may similarly make a remedial order to ensure that the requirements of the notice are complied with.
9. CPNs could be used to deal with a range of anti-social behaviour. Examples of the environmental anti-social behaviour where a CPN may be issued include dog fouling, graffiti, littering and fly posting. CPNs will replace the current regime in relation to litter abatement notices, litter clearing notices and street litter control notices, under sections 92 to 94A Environmental Protection Act 1990 (EPA1990), and defacement removal notices under sections 48 to 52 of the Anti-social Behaviour Act 2003 (ABA2003), which will be repealed by paragraphs 21 and 41(e) of Schedule 7 to the Bill. A CPN may also be issued to address certain aspects of noise nuisance that are not currently addressed under EPA1990, although a CPN may not be issued in relation to any matter that constitutes a statutory nuisance under Part 3 of the EPA 1990.
10. A CPN could also be used to deal with problems created by irresponsible dog owners, such as persistent noisy dog barking and out of control dogs. If a dog is out of control the person responsible for the dog could be served with a CPN requiring him to maintain control over the dog. The CPN could also require that person to keep the dog on a lead, or muzzled or require the owner to undertake appropriate dog training.

Part 4 Chapter 2 – Public Spaces Protection Orders

11. The Bill provides local authorities with the power to make a Public Spaces Protection Order (PSPO) in relation to a public space (the "restricted area"), if the local authority concerned is satisfied on reasonable grounds, that activities carried on in a public place have had 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. Examples of such activities in relation to the control of dogs may include dog owners persistently allowing their dogs to foul in a public park or allowing their dogs to enter a children's play area within that park.

12. The current regime under the Clean Neighbourhoods and Environment Act 2005 (CNEA2005) in relation to Dog Control Orders is to be replaced by the new PSPO. The new regime is intended to apply to a wide range of behaviour in public places, and is not confined to Dog Control Orders only, but the current regime under CNEA2005 in relation to Dog Control Orders, will be included within its scope. Sections 55 to 64, 66 and 67 CNEA2005, are repealed by paragraph 42 of Schedule 7.
13. A PSPO may specify things that are prohibited within the restricted area, or specify things to be done by persons carrying on specified activities in that area, or both. These may include the requirement to remove dog faeces, keeping a dog on a lead or not walking more than the specified numbers of dogs in that area at any time.
14. A PSPO may last up to three years unless extended and an interested person (i.e., someone who lives or works in a restricted area), may challenge the validity of a PSPO in the High Court.
15. It is an offence to do anything prohibited by, or to fail to comply with a requirement of, a PSPO, and a constable or community support officer or person authorised by the local authority, may issue a fixed penalty notice.
16. The CNEA2005 also inserted provisions into Part 8A of the Highways Act 1980 to enable local authorities to make temporary gating orders in respect of certain highways (for example lanes and alleyways) in their areas in order to assist in the prevention of crime and anti-social behaviour.
17. Clauses 60 and 61 specify how PSPOs can be implemented in relation to public highways. They place similar requirements and conditions on the closure of highways as those included in Part 8A of the Highways Act. These include requirements in relation to notification and the use of barriers or gates. Critically they will not remove any underlying highway status of routes covered by PSPOs.
18. Clause 61 places regulatory powers on the Welsh Ministers in relation to the types of highways that cannot be restricted under the PSPO. Part 8A of the Highways Act 1980 includes very similar powers, which have not been utilised in Wales to date.
19. Paragraph 2 of Schedule 8 to the Bill will repeal Part 8A section 129A to 129G of the Highways Act 1980. PSPOs will replace the temporary gating orders as set out in the Highways Act 1980.

Part 4 Chapter 3 – Closure of Premises Associated with Nuisance or Disorder

20. 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.
21. 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, if they are satisfied that the use of those premises has resulted or is soon likely to result, in nuisance to members of the public, or that there has been or is soon likely to be, disorder near those premises, and that a notice is necessary to prevent the nuisance or disorder.
22. The provisions being repealed are set out in sections 161 to 166 of the Licensing Act 2003, Parts 1, 1A and clauses 40, and 41 of the Antisocial Behaviour Act 2003. These repeals are set out in paragraphs 34 and 41(a),(b) and (d) of Schedule 7 to the Bill.
23. 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) and restricts access to premises according to the terms set out in the order. An application may be made to a Justice of the Peace for its discharge, or an appeal may be made to the Crown Court against a decision to make, or refuse to make, an order.
24. It is an offence, without reasonable excuse, to remain in or enter premises in contravention of a closure notice or closure order, or to obstruct a person serving a notice or securing premises subject to a notice or order.
25. It is not considered by the Welsh Government, that all of these proposed provisions fall squarely within the legislative competence of the Assembly. However, it is considered that a number of significant elements of the proposals do fall within Assembly competence, and are more than merely incidental to the purpose of this part of the Bill.
26. It is the view of the Welsh Government that Part 4 Chapters 1, 2 and 3 fall within the National Assembly's legislative competence under Part 1 of Schedule 7 to the Government of Wales Act 2006 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).

Part 7 – Amendments to the Dangerous Dogs Act 1991

27. The Dangerous Dogs Act 1991 currently provides that it is a criminal offence for a dog to be dangerously out of control in any public place and that an aggravated criminal offence is committed if that dog injures a person.
28. This amendment extends that provision to any place thereby making it an offence for a dog to be dangerously out of control on private property as well as in public places. It also creates an enhanced defence of self-defence that would be available to a householder in the event a trespasser to private dwelling house encounters a dog

29. The amendment also extends the power of a police officer to seize a dangerously out of control dog on private property.
30. It also makes it an aggravated criminal offence for a dangerously out of control dog to injure an assistance dog.
- 30A. Clause 99 clarifies the factors a court should consider when determining whether a dog is dangerous for the purposes of exercising the power to make an order for destruction under the Dangerous Dogs Act 1991. Recent case law had created doubt and clause 99 clarifies how the court should apply the test of dangerousness.
31. It is the view of the Welsh Government that Part 7 falls within the National Assembly's legislative competence under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to subjects listed under headings 1 (Agriculture, forestry, animals, plants and rural development), 9 (Health and health services) and 15 (Social Welfare).
32. The Bill extends to Wales.
33. The Bill includes a regulation-making power for the Welsh Ministers in relation to the PSPO under Chapter 2 of Part 4 of the Bill. The power enables the Welsh Ministers to prescribe additional description of highways in respect of which a PSPO may not be issued. The regulations would be subject to the negative resolution procedure. The regulations would therefore be laid before the National Assembly for Wales and would be subject to annulment in pursuance of a resolution of the Assembly.

Advantages of utilising this Bill

34. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most appropriate and proportionate legislative vehicle to enable these provisions to apply in relation to Wales because the Anti-social, Crime and Policing Bill will ensure that there is a consistent approach to tackling ongoing instances of environmental anti-social behaviour within Wales and England.
35. In addition, while the Welsh Government is of the view that the substantive proposals referred to in this memorandum, are within the legislative competence of the Assembly, it is accepted that some of the provisions that will need to be brought forward in order to give full effect to the policy underlying these proposals, arguably do not lie within competence, and that in consequence an advantage of using the Bill, is that all provisions can be made within a single, coherent Act.

Financial implications

36. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Anti-social Behaviour, Crime and Policing Bill which cannot be absorbed as part of existing obligations.

Alun Davies AM
Minister for Natural Resources and Food
September 2013