

LEGISLATIVE CONSENT MEMORANDUM

Policing and Crime Bill

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 Policing and Crime Bill (the “Bill”) was introduced in the House of Commons on 10 February 2016. The House of Commons agreed a carry-over motion for this Bill and the Bill was reintroduced in the House of Commons on 19 May. The Bill can be found at:
<http://services.parliament.uk/bills/2015-16/policingandcrime.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Home Office. The UK Government’s principal policy objectives for the Bill, as set out in the Explanatory Notes to the Bill, are to further improve the efficiency and effectiveness of police forces, including through closer collaboration with other emergency services; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation.
4. The Bill is in nine parts. This memorandum concerns certain clauses in Part 4 (which contains a number of reforms to police powers, including in relation to powers under sections 135 and 136 of the Mental Health Act 1983), and a clause in Part 9 (which contains miscellaneous and general provisions, including an amendment to the Sexual Offences Act 2003 in relation to child sexual exploitation offences).

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought for the provisions in the Bill concerning police powers under the Mental Health Act 1983 (“the 1983 Act”) and the provisions dealing with child exploitation matters. The references to the Bill are in respect of the version published on 19 May 2016 (Bill 003 2016-17).

6. Consent is also sought for amendments to the Bill numbered 94, 95 and 96 tabled by the Home Secretary Theresa May on 6 June, and published on 7 June. These are also amendments to the 1983 Act and are referred to in paragraphs 13 and 14 below.

Police powers under the 1983 Act

7. Chapter 3 of Part 4 of the Bill makes amendments to the 1983 Act, specifically sections 135 (warrant to search for and remove patients) and 136 (mentally disordered persons found in public places).
8. Sections 135 and 136 of the 1983 Act confer powers on the police to temporarily remove people who appear to be suffering from a mental disorder and who need urgent care, from private premises (section 135) or a public place (section 136) to a “place of safety” specified in section 135(6), so that a mental health assessment can be carried out and appropriate arrangements made for their ongoing care if necessary.
9. Clause 74 extends section 136 to all places other than private dwellings where a person normally resides, and requires the police to consult a health professional (either specified in the 1983 Act or in Regulations) before deciding to remove a person to, or keep a person at, a place of safety.
10. Clause 75 places restrictions on places that may be used as places of safety, by prohibiting the use of police cells as places of safety for children and providing that they can be used as a place of safety for adults only in circumstances specified in regulations. Clause 73 also widens the definition of a “place of safety” by removing the requirement that the occupier of the place of safety needs to be willing to temporarily receive the patient.
11. Clause 76 reduces the maximum period of detention in a place of safety from 72 to 24 hours, although this may be extended in specified circumstances by a registered medical practitioner for a period not exceeding 12 hours.
12. Clause 77 makes provision for “protective searches” where a warrant has been issued under section 135, where the police have reasonable grounds for believing that the person may present a danger to himself or herself or others, and is concealing an item that could cause physical injury to himself or herself or others.
13. Amendments 94 and 95 tabled on 6 June relate to clause 74. Clause 74 (4) already prevents the police from entering domestic premises to remove them to a “place of safety”. Amendment 94 ensures that this restriction also applies in cases where police officers are already on domestic premises before they become aware that a mentally disordered person is also on those premises. Amendment 95 is consequential on amendment 94.

14. Amendment 96, also tabled on 6 June, relates to clause 77 which makes provision for protective searches, as referred to at paragraph 12 above. Clause 77 already specifies that the power cannot be used to require a person to remove any of their clothing in public (apart from certain outer clothing). The amendment ensures that this limitation on the exercise of the power also applies where the person is not in a public place.
15. It is the view of the Welsh Government that the provisions set out above fall within the legislative competence of the National Assembly for Wales insofar as they relate to the prevention, treatment and alleviation of mental disorder and the care of vulnerable persons under paragraphs 9 and 15 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Provisions dealing with child exploitation matters

16. Clause 135 amends section 51 of the Sexual Offences Act 2003 to clarify that images that are “streamed or otherwise transmitted” fall within the range of offences set out under sections 48 to section 50 of the 2003 Act. Those offences include: - causing or inciting child prostitution or pornography; controlling a child prostitute or a child involved in pornography; and/or arranging or facilitating child prostitution or pornography. The current offences refer simply to the “recording” of images and could therefore be argued to exclude the live broadcast, streaming or transmission of images.
17. It is the view of the Welsh Government that Clause 135 falls within the legislative competence of the National Assembly for Wales because it relates to the “protection and well-being of children” under heading 15 - social welfare of Part 1, Schedule 7 to the Government of Wales Act 2006.
18. All of the provisions outlined above apply in relation to Wales.

Advantages of utilising this Bill rather than Assembly legislation

19. 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. The inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provisions for both Governments to be taken forward at the same time in the same legislative instrument. This will enable the non-devolved partners such as the Police (and where relevant Courts) to provide effective partnership and support in delivering a stronger child protection and exploitation and mental health safeguarding framework at the same time in both countries.

Financial implications

20. Provisions amending the Mental Health 1983 may attract some additional cost burden. Based on the Home Office's Financial Impact Assessment, indicative costs for additional psychiatric beds within health based places of safety across Wales is projected to be approximately £2.98M per annum. This notionally secures resources for 4 additional beds. These provisional calculations have been arrived at using proxy data taken from Home Office information. However, such costs are only likely to arise if the anticipated rise in need cannot be met from existing resources.

21. It is not anticipated that provisions in relation to child sexual exploitation will have a cost burden.

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