

## **SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM**

### **ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING BILL**

#### **PROVISION AMENDING THE ANTI-SOCIAL BEHAVIOUR ORDERS EXCEPTION IN PARAGRAPH 12, SCHEDULE 7 TO THE GOVERNMENT OF WALES ACT 2006**

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 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.](#)

#### **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.
5. The Bill extends to Wales.

#### **Provisions in the Bill for which consent would be required**

6. The relevant provision contained in the Bill is amendment No. 82 tabled on 7 October 2013 in the House of Commons. The amendment can be found at [Notices of amendments given on 7 October.](#)

7. The amendment was considered and passed at Commons Report stage on 14 October. Its effect is to amend Schedule 7 to the Government of Wales Act 2006 (legislative competence of the Assembly) by replacing, in the list of exceptions at paragraph 12, “Anti-social behaviour orders” with “Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress”.
8. It is the view of the Welsh Government that the replacement exception proposed by the UK Government, and now included in the Bill, places a wider restriction on the Assembly’s legislative powers than the current exception and therefore has a significant impact on the Assembly’s legislative competence. The current exception covers only Anti-social behaviour orders (ASBOs) under the Crime and Disorder Act 1998, therefore its replacement exception should cover only those powers in the Bill which equate, as far as is reasonably possible, to the current ASBOs. The replacement exception goes wider than this, and therefore reduces the Assembly’s legislative competence.
9. The replacement exception does not confer any powers to make subordinate legislation on Welsh Ministers.
10. It is the view of the Welsh Government that this amendment modifies the legislative competence of the National Assembly for Wales as set out in Part 1, Schedule 7 to the Government of Wales Act 2006.

### **Implications of the modification of the Assembly’s legislative competence by this Bill**

11. It is the view of the Welsh Government that the replacement exception now included in the Bill by means of the amendment referred to above, would have a significant impact on the National Assembly’s legislative competence.
12. The effect of the current exception is that anti-social behaviour orders (ASBOs) under the current Crime and Disorder Act 1998 regime, are not within the Assembly’s legislative competence. By contrast, the effect of the UK Government’s replacement exception is that all or any orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress would fall outside the Assembly’s legislative competence. This represents a reduction in the Assembly’s powers, as it would prevent it from legislating substantively about any sort of order to protect people from behaviour that causes or is likely to cause harassment, alarm or distress, even in devolved contexts such as the health service, schools or housing.
13. An amendment to Schedule 7 is an amendment of our devolution settlement, and as such it should be carefully considered and done with the agreement of the Assembly. This is particularly the case because there is an Order in Council process under the Government of Wales Act 2006, section 109, for making amendments to Schedule 7 with the

agreement of the Assembly, which underlines the need to obtain the agreement of the Assembly where the amendment is to be taken forward through a UK Bill.

14. In the Welsh Government's view, the proper way to take forward the required amendment to the Government of Wales Act 2006 would be through a replacement exception which corresponds as closely as reasonably practicable to the current exception, so there would be no material prejudice to the Assembly's powers.
15. In the Welsh Government's evidence to the Silk Commission, we made it clear that we see no need for the ASBO exception in Schedule 7. We favour the removal of the exception, whether in its current form or updated following implementation of this Bill, when Silk has reported. For the time being, we would accept in this Bill a replacement exception which does not restrict the Assembly's legislative competence more than the current exception, but we cannot accept the UK Government's proposal as it goes wider than the current exception.
16. On 11 October, the First Minister issued a written statement about the amendment and the Welsh Government's objection to it. The UK Government were aware of our objection before the amendment was tabled. We had also presented a detailed proposal for an alternative approach, designed to ensure that the replacement exception should cover only those powers in the Bill which equate, so far as is reasonably practicable, to the current ASBOs. The First Minister's written statement and copies of correspondence sent by me and the First Minister can be found at <http://wales.gov.uk/about/cabinet/cabinetstatements/2013/asbcp/?lang=en>
17. The Welsh Government view, therefore, is that it is not appropriate for amendment no. 82, tabled on 7 October, to be included in this Bill.

### **Financial implications**

18. There are no anticipated financial implications for the Welsh Government.

**Lesley Griffiths AM**  
**Minister for Local Government and Government Business**  
**October 2013**