



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- ~~• For information and discussion about the implications~~
- **For assessment by the Ministry of Justice**
(Delete the statement which does not apply)

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has

- **No or negligible potential impact** (in this case complete the JSII form only up to and including question 4.4)
- ~~• Low potential impact~~
- ~~• Medium or High potential impact~~
(Delete those which do not apply)

This is because:

The proposed legislation will provide a power for the Welsh Ministers, through regulations, to establish a body (referred to as a 'corporate joint committee') to undertake certain local authority functions. The establishment of such bodies will be at the request of principal councils themselves, or at the instigation of the Welsh Ministers in relation to a limited number of specified service areas.

As these proposals are concerned with the administrative means through which two or more principal councils come together to exercise certain functions, the proposal is considered to have no or negligible potential impact on the justice system.

There is a minimal risk that where the Welsh Ministers decide to establish a collaboration body that has not been requested by the relevant principal councils, the decision could be subject to challenge through judicial review.

1. Bill Title

1.1. Working title of Bill

Local Government and Elections (Wales) Bill

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

Local Government Transformation and Partnerships, Welsh
Government

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

Date of Submission:

2.6. b) When is a response
required?

03.07.2019

3. Additional contact details

3.1. Legal Contact

Local Government and Community Safety Team

3.2. Telephone number

3.3. Email address

4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

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- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

☐ Yes

☒ No (please explain why)

The proposal is not concerned with the administration of the courts or tribunal systems; it will not bring changes to criminal law and will not affect the operation of the judicial system. It is not, therefore, subject to the requirements of Desk Instruction 7.

- 4.3. In brief, what is your proposal? (no more than half a page) (*This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts*).

Principal Councils in Wales – Collaborative Regional Working Arrangements

The Local Government and Elections (Wales) Bill (“the Bill”) will include provisions empowering the Welsh Ministers to create collaboration bodies (known as ‘corporate joint committees’) to undertake certain functions of principal councils, enabling services to be planned, designed and delivered collaboratively on the scale which ensures the best outcomes for citizens.

Background

In 2018, the Welsh Ministers established an independently-chaired Local Government Working Group comprising representatives of the Welsh Government, local government and other sectors. The Group’s core task was to develop a shared agenda for reform which ensured the sustainability of local service provision through appropriate structures and processes, whether collaboration, shared services or voluntary mergers.

A key recommendation of the Working Group was the need for more consistent mechanisms and structures to support regional working and collaboration by principal councils. In giving effect to this recommendation, the Bill will deliver a single consistent, simplified and straightforward arrangement for democratically accountable collaborative working.

The powers in the Bill will enable the Welsh Ministers to create a new form of joint working vehicle which will be the blueprint for local authorities working together in future. The body will be a body corporate comprising members of its constituent principal councils. It will be capable of employing staff and holding assets and funding.

Principal councils will be able to request the Welsh Ministers to establish, through regulations, a corporate joint committee where they wish to work together on the basis of shared interests and mutual benefit. This can be in relation to any service which principal councils believe can be delivered more economically, efficiently or effectively in this way.

The Welsh Ministers will also be able to require principal council functions to be delivered regionally by a corporate joint committee for certain service areas. The intention is to focus on those areas where the Welsh Government has already put in place regional arrangements (either voluntary or statutory), or where legislation to make regional arrangements already exists. This includes areas such as improving education, strategic land-use planning, transport and economic development.

Potential Impact

The proposals are concerned with the establishment of new, more efficient and consistent, administrative structures for the joint delivery of certain principal council functions. As such, they are not anticipated to have a direct impact on the justice system. The proposals have been developed jointly with council leaders in Wales. There is, therefore, a high level of support for the proposed legislation amongst local government. However, there is a risk, though potentially small, that a decision by the Welsh Ministers to establish a corporate joint committee which has not been requested by the principal councils concerned could be susceptible to challenge through judicial review. It is not possible to estimate the likelihood of this with any certainty. However, given the collaborative approach adopted to developing the proposals through the Working Group referred to above, it is thought that such challenge would be rare i.e. less than one a year when the new arrangements are first put into effect from 2020/21.

- 4.4. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

The Welsh Government is cognisant of joint working arrangements that have been introduced in England over time, such as those established by the Local Government Act 1985 for the exercise of certain functions of the former Greater London Council. More recently, the Local Democracy, Economic Development and Construction Act 2009 empowered the Secretary of State to establish 'combined authorities' in England by order. However, the proposals to be set out in the Bill have been designed with local government to meet the specific needs of principal councils in Wales.

- 4.5. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

Related legislation:-

- Relevant provisions of this legislation will be implemented by Royal Assent, commencement order or subordinate legislation (if subordinate, please confirm whether by negative or affirmative procedures?).

- 4.6. Please indicate the anticipated date when a) the legislative changes are expected to come into force and b) the date when the first anticipated impact on the justice system will arise.

a)

b)

- 4.7. If altering or introducing an offence, sanction or penalty, which of the following groups will the proposal affect and in what circumstances? (Tick all that apply)

- ☐ Individuals
- ☐ Private Institutions (e.g. Businesses)
- ☐ Public Institutions (e.g. Government Departments)

Provide further information about those who may be affected by the legislation.

- Will there be any exceptions (e.g. owners / tenants of Listed Buildings, sole traders or micro, small, medium businesses, those not active in a commercial (for-profit) context?)

- 4.8. Does your legislation only have impact in Wales or are you working jointly with other administrations? Tick all that apply and provide brief details as appropriate, including whether your proposal will create different laws in Wales compared to England, Scotland and / or Northern Ireland.

Please note that, with the exception of the devolved tribunals, the MoJ administers the justice system in England and Wales only. Please talk directly to the MoJ devolution unit if you anticipate your proposal could have an impact on courts or prisons in Scotland or Northern Ireland.

- ☐ Wales only
- ☐ England
- ☐ Scotland
- ☐ Northern Ireland
- ☐ Other (Please Specify)

4.9. If your legislation could directly impact visitors to Wales or other people not normally resident in Wales, or if your legislation is significantly different from elsewhere in England, Scotland or Northern Ireland;-

- a) what arrangements have you made to ensure ongoing awareness raising of the different legislative approach on this issue in Wales?
- b) what will be the implications on the enforcement agencies of taking forward action against individuals not usually resident in Wales?

Consider:-

- Who are possible offenders and where might they normally live?
- How will people (victims, offenders, witnesses) not normally resident in Wales know about this law and how will this awareness raising be maintained in the longer term?
- Where will an action be brought against a non-resident of Wales? Would your answer alter if all the witnesses were also non-residents of Wales?

4.10. What are the options under consideration and how does this change the existing situation?

Consider:-

- Do Nothing – what is the impact on the justice system of this option? Is there a growing problem which your legislation is intended to address? Why is a change in legislation essential / what alternatives were considered?
- Criminal enforcement – what are the implications of this (+/-) on the justice system and how will it be effective in achieving the policy objectives?
- Civil enforcement - what are the implications of this on the justice system and how will it be effective in achieving the policy objectives?
- Other ways of achieving the same objectives – e.g. out of court disposals, measures other than legal enforcement such as incentivisation, mediation, arbitration.

In addition, identify the scale of existing enforcement actions (if any) per annum.

4.11.If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

Criminal Offences and Civil Penalties and Sanctions

4.12.Which of the following are you creating / amending? (Tick all that apply)

- ☐ Civil Sanctions
- ☐ Fixed Penalties
- ☐ Civil Orders
- ☐ Criminal Sanctions
- ☐ Criminal Offences
- ☐ Other (Please Specify)

➤ Include here details of any powers which may be revoked or extended by the proposed legislation.

4.13.If you are creating a criminal offence, is it:

- ☐ Summary Only (heard before a bench of lay magistrates / judge only)
- ☐ Triable Either Way
- ☐ Indictable Only (heard before a judge and jury)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

4.14.Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action?

Consider:-

- Individual local authorities, police forces or other regulatory enforcement agencies acting within their existing roles?
- What will be the impact on their financial and staff resources?
- If a Local Authority will be responsible, how do you know they have the ability to enforce this legislation and secure sufficient evidence for a prosecution to be brought?

4.15.What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

- If the measures in your proposed legislation had been in force over the previous three years, how many cases would have arisen? (Think of new cases and also any reduction in cases).
- How have you arrived at the estimated number of actions which will be brought?
- What are the maximum and minimum anticipated numbers per annum?
- Will there be an initial increase in cases before understanding and awareness of the legislation / case law is established or could there be lower than 'average' numbers of cases during the initial years? (In both cases, explain the rationale).

4.16. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

- Why do you believe this is the correct proportion?

4.17. Please state the maximum associated fine and/or custodial penalties. In the case of offences involving penalties of a fine or custody, please indicate and explain the circumstances which would result in a custodial sentence upon conviction and the proportion of custodial penalties which will be at the maximum level.

- What evidence do you have to support your answer?

4.18. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online.

4.19. Please provide details of the relevant legislation (where appropriate) and confirm whether the creation or amendment of criminal offences and penalties has been agreed in line with the guidance available at <https://www.gov.uk/government/publications/making-new-criminal-offences>.

4.20. What will be the short, medium and lifelong implications for an individual found guilty of this offence, and how is this proportionate to the offence created?

- What could be the implications (including for employment) for an individual if they have a conviction under this legislation? Will it show on a standard security check, an enhanced security check or on any locally held police force information?
- Why would restriction on their employability arising from such criminal record be an appropriate lifelong consequence for the offence?
- Please explain how the [Rehabilitation of Offenders Act 1974](#) will apply to an individual convicted under your legislation?

4.21. Does this legislation impose any duty on the public sector? If so, please provide your assessment of the likelihood of individuals or businesses taking action against the public sector for non-compliance with this legislation.

- Perhaps look internationally to see if (crowd-funded) actions have been taken against governments / public sector organisations in this area.

5. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

5.1. Do you expect there to be a change in Court or Tribunals process or an increase / decrease in applications / cases to HM Courts and Tribunals Service and / or the Welsh Tribunals through the creation or amendment of this law? Please provide an estimate of the change to volumes of cases

going through the court system as a whole, explain any changes in process and outline the evidence and sources that support these estimates.

- Include your assessment of whether there may be a 'bedding in' time – during which a lower or higher level of cases than normal may proceed.

5.2. Please confirm if the courts / tribunals would be under any duty to inform any regulatory authorities of any convictions made under this offence.

- ☐ No
☐ Yes (please provide details)

Appeal Rights

5.3. Does your proposal create a new right of appeal or expand an existing jurisdiction in the Unified Tribunals System or route to judicial review? If so, how do you expect these to be handled (i.e. administered by HM Courts & Tribunals Service or Welsh Tribunals)?

5.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

- Who did you discuss this with in WTU?
- When?
- What did they advise?

Alternative Dispute Resolution

5.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

- Why do you think this is so?

Prosecution and Enforcement

5.6. If the proposal is to add a new offence, will the Crown Prosecution Service act to prosecute defendants? If not, please identify who will prosecute.

5.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

5.8. Do you anticipate that Court and/or Tribunal procedural rules will have to be amended? If so, when is the likely date for the changes?

- Why is change to the procedural rules needed?

5.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

- Confirm if there is parallel work going ahead in England to bring forward similar proposals, sentences and penalties, or is this legislation distinctive to Wales?

6. Legal Aid and Court Fees

6.1. What evidence is there that individuals affected by your proposal will be able to secure and afford:

- a) legal representation and legal advice in order to secure a fair hearing of their case
- b) associated court fees

What legal costs for a typical case could each party bear and what provisions exist for a party found innocent to recover all or any of their legal costs?

Consider:-

- The socio-economic profile, protected characteristics and disposable income after housing and living costs of affected individuals.
- The financial thresholds for legal aid.
- Evidence of the ability of alternative sources of legal advice (advice centres / pro-bono work) to accommodate any additional burdens of demand which your proposal may create.
- Anticipated complexity / length of a case.
- Anticipated court fees (this will need to be considered with the MoJ / HMCTS who have a current policy of full recovery of the court costs associated with litigation from applicants).

6.2. Once implemented, is your proposal likely to require individuals to seek legal advice and to apply for legal aid in any of the following areas? In each case please provide supporting evidence.

- ☐ Criminal
- ☐ Civil (including Family)
- ☐ Asylum
- ☐ Legal aid not available (please provide supporting evidence)

- In completing this please also identify whether there are any solicitors in Wales specialising in this area of law who offer legal aid support.

6.3. If legal aid may be affected, would legal aid costs increase or be reduced (and by what margin)?

7. Prisons and Offender Management Services

Impact on HM Prison Services

7.1. Will the proposals result in a change in the number of offenders being committed to custody (including on remand) or probation (including community sentences)? If so, please provide an estimate and reasoning behind it, an estimated timeframe to reach this number of sentences, what evidence this is based on, and the source for your information.

Consider for example:-

- If the measures in your proposed legislation had been in force over the previous three years, how many offenders would there have been per year?
- Are offenders likely to have specific age / gender profiles or protected characteristics?

7.2. Does the proposal create, remove or change an existing offence with a custodial or probationary sentence, or change the way offenders go through the prison / probation service? If so, please provide details, including the expected impact on probationary services.



8. Main Justice System Impacts Identified

8.1. Volumes and Costs or Savings (please lengthen if necessary):-

NB in all cases, assume an average annual figure or make clear if a different timespan is being considered. Where there may be significance variance from average in the first years of implementation, please add additional information in the notes below.

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Criminal Offences and Sanctions					
Civil Penalties					
HM Courts & Tribunals Services					
Welsh Tribunals					

Identify the court or tribunal or MoJ service that will be affected by this proposal?	Volumes (please provide both numeric estimates and min-max ranges)	Type (e.g. prison place, tribunal hearing, fixed penalty, etc.)	Estimated recurring annual costs or savings (both numeric estimate and min-max range) (£)	Estimated initial set up costs (£)	Additional Information
Legal Aid					
Notes:-					

8.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine):

Offence	Maximum Penalty	No. of prosecutions brought per annum (numeric estimate and min-max range)	Likely proportion sentenced to immediate custody	Likely average custodial sentence length given	Estimated costs or savings p.a. (£) ¹ (please provide numeric estimate and min-max range)
Notes:					

Please be aware that any costs or savings identified as a result of any changes to the justice system /additional work must be factored in to the financial assessment of your legislation.

¹ The MoJ publish statistics on "Prison cost per place and cost per prisoner:" - see <https://www.gov.uk/government/statistics/announcements/prison-cost-per-place-and-cost-per-prisoner-2017-to-2018>