



Report on the Supplementary Legislative Consent Memorandum for the Criminal Justice and Courts Bill (Memorandum no. 2)

Background

1. The UK Government's Criminal Justice and Courts Bill¹ ("the Bill") completed its committee stages in the House of Lords on 30 July 2014. 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 better protect the public and reduce reoffending.

Legislative consent

2. In accordance with the National Assembly for Wales's Standing Order 29, when a UK Bill contains provisions (either on introduction or as a consequence of amendments tabled) that fall within – or modify – the Assembly's legislative competence, the Welsh Government must lay a legislative consent memorandum ("LCM"). LCMs must summarise the policy objectives of a Bill, specify the extent to which a Bill makes (or would make) relevant provision, and explain whether it is considered appropriate for that provision to be made.

3. When an LCM is laid, the Business Committee must normally refer it for committee consideration, outlining the timetable within which the relevant committee should report.

The Criminal Justice and Courts Bill

4. The stated purpose of the Criminal Justice and Courts Bill is to make provision about how offenders are dealt with before and after conviction; to

¹ [The Criminal Justice and Courts Bill](#), Bill 43 2014–15

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.

The original LCM (memorandum no. 1)

5. The first LCM relating to the Criminal Justice and Courts Bill was laid by the Welsh Government on 15 May 2014², with a revised version laid on 25 June 2014³. This LCM was laid as amendments tabled to the Bill – relating to planning policy – were deemed to fall within the Assembly’s legislative competence. The LCM was referred to the Environment and Sustainability Committee for consideration. A legislative consent motion was tabled by the Welsh Government and was debated in Plenary on 8 July 2014.⁴ The Assembly gave its agreement to the inclusion of the relevant provisions in the Bill.

The supplementary LCM (memorandum no. 2)

6. The Secretary of State for Justice, the Rt Hon Chris Grayling MP, tabled further amendments to the Bill on 10 June 2014. These amendments make wilful neglect or ill treatment on the part of care workers and care providers an offence. As these amendments make provisions that are deemed to fall within the Assembly’s competence, the Minister for Health and Social Services laid a Supplementary Legislative Consent Memorandum (“the Supplementary LCM”) in relation to the Bill on 24 June 2014.⁵

7. The Business Committee considered the Supplementary LCM on 1 July 2014. It was referred to the Health and Social Care Committee (“the Committee”) for consideration, in accordance with Standing Order 29.4. The Business Committee also agreed that the Committee should report on the relevant provisions by 25 September 2014. The LCM is due to be debated in Plenary on 30 September 2014.

² National Assembly for Wales, [LCM-LD9756](#) Legislative Consent Memorandum Criminal Justice and Courts Bill, 15 May 2014

³ Ibid, [LCM-LD9756-R](#) Revised Legislative Consent Memorandum Criminal Justice and Courts Bill, 25 June 2014

⁴ Ibid, Plenary, *Record of Proceedings [17:42]*, 8 July 2014

⁵ Ibid, [LCM-LD9794](#) Supplementary Legislative Consent Memorandum Criminal Justice and Courts Bill, 24 June 2014

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

8. Consent is being sought in relation to making wilful neglect or ill treatment on the part of carers an offence. The provisions introduced by the Secretary of State's amendments are to apply to Wales.

9. The amendments within the Bill as amended are New Clauses 19, 20, 21, 22, 23 and 24 and New Schedule 3. The amendments apply to Wales.

10. In brief the new clauses make provision as follows:

- **New clause 19** establishes a criminal offence of ill-treatment or wilful neglect by a care worker and sets out the penalties applicable on conviction.

The clause establishes an offence of ill-treatment or wilful neglect of an individual by a care worker who is paid to provide an individual with health care (other than excluded health care) or adult social care.

'Excluded health care' is defined in New Schedule 3 as health care provided on the premises of, or at accommodation provided by, an educational institution or at a children's home or residential family centre.

'Care worker' is defined as an individual who, as paid work, provides health care for an adult (an individual aged 18 or over) or child (an individual aged under 18) or social care for an adult.

'Health care' includes all forms of physical or mental health care provided for individuals including care provided for or in connection with the protection of public health and procedures that are similar to forms of medical or surgical care but not provided in connection with a medical condition.

'Social care' includes all forms of personal care and practical assistance provided for individuals who are in need of such care or assistance by reason of age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs or similar circumstances.

- **New clause 20** establishes a criminal offence committed by care providers. Care providers are bodies and 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 has followed a gross breach of duty by the care provider.

- **New clause 21** excludes local authorities (in Wales county councils and county borough councils) from the scope of the offence established by new clause 20 when carrying out their wider children’s services functions and other organisations when carrying out functions on a local authority’s behalf.
- **New clause 22** sets out penalties applicable to offences under new clause 20 which include the imposition of fines or publicity orders.
- **New clause 23** sets out how the offence under new clause 20 and 22 relating to care providers applies to unincorporated associations, including partnerships.
- **New clause 24** provides that there is to be no individual liability for ancillary offences connected to the new offence in new clause 20 relating to care providers.
- **New Schedule 3** excludes from the scope of the offence in new clause 19 health care provided in specified education and childcare settings.

11. The Supplementary LCM notes that provisions do not include powers for Welsh Ministers to make subordinate legislation and have no financial implications for the Welsh Government.

12. The Supplementary LCM identifies the Assembly’s legislative competence under Heading 15 (Social Welfare) of Schedule 7 to the Government of Wales Act 2006 as they relate to “social welfare” and to “the protection and well-being of children, young adults, vulnerable persons and older persons”.

13. The stated view of the Welsh Government in the Supplementary LCM is that these provisions fall within the legislative competence of the Assembly but that it is appropriate to deal with them in a UK Bill. The given rationale for this view is that it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales.

The Supplementary LCM also notes that this has the advantage of ensuring that these provisions can be brought into force in Wales and England at the same time.

Consideration of the LCM

14. Due to the timing of the Supplementary LCM's laying, it was not possible for the Committee to consider it formally before the summer recess. Nevertheless, the Committee agreed to write to the Welsh Government to seek further information about the following points:

- the relevant Welsh Government policy objective to which the provisions of this LCM relate;
- how the provisions relate to the taking forward of any relevant policy;
- whether, and if so how, care workers in excluded health care settings are to be penalised for wilful neglect and ill-treatment;
- why local authorities are excluded from the scope of what was, at the time of writing, clause 18 (now clause 20 in the Bill as amended);
- a more detailed explanation as to why it is considered appropriate to proceed by way of UK legislation rather than by means of forthcoming legislation on the regulation and inspection of care and support in Wales.

15. The Minister for Health and Social Service's response to each of these points is provided in Annex A to this report. The Committee is satisfied with the additional information provided, and would welcome the inclusion of similar detail in future memoranda. The Committee is content that the provisions made in the Bill accord with the Welsh Government's policy objectives in this field, and note the explanations given for the various exclusions that apply to the provisions. The Committee also acknowledges that it is sensible to take the opportunity to legislate simultaneously for healthcare and social care workers, an option that is not afforded by the forthcoming Regulation and Inspection Bill, the scope of which the Minister notes will be limited to social care.

Our view

The Committee notes the LCM and has no objection to its use in the manner proposed.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref LF/MD/0711/14

David Rees AM
Chair of the Health and Social Care Committee
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4 September 2014

Dear David,

Supplementary Legislative Consent Motion (LCM) for the Criminal Justice and Courts Bill – offence of Wilful Neglect or Ill-treatment

Thank you for the letter addressed to Gwenda Thomas AM regarding clarification on issues relating to the supplementary LCM. As I will be leading the debate I thought it appropriate to respond to your queries.

Since I laid the LCM on 24th June 2014, the First Minister outlined the legislative priorities for the Assembly over the next year. Within this announcement, on 15th July, the First Minister announced a Bill to develop the regulatory and inspection regime to protect and promote the wellbeing of people in Wales in most need of care and support.

The issue of the overlap between the subject matter of these offences and the forthcoming Regulation and Inspection Bill was not covered in the Legislative Consent Memorandum and I hope it will assist the committee to outline the view which the Deputy Minister for Social Services and I have taken.

As far as social care workers are concerned, provision for an offence of this nature would be within the scope of the forthcoming Regulation and Inspection Bill. The Bill is concerned with the regulation of social care providers and the social care workforce. It is limited solely to social care; the offence created in the UK Government's Bill applies to both health and social care.

There is no opportunity to legislate in relation to healthcare workers in this Assembly term. Even if such an opportunity arises in the next Assembly is even less certain and in any event it would mean that the creation of the offence in relation to healthcare workers would be several years away. Additionally, if the offences were to be created in two separate bills – one for health and one for social care – there is no guarantee that the offences would be created in identical terms.

For these reasons the Deputy Minister and I consider it is right for the provisions in the UK Bill creating these offences to apply to Wales as well as England, subject to the Assembly's agreement. I have therefore laid a LCM before the Assembly, requesting its consent to the creation of the offence in relation to both healthcare workers and social care workers through the UK Government's Criminal Justice and Courts Bill.

In response to your other queries:

Delivering Safe Care, Compassionate Care sets out the Welsh Government's response to the Robert Francis report into the events in the Mid Staffordshire NHS Foundation Trust. It demonstrates our commitment to deliver safe and compassionate care to all who use our services. The Welsh Government aims to ensure we have a culture which focuses, at all times, on the needs and rights of patients. *Delivering Safe Care, Compassionate Care* talks about the need to develop an intolerance of unacceptable care. Creating an offence of this kind therefore complements Welsh Government policy.

In *Sustainable Social Services*, published in 2011, the Deputy Minister for Social Services set out the principles for social care going forward. A key principle was safety, articulated as: "We all, whether young or older, have a right to be protected from avoidable harm and from neglect."

The creation of this offence will contribute to meeting this principle, and the underlying policy aims that flow from it, by making it clear that wilful neglect will not be tolerated in our social care system. It will form part of a wider legislative framework that protects citizens from abuse and neglect in social care. In both health and social care it will send out a message and will provide a deterrent to those working in health and social care that they can be held to account through a criminal process.

The Department of Health consultation on behalf of England and Wales drew out the fact that care workers in excluded health care settings will still be subject to section 1 of the Children and Young Persons Act 1933. This section makes it a criminal offence for any person who has responsibility for any child or young person under 16, to wilfully assault, ill-treat, neglect, abandon, or expose that child in a manner likely to cause the child unnecessary suffering or injury to health.

The Department of Education (England) took the view that it was unnecessary to extend the scope of the offence beyond formal healthcare settings as a care worker providing healthcare in one of the excluded children's services and settings could be held to account in the event of them ill-treating or wilfully neglecting their patient, as the potential application was limited and there are already adequate safeguards in those circumstances.

The exclusion of local authorities from the scope of the care provider offence is not a blanket exclusion, but only in relation to the exercise of their education functions, their function of securing sufficient childcare in their area under part 2 of the Childcare Act 2006, or in relation to the exercise of their social services functions as regards children. This includes where services that could amount to healthcare are included as part of an integrated package of services set up by the local authority or its agent, tailored to the needs of a particular child.

This exclusion is included at the request of the Department of Education (England), in order to provide consistency with regard to children's non-health settings and services and to exclude liability in circumstances where there is merely an element of healthcare in arrangements made by a local authority in the exercise of its social services functions. A local authority can however be liable under the care provider offence in relation to the exercise of its functions regarding adult social care, safeguarding vulnerable adults, etc.

I trust this clarifies the important points you have raised.

Best wishes

Mark Drakeford.

Mark Drakeford AC / AM

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services