

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM CRIMINAL JUSTICE AND COURTS BILL

Memorandum no. 2: Provisions relating to offence of ill-treatment or wilful neglect by care workers

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 UK Government's 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/2014-15/criminaljusticeandcourts.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Ministry of Justice. The UK Government's policy objectives for the Bill are to make wide ranging reforms to the justice system as well as targeted provisions to protect the public better and reduce reoffending.
4. The Bill makes provision about:
 - sentencing and the release and recall of offenders
 - electronic monitoring of offenders released on licence
 - the detention of young offenders
 - courts and tribunals including a new procedure for use in criminal proceedings in the magistrates' courts in certain circumstances
 - circumstances in which the High Court and the Upper Tribunal may refuse relief in judicial review proceedings

Provisions in the Bill for which consent is sought

5. A provision has been introduced by way of amendments to the Bill tabled on 10 June by the Secretary of State for Justice, the Rt Hon Chris Grayling MP, to make wilful neglect or ill-treatment on the part of carers an offence. The provision applies in relation to Wales.
6. The amendments within the Bill relating to the provision are New Clauses 45, 46, 47, 48, 49 and 50, New Schedule 2 and amendments 47, 48 and 49. Amendments 47 and 48 are consequential amendments to ensure the new clauses and the Schedule extend to Wales.

7. New clause 45 establishes a criminal offence of ill-treatment or wilful neglect of an individual by a care worker who is paid to provide the individual with health care, other than excluded health care as set out in new Schedule 2, or adult social care. It sets out the penalties on conviction for the new offence.
8. New clause 46 establishes a criminal offence committed by care providers, i.e. bodies and certain individuals that provide or arrange for the provision of health care, other than excluded health care, or adult social care. It applies where ill-treatment or wilful neglect of an individual arises from a gross breach of a duty of care by the care provider.
9. Excluded care providers for the purposes of new clause 46, relating to care providers, are local authorities when carrying out their wider children's services functions and other organisations when carrying out those functions on a local authority's behalf.
10. New clause 48 sets out the penalties available following conviction of the offence in new clause 46 relating to care providers. Courts will have powers to impose fines or to make remedial or publicity orders.
11. New clause 49 sets out how the new criminal offence in new clause 46 relating to care providers is to be applied in relation to unincorporated associations, including partnerships.
12. New Schedule 2 excludes from the scope of the offence in new clause 45 health care provided in specified education and childcare settings.
13. The provisions described above apply in relation to Wales.
14. The provisions do not include any powers for Welsh Ministers to make subordinate legislation.
15. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to "social welfare" and to the "protection and well-being of children and of young adults" They also relate to "care of children, young adults, vulnerable persons and older persons" which are all under the Social Welfare heading in paragraph 15 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

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 practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. It also has the advantage of ensuring that this provision can be brought into force in both England and Wales at the same time.

Financial implications

16. There are no additional financial implications for the Welsh Government.

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Minister for Health and Social Services
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