

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Ann Jones AM
Chair, Children, Young People and Education Committee
National Assembly for Wales

3 February 2015

De Ann,

I am writing to draw your attention to a Legislative Consent Memorandum which I laid before the Assembly on Friday 30 January. It is not normal practice for Ministers to write directly in this way, but for the reasons set out below I think it appropriate in this instance. A copy of the Memorandum is attached.

The Serious Crime Bill, currently before Parliament completed Committee stage in the House of Commons on 22 January, having been introduced in the Lords.

The Assembly has previously passed two Legislative Consent Motions in respect of amendments to this Bill, firstly in respect of an extension of the offence of child cruelty (at Report stage in the Lords), and secondly in respect of coercive or controlling behaviour (at Committee stage in the Commons).

A number of amendments were tabled by the UK Government on 8 January which required careful consideration as to whether they give rise to the need for the legislative consent of the National Assembly for Wales. Among these was an amendment creating an offence of sexual communication with a child, and the Memorandum I have laid sets out the reasons why this provision falls within the legislative competence of the Assembly.

I note that Business Committee has agreed this morning that the Memorandum will be considered in Plenary on 10 February. Given the late stage of the Bill in Parliament, timescales are exceptionally short. I wanted to ensure that you were made aware as early as possible.

I am also copying this letter to the Chair of the Health and Social Care Committee; and to Elin Jones AM, Kirsty Williams AM, and Darren Millar AM as Party Spokespeople.

Best wishes

Mark Drakeford

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**SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM
(Memorandum No.3)**

SERIOUS CRIME BILL

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 Serious Crime Bill (“the Bill”) was introduced in the House of Lords on 5 June 2014. The Bill can be found at:

<http://services.parliament.uk/bills/2014-15/seriouscrime.html>

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Home Office. The UK Government’s principal policy objective for the Bill is to ensure that law enforcement agencies have effective legal powers to deal with the threat from serious and organised crime.
4. The Bill is in six Parts:
 - Part 1 makes provision in respect of the recovery of property derived from the proceeds of crime.
 - Part 2 makes amendments to the Computer Misuses Act 1990.
 - Part 3 provides for a new offence of participating in the activities of an organised crime group and strengthens the arrangements for protecting the public from serious crime and gang-related activity provided for in Part 1 of the Serious Crime Act 2007 and Part 4 of the Policing and Crime Act 2009 respectively.
 - Part 4 provides for the seizure and forfeiture of substances used as drug-cutting agents.
 - Part 5 amends the law in relation to the offences of child cruelty and female genital mutilation, provides for female genital mutilation protection orders and creates a new offence of possession of “paedophile manuals”.
 - Part 6 provides for or extends extra-territorial jurisdiction in respect of the offences in sections 5 (preparation of terrorist acts) and 6 (training for terrorism) of the Terrorism Act 2006 and confers Parliamentary approval (as required by section 8 of the European Union Act 2011) for

two draft Council Decisions under Article 352 of the Treaty of the Functioning of the European Union. Part 6 also contains minor and consequential amendments to other enactments and general provisions, including provisions about territorial application and commencement.

Provisions in the Bill for which consent is sought

5. The consent of the Assembly is sought for the amendments tabled by Karen Bradley, Minister for Modern Slavery and Organised Crime, in the UK Parliament on 8 January 2015, which introduce new provision relating to 'Sexual Communication with a Child'. Details of the amendment can be found in the Notices of Amendments tabled in Public Bill Committee; this list was tabled in Parliament on 8 January 2015.
6. The amendment was agreed to in Committee on 20 January and is included as Clause 67 in the Bill as amended in Public Bill Committee. This Clause provides for a new offence where an adult communicates with a child under 16 for the purpose of obtaining sexual gratification and the communication is sexual or intended to encourage a sexual response. The offence would be triable either way with a maximum penalty (on conviction on indictment) of two years' imprisonment.
7. It is the view of the Welsh Government that new Clause 67 falls within the legislative competence of the National Assembly for Wales in so far as it relates to "protection and well-being of children (including adoption and fostering) and of young adults" (paragraph 15) under Part 1 of Schedule 7 to the Government of Wales Act 2006.
8. The provisions outlined above apply in relation to Wales.
9. The provisions outlined above do not include powers for Welsh Ministers to make subordinate legislation.

Advantages of utilising this Bill rather than Assembly legislation

10. 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 practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. The inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provisions for both to be taken forward at the same time in the same legislative instrument. This will enable the non-devolved partners of the Police and Courts to provide effective partnership and support in delivering a stronger child protection framework. We consider therefore that making provision for an offence which applies across England and Wales helps ensure a co-ordinated approach to the issue as senders and recipients of communications could be located in either country

Financial implications

11. There are no financial implications for the Welsh Government.

Mark Drakeford AM
Minister for Health and Social Services
January 2015