

## **LEGISLATIVE CONSENT MEMORANDUM**

### **PRISONS AND COURTS BILL**

#### **The Prison and Probation Ombudsman's role in relation to secure children's homes, and statements of truth**

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 any purpose within, or which modifies the legislative competence of the National Assembly.
2. The Prisons and Courts Bill (the "Bill") was introduced in the House of Commons on 23 February 2017. The Bill can be found at:

[Bill documents — Prisons and Courts Bill 2016-17 — UK Parliament](#)

#### **Policy Objectives**

3. The UK Government's stated policy objectives are to reform prisons and courts by setting a new framework and clear system of accountability in the prison system, strengthening safety and security, improving efficiency and services for users in courts and tribunals, and reforming the claims process for minor whiplash injuries resulting from road traffic accidents.

#### **Summary of the Bill**

4. The Bill is sponsored by the Ministry of Justice.
5. The key provisions of the Bill cover:
  - Reforming the purpose and scrutiny arrangements of prisons and enabling new security responses to drugs and mobile phones in custody;
  - Reforming the criminal, civil and family courts and tribunals;
  - Modernising judicial recruitment and deployment; and
  - Changing the claims process for pain, suffering, and loss of amenity arising from whiplash injuries.

#### **Provisions in the Bill for which consent is required**

6. The consent of the National Assembly is sought for clauses 4-6 and clause 54 and Schedule 13 of the Bill. Clause numbers refer to the print of the bill as introduced.

Clauses 4-6 – Prisons and Probation Ombudsman; investigations of deaths in secure children’s homes

7. Clause 4 creates the statutory office of the Prisons and Probation Ombudsman and sets out the functions of the Ombudsman which include conducting an investigation into the death of a child detained or resident in a secure children’s home in Wales or a child who has ceased to be detained or resident in the home. Clause 5 sets out those deaths that are within the Ombudsman’s remit and includes the death of a child who, at the time of his or her death, was detained or resident in a secure children’s home in Wales. Clause 6 provides the Ombudsman with discretionary powers which include the discretion to investigate a death of a person no longer detained or resident in a secure children’s home in Wales where the Ombudsman has reason to believe that the death may in some way be connected with that child’s residence or detention there.

Clause 54 and Schedule 13 – Traffic and air quality offences: use of statements of truth

8. Clause 54 gives effect to Schedule 13 to the Bill. The Schedule sets out amendments to existing legislation which replaces statutory declarations (a legal declaration given and signed in the presence of a person authorised by the court) with statements of truth (a signed, written statement sent to the court) in certain traffic and air quality offences. Replacing statutory declarations with statements of truth will modernise current outdated and inconsistent procedures with digital processes, whilst retaining strong penalties where a statement of truth is found to be false. These changes will reduce the need for people to attend court, which will not only benefit the court in cutting down on court time but also users travelling to court buildings, especially in light of recent court closures.
9. Schedule 13 of the Bill amends paragraph 5 of Schedule 11 to the Environment Act 1995 (“the 1995 Act”). Welsh Ministers used the powers conferred in section 87 and Schedule 11 of the 1995 Act to make the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003/300 (“the Regulations”) by way of a Statutory Instrument. The Regulations make several references to statutory declarations. The amendment made to Schedule 11 of the 1995 Act by the Bill will permit the Regulations to be amended to require Statements of Truth instead of Statutory Declarations in line with the policy intention of the amendments made by the Bill more widely in relation to air quality offences. The Ministry of Justice has confirmed it will make the necessary consequential amendments to the Regulations in English and Welsh through secondary legislation.
10. Consent is required for these provisions because they fall within the legislative competence of the National Assembly for Wales in so far as they relate to social welfare including social services and the protection of the environment. In particular the protection, well-being and care of children under paragraph 15 of Part 1, Schedule 7 to the Government of Wales Act 2006 (GoWA 2006) and economic development which includes

improvement to the environment under heading 4 and environmental protection under heading 6 of Schedule 7 to the GoWA 2006.

## **Reasons for making these provisions for Wales in the Prisons and Courts Bill**

### Clauses 4-6

11. The office of Prisons and Probations Ombudsman (PPO) was created by the Ministry of Justice, and his remit is currently set by the Secretary of State. It covers England and Wales and is non-statutory. The Bill puts the PPO's office and functions on to a statutory footing. His remit was recently extended to include investigations of any deaths in secure children's homes in Wales, to remove the inconsistency by which the death of a Welsh child in a secure children's home in England would be investigated by the PPO, but the death of a Welsh child placed in a similar home in Wales would not be (and a similar inconsistency regarding English children placed in Wales instead of England). The Minister for Social Services wrote to the Parliamentary Under-Secretary of State for Justice in January, asking for the PPO's remit to be extended in this way, and on 26 January she laid before the Assembly the Children's Homes (Wales) (Amendment) Regulations 2017 to facilitate any such investigations in the one secure children's home in Wales.
12. Including the clauses regarding Welsh secure children's homes in this Bill will ensure that the PPO's remit continues to cover deaths in secure settings in Wales, and ensure consistency in the arrangements for investigations of both Welsh and English children whether they are placed in Wales or in England.
13. Secure children's homes in Wales are exempted from those provisions in the Bill which place requirements upon the registered manager of the home. As secure children's homes are registered and inspected by CSSIW, and governed by regulations made by the Welsh Ministers, it is considered more appropriate for the requirements on the registered manager / responsible individual to be made under Welsh regulations.

### Clause 54 and Schedule 13

14. These provisions make minor changes to administrative processes in the County Court. They form part of a broad package of measures aimed at improving efficiency and services for users in the courts and tribunals of England and Wales. It is important that these changes are taken forward on an England and Wales basis so that the package of administrative reforms is implemented coherently at the same time in both Wales and England.

## **Financial implications**

15. There are no direct financial implications for the Welsh Government if the National Assembly for Wales consents to the provisions applying to Wales. However, subsequent future costs may be incurred in the event of a death of a looked after child placed in a secure children's home in Wales. These costs would relate to the investigation of the child's death. The actual cost would depend upon the circumstances of the death and the number of people to be interviewed, plus travel and subsistence. There has to date only ever been one death in a secure children's home in England and Wales, in the late 1990s.

## **Conclusion**

16. 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. They make minor changes to court processes which form part of a broad package of reforms to the Courts and Tribunals of England and Wales. They also put investigations by the Prisons and Probations Ombudsman, into the death of a child in a secure children's home in Wales, on to a statutory footing. Detailed provisions placing requirements upon the registered manager for the children's home, to help facilitate any such investigation, will continue to be made in Regulations made by the Welsh Ministers under the social services legislation.

**Carl Sargeant AM**  
**Cabinet Secretary for Communities and Children**  
**March 2017**