

LEGISLATIVE CONSENT MEMORANDUM

CRIMINAL JUSTICE AND COURTS BILL

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO 29 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 Criminal Justice and Courts Bill (the “Bill”) was introduced in the House of Commons on 5 February 2014. The Bill can be found at <http://services.parliament.uk/bills/2013-14/criminaljusticeandcourts.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Ministry of Justice. The Ministry of Justice’s policy objectives for the Bill are to make provision about how offenders are dealt with before and after conviction; to amend the offence of possession of extreme pornographic images; to make provision about the proceedings and powers of courts and tribunals; to make provision about judicial review; and for connected purposes.
4. The key provisions of the Bill can be summarised as follows:
 - Part 1 and Schedules 1 and 2 make provision about criminal justice including provision about sentencing and the release and recall of offenders and about the electronic monitoring of offenders released on licence, and about the giving of cautions. Part 1 also contains provision about the offence of possessing extreme pornography.
 - Part 2 and Schedules 3 and 4 make provision about the detention of young offenders, about giving cautions and conditional cautions to youths and about referral orders.
 - Part 3 and Schedules 5 to 8 make provision about courts and tribunals including provisions creating a new procedure for use in criminal proceedings in the magistrates’ courts in certain circumstances, provision about the recovery of the costs of the criminal courts from offenders, about appeals and costs in civil proceedings and about contempt of court and juries.
 - Part 4 provides for the circumstances in which the High Court and the Upper Tribunal may refuse relief in judicial review proceedings and about funding and costs in relation to such proceedings.

Provisions in the Bill for which consent is sought

5. Part 4 of the Bill, alongside a new Schedule (the “new Schedule”) inserted into the Bill by way of amendment on 6 May, give rise to this Legislative Consent Motion. The new Schedule proposes to amend the following provisions:
 - Section 287 of the Town and Country Planning Act 1990 (the “TCPA”);
 - Section 288 of that Act;
 - Section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the “Listed Buildings Act”);
 - Section 22 of the Planning (Hazardous Substances) Act 1990 (the “Hazardous Substances Act”); and
 - Section 113 of the Planning and Compulsory Purchase Act 2004 (the “PCPA”).
6. All the provisions outlined above apply in relation to Wales. A brief description of each of those provisions is set out in the following paragraphs. Each challenge of the type described in those paragraphs is brought by an applicant in the High Court. There is currently no requirement that the leave of the High Court be obtained before such a challenge may be made.

Section 287 of the TCPA

7. Section 287 of the TCPA prescribes the only means whereby the validity of development plans and certain schemes and orders referred to in sections 247, 248, 249, 251, 257, 258 or 277 of that Act may be questioned by any person aggrieved by the decision on such a plan, scheme or order.

Section 288 of the TCPA

8. Section 288 of the TCPA prescribes the only means whereby the validity of the orders mentioned in section 284(2) of that Act, and the actions taken by the Welsh Ministers referred to in section 284(3) of that Act, may be challenged by any person aggrieved by such an order or action.

Section 63 of the Listed Buildings Act

9. Section 63 of the Listed Buildings Act prescribes the only means whereby the validity of the orders, decisions and direction referred to in section 62(1) of that Act may be challenged by any person aggrieved by such an order or decision.

Section 22 of the Hazardous Substances Act

10. Section 22 of the Hazardous Substances Act prescribes the only means whereby decisions taken by the Welsh Ministers under sections 20 or 21

of that Act may be challenged by any person aggrieved by such a decision.

Section 113 of the PCPA

11. Section 113 of the PCPA prescribes the only means whereby the validity of any strategy, plan or document referred to in section 113(1) of that Act may be challenged by any person aggrieved by such a strategy, plan or document.

Effect of amendments proposed by the Bill

12. The UK Government, by way of the new Schedule, proposes to amend the sections referred to in paragraphs 5 – 11 as they apply in relation to Wales, alongside equivalent changes to those sections as they apply in relation to England. The overarching effect of those amendments is that an application under those sections may not be made without the leave of the High Court having been obtained.
13. The proposals also include a requirement that such an application for leave must be made to the High Court within six weeks from a date identified for each order, decision, action, etc – for example the date being the date on which an order is confirmed or takes effect, or the date on which an action or decision is taken.
14. Additionally, it is proposed that when considering whether to grant leave, the High Court may (subject to provisos) by interim order suspend the operation of the order, decision, or action, etc to which the proposed challenge relates until the final determination of the question of whether leave should be granted; or, where leave is granted, the final determination of the proceedings.
15. It is the view of the Welsh Government that the proposed amendments described in paragraphs 12-14 above to those provisions referred to in paragraphs 5-11 above fall within the National Assembly's legislative competence as set out in paragraph 18 (town and country planning) in Part 1 of Schedule 7 to the Government of Wales Act 2006. The National Assembly also has legislative competence in relation to 'hazardous substances' and 'highways' by virtue of that Part of that Schedule.

Advantages of utilising this Bill

16. The changes proposed in the new Schedule are a pragmatic approach to reducing the adverse effect on the planning system of unmeritorious challenges. It is therefore considered that the proposals are desirable, and that bringing in the changes identified as they apply in relation to Wales at the same time as they are brought forward in relation to England avoids the risk of creating confusion and enables a consistency of approach.

17. 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 the provisions to apply in Wales.

Financial Implications

18. There are no anticipated financial implications for the Welsh Government as a result of changes identified above.

Carl Sargeant AM
Minister for Housing and Regeneration
May 2014