

REVISED LEGISLATIVE CONSENT MEMORANDUM

CRIMINAL JUSTICE AND COURTS BILL

This Memorandum is a revision of the Memorandum laid on 15 May (LCM-LD9756) (the “previous Memorandum”). It differs from the previous Memorandum as it has been revised to take account of amendments to the Criminal Justice and Courts Bill (the “Bill”) tabled on 12 June by the Secretary of State for Justice, the Rt Hon Chris Grayling, MP and published in the Notices of Amendments given up to and including Friday 13 June 2014.

These amendments are within the National Assembly’s legislative competence and relate to the procedure by which challenges may be brought in the High Court against decisions relating to the award or refusal to award costs in respect of specified applications and appeals made under the Town and Country Planning Act 1990 and the Planning (Listed Buildings and Conservation Areas) Act 1990.

In accordance with Standing Order 29.3(v) this revised Memorandum sets out how and why the new Memorandum differs from the previous one.

Revisions have been made to paragraph 5, and a new paragraph 5A added, for the purpose of explaining amendment to the Bill that has occurred since the laying of the previous Memorandum, which resulted in withdrawal of a previously relevant clause and Schedule, and the insertion of a new clause and Schedule.

Details of the relevant amendments which were not the subject of the previous Memorandum are set out at new paragraphs 5B and 14A-14D below.

New paragraphs 6A and 8A are inserted to provide a description of provisions which are now the subject of proposed amendments, but were not so at the time when the previous Memorandum was laid.

Revisions have also been made to paragraphs 12 and 15 for the purpose of ensuring that the cross references to other paragraphs within this Memorandum reflect the inclusion of the most recent amendments.

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 Bill was introduced in the House of Commons on 5 February 2014. The Bill can be found at

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. The amendments which gave rise to the previous Memorandum were those at what were then new clause 12 and new Schedule 1, inserted into the Bill on 6 May. The provisions affected by those amendments were as follows:

- 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").

5A Since the previous Memorandum was laid, what were new clause 12 and new Schedule 1 have been withdrawn. However, it is to be noted that it is not the case that the provisions referred to in the paragraph above are no longer the subject of the amendments described in that clause and that Schedule. Rather, those amendments have simply been re-stated alongside more recent amendments in what are now new clause 52 and new Schedule 3, which were tabled on 12 June.

5B. Those most recent amendments to the Bill, tabled since the previous Memorandum, also propose amendment to the following provisions:

- Section 284 of the TCPA; and
- Section 62 of the Listed Buildings Act

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 284 of the TCPA

6A. Section 284 of the TCPA provides that the validity of the orders, decisions and directions referred to in section 284(1)-(3) may not be questioned in any legal proceedings whatsoever, except for in so far as is provided for elsewhere in Part 12 of that Act.

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 62 of the Listed Buildings Act

8A. Except as provided for by section 63 of the Listed Buildings Act, section 62 of that Act prevents the questioning, in any legal proceedings whatsoever, of the orders and decisions mentioned in sections 62(1)(a) and (b) of that Act.

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 7, 8, 9, 10 and 11 above 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.

14A. In the period following the laying of the previous Memorandum, the UK Government has also proposed further amendments to the provisions described in paragraphs 8 and 9 above, in addition to amendments to the provisions described at paragraphs 6A and 8A above.

14B. The combined effect of those amendments is that a person aggrieved by a costs order made under section 250(5) of the Local Government Act 1972 (as applied by the TCPA or Listed Buildings Act) in connection with an order or action mentioned in section 284(2) or 284(3) of the TCPA, or in

connection with an order or decision mentioned in section 62(1)(1) or (b) of the Listed Buildings Act, may challenge the validity of such a costs order in the High Court.

14C. However, it is again to be noted that the leave of the High Court must first be obtained before such a challenge may be brought. Also of note is that the validity of such a costs order may not otherwise be questioned in any legal proceedings whatsoever.

14D. These proposals again also similarly include a requirement that an application in respect of leave to challenge the validity of the costs order must be made to the High Court within a six week period, and also enable the High Court, by interim order, to suspend the operation of the costs order in question until the question of leave should be granted has been determined by the court, or, where that 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 12-14D 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.

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Minister for Housing and Regeneration
June 2014