

National Assembly for Wales

Communities, Equality and Local Government Committee

17 September 2013

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Legislative Consent Memorandum for provisions relating to injunctions to prevent nuisance and annoyance, criminal behaviour orders and the community trigger

Background

1. On 23 and 24 May 2013, the Welsh Ministers laid four Legislative Consent Memoranda for the Anti-social Behaviour, Crime and Policing Bill¹, which is currently before the UK Parliament.
2. This Memorandum was laid by the Minister for Local Government and Government Business on 24 May.
3. On 4 June 2013, the Business Committee referred the Memorandum to the Communities, Equality and Local Government Committee for consideration and agreed a reporting deadline of 19 September 2013.

Anti-Social Behaviour, Crime and Policing Bill (“the Bill”)

4. 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.
5. The Bill makes provision for condensing the current 19 orders to 6 new orders to deal with anti-social behaviour: it 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 to extend its provisions to private property; increases the maximum penalty for the

¹ <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html>

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.

Main effect of the provisions in the Bill for which consent is sought

6. As regards this Legislative Consent Memorandum, consent is sought for provisions of the Bill as follows:-

- Part 1 - Injunctions (replacing, among other things, the ASBO);
- Part 2 - Criminal Behaviour Orders (replacing, among other things, the ASBO on criminal conviction);
- Part 6 - the Community Trigger.

7. Further details are set out in the Welsh Ministers' Legislative Consent Memorandum.

Consideration of LCM

8. We considered the LCM on 13 June 2013 and agreed to invite the Minister to attend a Committee meeting to clarify a number of issues. The Minister attended the Committee's meeting on 17 July 2013.

Competence

9. It should be noted that the UK Government has not identified Part 1 as an area of policy which requires the consent of the National Assembly (see paragraph 86 of the Explanatory Notes to the Bill). The Welsh Government considers that the proposed provisions do fall within the National Assembly's legislative competence, by virtue of the following headings in Schedule 7 to GOWA: animal health and welfare (Heading 1), environmental protection, including pollution and nuisances, prevention, reduction, collection, management, treatment and disposal of waste) (Heading 6); promotion of health, prevention of injury, provision of health services (Heading 9); provision of housing (Heading 11) powers and duties of local authorities (Heading 12); social welfare and the protection and well-being of children and young adults (Heading 15).

10. It should be noted that the UK Government has not identified Part 2 as an area of policy which requires the consent of the National Assembly (see paragraph 86 of the Explanatory Notes to the Bill). The Welsh Government

considers that the proposed provisions do fall within the National Assembly's legislative competence, by virtue of the following headings in Schedule 7 to GOWA: animal health and welfare (Heading 1); promotion of health and prevention of injury, (Heading 9); powers and duties of local authorities and their members and officers (Heading 12); social welfare and the protection and well-being of children and young adults (Heading 15).

11. The Welsh Government takes the view that the provisions in Part 6 fall within the legislative competence of the National Assembly under Heading 12 (Local Government) of Schedule 7 to the Government of Wales Act 2006 ('GOWA').

Minister's view

12. On the issue of competence, the Minister told us:

"The Bill is cross-cutting, and there are several elements of the Bill relating to anti-social behaviour that relate to matters within the legislative competence of the Assembly, such as health, housing and environmental protection. As was also set out in the UK Government's evidence to the Silk commission, it considers the exception of anti-social behaviour orders, contained under the local government heading in paragraph 12 of Schedule 7 to the Government of Wales Act 2006, to cover anti-social behaviour generally. It therefore considers the provisions of Part 1 and Part 2 to be outside the legislative competence of the Assembly. However, we consider the exception to be limited to the Orders under the Crime and Disorder Act 1998. Therefore, many of the provisions in Part 1 and Part 2 of the Bill do not fall within that exception."

13. In relation to why the Welsh Government had not brought forward its own Bill to deal with the provisions, the Minister said:

"It is important that we protect our devolved interests in this area. If we want to legislate in the future, it is important that we do that now. I just mentioned some aspects of community safety from my portfolio; we are very interested in all elements of that work. We feel that it is appropriate to deal with these provisions in the UK Bill, as this represents the most appropriate way of bringing this legislation forward."

Anti-social behaviour – general

14. In recent years, a number of “tools” to deal with anti-social behaviour (ASB) have been introduced through more than ten Acts of Parliament. Some of these tools, such as Anti-social Behaviour Orders (ASBOs), are fairly broad powers to impose restrictions on ASB perpetrators. Others were designed to deal with very specific problems. This is particularly true of the tools brought in to deal with environmental anti-social behaviour, such as litter or graffiti. Some of the ASB remedies apply to individuals and some – such as dispersal orders or gating orders – apply to areas where there have been problems.

15. The *Crime and Disorder Act 1998* provides for statutory partnership working between the police, local authorities and others to tackle crime and disorder. A network of anti-social behaviour co-ordinators was set up, and UK Government websites (e.g. Respect) provides detailed advice to practitioners.

16. The police have also been developing operational policy on dealing with ASB. For further information see Her Majesty’s Inspectorate of Constabulary reports into policing of anti-social behaviour, ‘[Stop the rot](#)’ 2010, and ‘[A step in the right direction](#)’ 2012.

17. Table 1 below provides a summary of the rationalisation of ASB tools proposed in the Bill:

<p>People</p> <p>ASBO, Drinking Banning Order on conviction, ASBO on conviction, Individual Support Order, Intervention Order, Drink Banning Order, ASB Injunction.</p>	<p>Injunction to Prevent Nuisance and Annoyance (IPNA), Criminal Behaviour Order (CBO)</p>
<p>Places</p> <p>Litter Clearing Notice, Gating Order, Premises Closure Order, Street Litter Clearing Notice, Dog Control Order, Crack House Closure Order, Designated Public Place Order, S.161 Closure Order</p>	<p>Community Protection Notices, Public Space Protection Orders, Closure Notices and Closure Orders.</p>
<p>Police powers</p> <p>S.30 Dispersal Order, S.27 Direction to Leave</p>	<p>Dispersal Powers</p>

18. In response to a question on how the proposals aligned with the Welsh Government's approach to children's policy, the Minister said:

"We would expect any Welsh children to be dealt with in a way that respects their rights. I think that, in Wales, we have really led the way. Think about the way in which we have adopted the United Nations Convention on the Rights of the Child as a basis for all our policy making. I do not want to see children criminalised. I think that we have done a huge amount of work. The number of Welsh children in custody has been halved in the last five years. I met this week with the chair of the youth justice board. It was very pleasing to hear of the drop. However, 50 is still too many.

I think that, with the way that this Bill will work, it is very important that we protect the victim, but, as you said, it is very important that we look at it from a children's perspective. I want to make sure that their rights are defended. Our views have been taken into consideration as this policy has been developed. It is not, obviously, a Welsh Government policy. I have already asked my officials to write to the Home Secretary to ask what consultation took place with children and young people, because I think that it is very important, as this Bill has been progressed, that their views have been taken into account."

19. On the issue of whether or not key stakeholders in Wales had been consulted on the proposals, the Minister said:

"You will appreciate that this is UK Government legislation, so it is up to the UK Government as to whom it consults. However, I would hope that it would have. I know that there has been some consultation with stakeholders in Wales, but I am not sure of the specific organisations; I do not have detailed information on that. I know that the UK Government had a long consultation; it was 14 weeks, and it had over 1,000 responses. My officials have asked Home Office officials to ensure that all Welsh bodies were given the opportunity to respond to the consultation if they wanted to do so, and that was the case. Very importantly, I think that there is positive engagement between officials."

Part 1 – Injunctions

20. Under Part 1, a new civil order, the Injunction to Prevent Nuisance and Annoyance (IPNA) will replace the current "stand alone" Anti-social Behaviour Order (ASBO). This is the ASBO that does not require a criminal conviction.

The IPNA will also replace other orders including the Anti-social Behaviour Injunction (ASBI), which social housing providers can use currently.

21. The IPNA will be like the ASBI, including using its wide definition of ASB. This is conduct “capable of causing nuisance or annoyance to any person” rather than the definition used for ASBOs, which is conduct causing (or is likely to cause) “harassment, alarm or distress”.

22. Unlike ASBOs and ASBIs, IPNAs will be able to impose positive requirements as well as prohibition.

23. In contrast to ASBOs, breach will not be a criminal offence, but will be punished as contempt of court. Cases will be heard in the county court or High Court, whereas stand-alone ASBOs are heard in magistrates’ courts.

24. In summary:

- The IPNA is a civil injunction available in the county court for adults and in the youth court for those under the age of 18.
- The injunction replaces a range of current tools including the ASBO on application, the ASBI, the drinking banning order on application, intervention orders and individual support orders.
- An injunction can be made against a person aged 10 or over if the court is satisfied, on the balance of probabilities (the civil standard of proof), that the person has engaged in, or is threatening to engage in, anti-social behaviour and that it is just and convenient to grant the injunction.
- An injunction will be available to a number of public bodies including local authorities, housing providers, the Environment Agency, Welsh Ministers (exercising corresponding functions to the security management functions exercised by the Secretary of State under section 195(3) of the National Health Service Act 2006) or a Special Health Authority (acting on the direction of the Welsh Ministers) to prevent and address conduct causing nuisance or annoyance to any person.
- The injunction could include prohibitions that assist in the prevention of future nuisance or annoyance. Such prohibitions may include, for example, not being in possession of a can of spray paint in a public place, not entering a particular area, or not being drunk in a public place. The injunction could also include positive requirements to get the individual to deal with the underlying causes of any conduct.

25. Some commentators, particularly practitioners, have welcomed the flexibility of the new IPNA, which they see as being potentially more effective than the ASBO. Other commentators have raised concerns about the broad definition of ASB (the term “anti-social behaviour” (ASB) covers a very broad range of conduct. Some of this is low level crime; other ASB may not be against the law, but cause annoyance, alarm, harassment or distress). Further, concern has been raised because under the new law, ASB will have to be proved only to the civil standard – ‘on the balance of probabilities’ – which is easier to prove than the criminal standard of proof – ‘beyond reasonable doubt’- which is currently required for ASBOs.

26. In response to a question on concerns that the proposals might fast-track individuals into the criminal justice system rather than diverting them away, the Minister said:

“I would hope not, and there is certainly nothing to make us think that it would. The IPNA is to stop people from being criminalised, so I would certainly hope that that would not be the case. I have just mentioned how much importance we place on diverting young people away from the criminal justice system, so I would be very concerned if that were the case.”

27. In response to a question about whether or not the IPNAs would be applied proportionately and consistently, the Minister said:

“Until we know a bit more about them, it is a bit difficult to say, but there are concerns that kangaroo courts will spring up or something and that people would be dragged before them. So, it is really important that we see how they work. Obviously, it is for local determination—it is for local authorities to decide how they would use it. Again, it is something that we will have to monitor. Lots of aspects of this concern me, as to how they will play out, and it will be up to us to monitor it, and, if necessary, make representations.”

28. In terms of ensuring that people across Wales are treated equitably by local authorities, the Minister said:

“As I say, we will have to see what thresholds are set. We will have to give them some direction, I presume, to make sure that we do not have a huge variation.”

29. In relation to the possibility that IPNAs could be made against children as young as 10, and whether or not this could, in effect, criminalise them, the Minister said:

“I think that it will get them help earlier. We go back to the point about trying to keep people out of the system: they would get help earlier than perhaps they would have done previously.”

Part 2 - Criminal Behaviour Orders

30. A new Criminal Behaviour Order (CBO) will replace some orders which are currently available where a person is convicted of a criminal offence. These include the ASBO on conviction, or “CRASBO”. The new order is similar to the CRASBO. One difference is that courts will be able to impose positive requirements.

31. In summary:

- The CBO will be an order on conviction, available following a conviction for any criminal offence in the Crown Court, a magistrates’ court or a youth court. This would replace the ASBO on conviction (CRASBO) and the drinking banning order on conviction.
- A court will be able to make a CBO against an offender only if the prosecutor applies for it. This would normally be at the instigation of the police or local authority.
- Unlike the current process, local authorities would be able to apply directly to the prosecution without requesting the permission of the police.
- An order may be made against a person over the age of 10 if the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender and that the court considers that making the order will assist in preventing the offender from engaging in such behaviour.
- As the order would be made on conviction, the standard of proof would be “beyond reasonable doubt” (as it is under the current law governing CRASBOs).
- Similarly to the Injunction under Part 1 of the Bill, the order could include prohibitions and/or positive requirements that assist in preventing the offender from engaging in behaviour that could cause harassment, alarm and distress in the future.

- A possible example of a positive requirement that could be contained in a CBO includes the attendance at a course to address the underlying causes of the behaviour leading to the CBO. Where a CBO includes a positive requirement, the court must also specify a person to be responsible for supervising compliance with the requirement. Possible examples include a local authority, or recognised providers of substance misuse recovery.
- The court must, prior to including a requirement in the order, receive evidence about its suitability and enforcement from the person or body specified to supervise compliance.

32. In relation to the impact on local authorities of the positive requirements contained in CBOs, the Minister said:

“The proposals replace existing powers. For instance, I was concerned that maybe they would place additional burdens on local authorities, but I am reassured that that is not the case because they do replace existing powers. I will go back. We will need to continue to monitor the potential impact that this legislation will have on local authorities. If need be, I will make representations to the Home Office.”

Part 6 – the Community Trigger

33. Part 6 of the Bill will introduce a new ‘Community Trigger’ which would give victims and communities the right to require agencies to deal with persistent anti-social behaviour that has previously been ignored.

34. In summary:

- The Community Trigger is a mechanism for victims of persistent behaviour that causes harassment, alarm or distress to request that relevant bodies undertake a case review.
- A case review would entail the relevant bodies sharing information in relation to the case, discussing what action has previously been taken, and collectively deciding whether any further action could be taken.
- Relevant bodies include local authorities, the police, health providers and providers of social housing.
- Any individual, community or business can make an application for a case review, and the relevant bodies must carry out a case review if the threshold is met. Any individual may request a review, so Members of Parliament, Assembly Members, local councillors and others would be able to use the trigger on victims’ behalf.

- The threshold will be set locally by the relevant bodies and could, for example, be three reports of separate incidents of such behaviour in a six month period, where there has not been an adequate response to that behaviour.
- The threshold may also be set with reference to the persistence of the behaviour, the potential for harm to the victim, and the adequacy of response from agencies.
- The threshold should be set no higher than three complaints, but agencies may choose to set a lower threshold.
- The Community Trigger is intended as a safety net for victims who consider that there has not been an appropriate response to their complaints.

35. In relation to the provision for local authorities to determine their own thresholds, the Minister said:

“I think that this will be a positive step. Local authorities will be compelled to publish the thresholds that they set, or any criteria process. They would have to publish any reporting mechanisms that they wished to use. I think that that will make them more accountable to their local population and to the people whom they serve. It should mean that they are also focusing on the needs of the victims in the area. I did say earlier that the community trigger is aimed at protecting victims, and local authorities, along with housing providers, will obviously know what is best for the local area. As it is replacing existing responsibilities, I do not think that the impact will be too great on local authorities.”

Other Issues

Advantages of using this Bill rather than an Assembly Bill

36. The Welsh Government is content for these matters to be dealt with in the Bill. The Welsh Government acknowledges that there may be a question over whether certain provisions fall entirely within the competence of the National Assembly and considers there is merit in wrapping up all the provisions in a single coherent UK Bill.

37. The Welsh Government also supports the implementation of legislation (in this context) which is consistent across Wales and England.

Proposed legislation – Welsh Government

38. In terms of the impact of the proposals on the Welsh Government's intentions to bring forward its own legislation relating to youth offenders, the Minister said:

“It will not have an impact. As I said, I am considering, following the Green Paper consultation, which finished last December. I have had an analysis of the consultation responses undertaken. I am looking at options for legislation now, but this will probably not have much of an impact.”

General points on the Legislative Consent Memorandum

39. There are no new powers conferred on the Welsh Ministers by Parts 1 or 2 of the Bill. Commencement is a matter for the Secretary of State.

Financial Implications

40. The Welsh Government's Memorandum states that 'there are no anticipated financial implications for the Welsh Government arising from the proposals in the Bill'. It goes on to say that:

“There may be associated costs for local authorities but these proposals replace existing provision – therefore funding is currently available and there should be no additional burdens. Furthermore, the Home Office anticipate there will be cost savings under the new proposals although it is not possible to quantify those savings at this stage.”

41. In response to a question on the financial implications of the proposals, the Minister said:

“It is primarily UK Government legislation, so it is up to it to make sure that it has the appropriate funding in place for its sections of it. Officials have been discussing the point about finance. I think that it is anticipated that there will be cost savings by removing existing anti-social behaviour laws. So, it is believed that these proposals will be cost-neutral, but we have not been able to be completely clear, I think that it is safe to say.”

42. The official accompanying the Minister said that

“[...] this is something that I raised very early on with my colleague in the Home Office. Clearly, we are in a bit of a difficult situation with the devolved and non-devolved interface, and the burden is on local authorities. I did make it clear from the very beginning that, actually, we need to be assured that there will be sufficient funding available to fund these, and my colleague was quite adamant that if there would not be cost savings, it would be cost-neutral, because they are removing previous burdens from local authorities and replacing them with these instead.”

Conclusion

43. We draw the issues outlined in this report to the attention of the Assembly in advance of its debate on the Legislative Consent Memorandum.