

Paper 1

LEGISLATIVE CONSENT MEMORANDUM ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL PROVISIONS RELATING TO INJUNCTIONS TO PREVENT NUISANCE AND ANNOYANCE, CRIMINAL BEHAVIOUR ORDERS AND THE COMMUNITY TRIGGER

1. This Legislative Consent Memorandum is laid under Standing Order (“SO”) 29.2. SO29 prescribes 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 Anti-Social Behaviour, Crime and Policing Bill (the “Bill”) was introduced in the House of Commons on 9 May 2013. The Bill can be found at: Bill Documents - Anti-social Behaviour, Crime and Policing Bill 2013-14 – UK Parliament Website

Summary of the Bill and its Policy Objectives

3. 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

4. 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 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 importation and exportation 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.

Provisions in the Bill for which consent is sought

Part 1 - Injunctions

5. The injunction to prevent nuisance and annoyance 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 anti-social behaviour order (“ASBO”) on application, the anti-

social behaviour injunction (“ASBI”), the drinking banning order on application, intervention orders and individual support orders.

6. 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. This is in line with the current ASBI, which is used by private registered providers of social housing and local authorities (in relation to their housing management functions) to stop anti-social behaviour.

7. 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.

8. The injunction can be used to tackle a range of anti-social behaviour problems. For example, an individual regularly hangs around inside local hospital waiting areas. He is always drunk and aggressive to hospital staff, often allowing his dog to jump at staff and others in an uncontrolled manner. Under the new system, in Wales, the Welsh Ministers, or a Special Health Authority (such as the NHS Business Services Authority) acting on the direction of the Welsh Ministers, could apply for an injunction to prevent the individual’s conduct.

9. 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 cause of any conduct. This could include attendance a requirement to attend dog training classes to address issues of dog-control and better understand a dog’s welfare needs.

10. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to paragraph 1 (animal health and welfare), paragraph 6 (environmental protection, including pollution, nuisances; prevention, reduction, collection, management, treatment and disposal of waste), paragraph 9 (promotion of health, prevention of injury and provision of health services), paragraph 11 (housing), paragraph 12 (powers and duties of local authorities) and paragraph 15 (social welfare and the protection and well-being of children and of young adults).

Part 2 - Criminal Behaviour Orders (CBO)

11. The criminal behaviour order (“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 and the drinking banning order on conviction. A court will be able to make a criminal behaviour order 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.

12. 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”.

13. 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. Such prohibitions could include 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.

14. 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, recognised providers of substance misuse recovery or dog training providers for irresponsible dog owners. 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.

15. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to paragraph 1 (animal health and welfare), paragraph 9 (promotion of health and prevention of injury), paragraph 12 (powers and duties of local authorities and their members and officers) and paragraph 15 (social welfare and the protection and well-being of children and young adults).

Part 6 - the Community Trigger

16. 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.

17. The threshold will be set 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 backstop safety net for victims of who consider that there has not been an appropriate response to their complaints.

18. It is the view of the Welsh Government that these provisions fall within the legislative competence of the National Assembly for Wales under Part 1 of Schedule 7 to the Government of Wales Act 2006 in relation to paragraph 12 (powers and duties of local authorities and their members and officers)..

19. The Bill extends to Wales. Parts 1, 2 and 6 of the Bill do not include powers for Welsh Ministers to make subordinate legislation.

Advantages of utilising this Bill rather than Assembly legislation

20. 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 appropriate and proportionate legislative vehicle to enable these provisions to apply in relation to Wales because the Bill will ensure that there is a consistent approach to tackling anti-social behaviour within Wales and England.

21. In addition, while the Welsh Government is of the view that the substantive proposals referred to in this memorandum, are within the legislative competence of the Assembly, it is accepted that some of the provisions that will need to be brought forward in order to give full effect to the policy underlying these proposals, may not lie within competence, and that in consequence an advantage of using the Bill, is that all provisions can be made within a single, coherent Act.

Financial implications

22. There are no financial implications for the Welsh Government arising from the proposals in the Anti-Social Behaviour, Crime and Policing Bill. 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.

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