

LEGISLATIVE CONSENT MEMORANDUM

CRIME AND COURTS BILL

Legislative Consent Motion

1. 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.

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by John Griffiths AM, Minister for Environment and Sustainable Development, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO 29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly, if a UK Parliamentary Bill makes provision in relation to Wales, for a purpose that falls within the legislative competence of the National Assembly, or has a negative impact on that competence.
3. The Crime and Courts Bill was introduced to the UK Parliament on 10 May 2012. The Bill can be found here:

<http://services.parliament.uk/bills/2012-13/crimeandcourts/documents.html>

Summary of the Bill and its policy objectives

4. The provisions in the Crime and Courts Bill will help protect the public by enhancing the national response to serious, organised and complex crime and strengthening border security. In addition, the Bill will deliver a swifter, more open and effective courts and tribunals system, while also reforming the judicial appointments process.

The key provisions in the Bill are as follows:

Part 1 - will establish the National Crime Agency (NCA) to prevent and investigate serious, organised and complex crime, enhance border security and tackle the sexual abuse and exploitation of children and cyber crime. The Bill makes provision for the constitution and governance of the NCA, it sets out its functions and powers, including the powers of NCA officers and provision for the NCA and other law enforcement agencies to share information and cooperate. The Bill abolishes the Serious Organised Crime Agency and the National Policing Improvement Agency.

Part 2 - of the Bill includes a number of provisions to improve the efficiency and transparency of courts and tribunals and to enhance judicial diversity.

Part 3 of the Bill introduces a number of reforms to create a more effective and proportionate immigration appeals system, while improving road safety.

Provisions in the Bill for which consent is sought

5. Section 130 of the Powers of Crime and Criminal Courts (Sentencing) Act 2000 (“the 2000 Act”) grants the magistrates’ court the power to make compensation orders against convicted offenders, which is subject to the provisions of section 131 of that Act, while section 131(1) of the 2000 Act currently provides that the compensation to be paid under such an order in respect of any offence of which the court has convicted the offender must not exceed £5,000.
6. The UK Government, by way of the Crime and Courts Bill, proposes to amend section 131 of the 2000 Act so that the £5,000 limit only applies to compensation orders made against offenders under the age of 18.
7. Because section 33(B) of the Environmental Protection Act 1990 (“the EPA 1990”) refers to section 131 of the 2000 Act, the UK Government propose a consequential amendment to section 33B(5), and that is the relevant provision for which the consent of the Assembly is sought.
8. The amendment to section 33(B)(5) tabled by the UK Government proposes that the words “in the case of a young offender” are inserted after the words “limit on the amount payable”. Though the amendment is consequential upon the amendment to section 131, the effect of the amendment is that it alters the penalty regime in respect of environmental offences under section 33 of that Act.
9. The effect of these amendments means that where an adult is convicted of an offence, the court may make an order requiring the person to pay compensation for any personal injury, loss or damage resulting from that offence. In respect of illegal waste activities under section 33B(2) of the EPA 1990 this will include costs in removing waste or taking steps to eliminate or reduce the consequences of the waste. Therefore, in the context of section 33B, the compensation payable is directly linked to the costs incurred or to be incurred in the clean up, and while there is no cap

imposed on the amount payable it should not exceed the costs of clean up. Where a person under 18 is convicted of an offence not defined as a 'relevant offence' the compensation is limited to the amount of the costs incurred, or to be incurred, in the clean up of the waste. Where a person under 18 is convicted of a relevant offence, the compensation that may be ordered continues to be limited to £5,000.

10. It is the view of the Welsh Government that the provisions referred to in paragraph 7 and 8 fall within the Assembly's legislative competence as set out in paragraph 6 (Environmental Protection) of Part 1 of Schedule 7 to the Government of Wales Act 2000.

Advantages of Utilising this Bill

11. The proposals support the polluter-pays principle. Removing the cap on compensation that magistrates can order will help waste regulation authorities to recover costs of cleaning up illegally deposited waste. This will help to prevent pollution and any long-term impact on the environment. Allowing the changes to be made through the Bill will help to ensure a consistent approach by the courts across England and Wales. It is the view of the Welsh Government that it is appropriate to consider and approve 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.

Financial Implications

12. There are no anticipated financial implications for the Welsh Government of any subsequent implementation of the relevant provisions of the Crime and Courts Bill.

John Griffiths
Minister for Environment and Sustainable Development
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