

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 financial controls on chief constables in Wales

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.
4. The Committee considered the Memorandum on 19 June.

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

5. 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.
6. The Bill makes provision for condensing the current 19 orders to 6 new orders to deal with anti-social behaviour; 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

7. Chief constables are not currently permitted to borrow money (Paragraph 7(3) of Schedule 2 to the Police Reform and Social Responsibility Act 2011). Part 10 of the Bill will permit them to borrow money in certain defined circumstances and will make other provisions relating to their financial arrangements. Paragraph 7(3) will be repealed.

8. Clause 21 of the Bill will insert a new paragraph (7a) in Schedule 2 to the Police Reform and Social Responsibility Act 2011. This will permit chief constables to borrow sums temporarily required to meet expenses. Borrowing must be with the consent of the relevant police and crime commissioner. Chief constables will not be permitted to enter into 'credit arrangements' (see below).

9. Part 1 of the Local Government Act 2003 makes various provisions as regards borrowing by local authorities. If the Bill is passed, those provisions will apply equally to chief constables.

10. The provisions are as follows:-

- Section 6 (protection of lenders): lenders will not need to check whether chief constables have the power to borrow;
- Section 7 (meaning of credit arrangements): sets out what constitutes a credit arrangement (as described above). The Welsh Ministers may, by regulation, classify an arrangement as a 'credit arrangement';
- Sections 9 to 11 (capital receipts): set out what constitutes a capital receipt and how it may be used. The Welsh Ministers may make regulations classifying a sum as a 'capital receipt';
- Section 13 (security for money borrowed): sets out further conditions around borrowing arrangements which will apply to chief constables, including not using property as security against the sum being borrowed (in other words, mortgages/charges will not be permitted);

- Section 14 (information): stipulates that chief constables will be required to provide the Welsh Ministers with any information they require about capital finance and accounts;
- Section 15 (guidance): stipulates that chief constables will be required to have regard to guidance and regulations issued by the Welsh Ministers;
- Section 16 (meaning of 'capital expenditure'): defines what constitutes capital expenditure and how the Welsh Ministers may classify an item of expenditure as being capital expenditure;
- Section 17 (external funds); sets out that borrowing by a chief constable for the purposes of an external fund (for example a trust fund) will not be considered to be borrowing in the usual sense;
- Section 18 (local authority companies): allows the Welsh Ministers to make regulations applying the rules described here to a company set up by a chief constable;
- Section 20 (directions): provides that directions to chief constables about borrowing limits must be in writing; and
- Sections 21 and 22 (accounts): gives power to the Welsh Ministers to make regulations relating to accounting arrangements which would apply to chief constables. This ensures that the statutory accounting framework that applies to police and crime commissioners also applies to chief constables.

11. The provisions described above in Paragraph 9 refer throughout to the 'Secretary of State', but Section 24 provides that the Welsh Ministers exercise the relevant powers in Wales.

Competence

12. In the view of the Welsh Government, the relevant provisions fall within the competence of the National Assembly pursuant to Heading 14 (Public Administration) in Part 1 of Schedule 7 to the Government of Wales Act 2006, specifically 'audit, examination, regulation and inspect of auditable public authorities'.

Advantages of using this Bill rather than an Assembly Bill

13. The Welsh Government has stated that it is content for these matters to be dealt with in the Bill and considers this to be the most appropriate way to enable these provisions to take effect in Wales.

General points on the Legislative Consent Memorandum

14. The references above to regulation-making powers of the Welsh Ministers do not confer any new powers on the Welsh Ministers. Those powers already exist under the Local Government Act 2003. The provisions of the Bill will simply mean that any such regulations will now apply to chief constables as well as to local authorities.

Conclusion

15. We have no objection to the use of an LCM in the manner proposed.