

National Assembly for Wales

Constitutional and Legislative Affairs Committee

December 2012

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Report on the Legislative Consent Memorandum for the Crime and Courts Bill

Background

1. On the 6 November 2012, the Minister for Environment and Sustainable Development gave notice of a motion in the following terms:

“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Crime and Courts Bill which amend section 33B of the Environmental Protection Act 1990 relating to the amount of compensation that the magistrates’ court may order in respect of loss or damage incurred in relation to the costs of cleaning up waste which has been unlawfully deposited, treated or disposed, in so far as it falls within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

2. The Legislative Consent Memorandum (“LCM”) was considered on the 13 November 2012 by the Business Committee, who agreed to refer it to the Constitutional and Legislative Affairs Committee (“the Committee”) for scrutiny. The Business Committee also agreed that the Committee should report on the LCM by 10 January 2013 to allow the Legislative Consent Motion to be debated in plenary on 15 January 2013.

The Bill

3. The Crime and Courts Bill was introduced in the House of Lords on the 10 May 2012 by Lord Henley, then Minister of State at the Home Office. The Bill completed its passage through the House of Lords on the 18 December 2012 and is expected to have its second reading in the House of Commons on 14 January 2013.

4. The Explanatory Notes to the Bill as introduced contains the following explanation of the Bill’s territorial application:

“45. With the exception of certain provisions in Part 2 which extend to England and Wales only and clause 27 and Schedule 15 (drugs and

driving) which extend to Great Britain, the Bill extends to the whole of the United Kingdom. In relation to Wales the provisions relate to non-devolved matters. In relation to Scotland and Northern Ireland the Bill addresses both devolved and non-devolved matters.”¹

5. The LCM arises from amendments made to the Bill at Committee Stage in the House of Lords. Paragraph 4 of the LCM summarises the Bill and its policy objectives. The explanation is not very detailed because, apart from the minor aspect that is the subject of the LCM, the content of the Bill is not devolved.

Legislative Competence

6. The National Assembly’s legislative competence under section 108 of the Government of Wales Act 2006 requires that provisions relate to “one or more of the subjects listed under any of the headings in Part 1 of Schedule 7 and does not fall within any of the exceptions...”. The Minister has identified heading 6 (Environment) as the relevant heading. Under that heading, the relevant subjects include ‘Environmental protection, including pollution, nuisances and hazardous substances.’ There are no relevant exceptions under the heading of ‘Environment’. The fact that the provisions of the Bill relate to the criminal law and proceedings does not necessarily take them outside the Assembly’s legislative competence if there is a provision that does relate to the Assembly’s competence under ‘Environment’.

The Consent Memorandum

7. The LCM seeks to explain the effect of the relevant provisions of the Bill. Unfortunately it gives no indication of where those provisions are to be found. In fact the provisions are in Part 3 of Schedule 16 to the Bill.

8. The provisions in question were inserted by an amendment proposed by the Government at Committee Stage, and therefore are not referred to in the Explanatory Notes that accompanied the Bill on introduction. The only information available as to the intention behind the amendments is therefore the brief remarks made by the Minister (Lord McNally) in proposing the amendment in Committee:

“Part 3 of the new schedule removes the current £5,000 cap on a single compensation order that applies in the magistrates’ courts for adult offenders. The Government are committed to ensuring that as many victims as possible receive financial compensation from their offender. This change will give magistrates greater flexibility to impose appropriate levels of compensation in cases where significant harm may have been involved; for example, in environmental offences or criminal damage offences.”

¹ Following the Bill’s passage through the House of Lords, clause 27 is currently clause 37 and Schedule 15 is currently Schedule 18.

9. The LCM explains that section 131 of the *Powers of Criminal Courts (Sentencing) Act 2000*² is to be amended to remove in relation to adults the cap of £5,000 that normally applies to compensation orders made by magistrates courts. In future, it will be the normal maximum only for those under 18.

10. That amendment leads to a consequential amendment to section 33B(5) of the *Environmental Protection Act 1990* ('EPA'), which is a section that relates to a subject within the Assembly's legislative competence. The amendment to that section is to insert the words "in case of young offender" as follows:

"(5) Subject to subsection (6) below, in relation to the costs referred to in subsection (2) above, the reference in section 131(1) of the *Powers of Criminal Courts (Sentencing) Act 2000* (limit on amount payable in case of young offender) to £5000 is instead to be construed as a reference to the amount of those costs (or, if the costs have not yet been incurred, the likely amount)."

11. Section 33B(2) of the EPA provides that the loss or damage that may be the subject of a compensation order includes costs incurred or to be incurred by a relevant person to remove waste and taking other steps to eliminate or reduce the consequences of the deposit or disposal of that waste. Subsection (5) states that in those circumstances those costs replace the sum of £5,000 as the compensation limit in magistrates courts. The restriction of that limit to offenders under 18 means that the limitation of compensation to 'clean-up costs' will only apply to such offenders. Otherwise compensation will not be limited in this way.

12. The amendment to section 33B(5) is trivial in that it only amends the description of section 131 of the *Powers of Criminal Courts (Sentencing) Act 2000*. However, the amendment to section 131 will permit courts in Wales to impose more substantial compensation orders in relation to environmental offences within the Assembly's competence.

Consideration

13. We considered the LCM in respect of the Crime and Courts Bill at our meeting on 3 December 2012.

Conclusion

14. We are content with the memorandum and note the amendment to section 131 of the *Powers of Criminal Courts (Sentencing) Act 2000* is intended to give magistrates courts power to compensate more fully. Although the consequential amendment to the *Environmental Protection*

² Incorrectly referred to in the LCM as the *Powers of Crime and Criminal Courts (Sentencing) Act 2000*

Act 1990 is very minor, it does relate to the Assembly's competence in relation to the Environment, and the Legislative Consent Motion is therefore appropriate.

15. In light of our observation in paragraph 7 of this report, it would be helpful if all future Legislative Consent Memoranda were to state clearly where the provisions to which they refer are to be found in the relevant Bill.