



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

1. Policy lead contact details

1.1. Name / Job Title

1.2. Department / office /
business area

1.3. Telephone number

1.4. Email address

1.5. a) Date of submission of
this form

1.6. b) When is a response
required?

Date of Submission: 14/9/2018

2. Additional contact details

2.1. Legal Contact

2.2. Telephone number

2.3. Email address

3. General information

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

a)
b)

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

LOCAL GOVERNMENT AND ELECTIONS (WALES) BILL
(JSII Form Ref: Batch 2, 2 of 3)

Performance and Governance

The Local Government and Elections (Wales) Bill will include provisions concerning a new performance and governance regime (the regime) for principal local authorities in Wales.

The proposed new regime aims to establish a system that requires self assessment of performance by local authorities and periodic peer review which are intended to ensure local authorities take ownership of their own performance and improvement.

The regime intends to place the responsibility squarely on authorities, supported by an external peer perspective. It intends to promote a culture where local authorities are open to and embrace challenge, whether presented from within the authority or externally. Areas for improvement should be actively pursued to ensure issues or problems are dealt with early and before they become systematic. Such an approach needs to become an integral part of the system of how local authorities operate on a day to day basis rather than as an add-on.

Over and above the system of assessment and reporting, the regime will enable Welsh Ministers to ask the Auditor General for Wales (the AGW) to carry out a special inspection of a local authority when concerns about that authority have been identified. Welsh Ministers will also have a range of support and intervention powers (similar to the current support and intervention powers under the Local Government (Wales) Measure 2009) to respond to any concerns and / or recommendation regarding a local authority.

The Bill will repeal Part One of the Local Government (Wales) Measure 2009, which sets out the current regime for local government improvement.

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

The provisions relating to the performance regime will be commenced by order.

- 3.4. 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) 2020
- b) 2020 (but no material impact is anticipated)

- 3.5. 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)

A person who without reasonable excuse fails to comply with a requirement to comply with the AGW's special inspection powers under the Bill or who intentionally obstructs an inspector carrying out a special inspection will commit an offence. The special inspection powers relate to a principal councils' compliance with requirements under the Bill relating to the authority's performance and governance. If a person or third party holds materials or has information relating to the authority's compliance with the relevant duties, the AGW will be able to exercise his special inspection powers to require a person or third parties to comply (subject to certain carve outs and the defence of "reasonable excuse").

This is not a new offence. There are existing equivalent offences in the Local Government Wales Measure 2009, which is being repealed.

- 3.6. 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)

- 3.7. 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?

Not relevant

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

Part 1 of the Local Government (Wales) Measure 2009 (the Measure) sets out the existing improvement arrangements for “Welsh improvement authorities”. It sets out a general duty requiring improvement authorities to make arrangements to secure continuous improvement in the way they exercise their functions. In complying with that duty, improvement authorities must have regard to a number of aspects, including strategic effectiveness and service quality.

In addition, the AGW is given a specific role of considering and reporting on the extent to which improvement authorities are complying with the general duty. Subsequently the AGW is required to produce a report for each authority. The report can include recommendations for the authority to take action. It can also include recommendations to the Welsh Ministers to take action in respect of an improvement authority, such as providing support or intervention. The AGW also has powers to undertake special inspections where it or relevant regulators believe that an authority may fail to comply with the requirements of the general duty. The Welsh Ministers may also request the AGW to carry out a special inspection.

The proposed new regime will be focused on self assessment and peer review to ensure ownership of performance in local authorities themselves. It is a clear statement from Welsh Government that the onus for improvement is on each local authority and the sector more generally. It is also a significant simplification of the current improvement regime which is a key policy objective.

The support and intervention powers available to Welsh Ministers under the Measure will be replicated in the proposed new regime.

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

Not relevant

Criminal Offences and Civil Penalties and Sanctions

- 3.10. 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)

Civil Orders – provisions within the Bill allow for the enforcement of intervention directions by mandatory order.

Criminal Offences – provisions within the Bill allow for the enforcement of AGW's powers of special inspections by the imposition of a criminal offence. (There are existing equivalent provisions in the current Local Government (Wales) Measure 2009 and the provisions in this Bill replicate them because the Measure is being repealed.)

Criminal sanction: the sanction for the offence referred to above will be that a person guilty of that offence will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

3.11. 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)

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

Welsh Ministers can apply to the Courts for an **intervention direction** to be enforced by mandatory order in the event of non compliance by a local authority.

Based on existing provisions under the Local Government (Wales) Measure 2009, the Auditor General for Wales or a person exercising a function of the Auditor General for Wales under the Bill can apply to the Courts for a **special inspection** to be enforced by mandatory order in the event of non compliance / obstruction by a local authority.

As regards the offences of not complying with a special inspection requirement or obstructing an inspector, it is envisaged the offence would be investigated by the police and enforced by the Magistrates' Court if a decision to prosecute is made and the person is convicted.

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

It is difficult to predict the number of cases for intervention and special inspections.

However, based on experience of the existing improvement regime under the Local Government (Wales) Measure 2009, the number of applications for a mandatory order is likely to be very low or even nil.

As regards the offences relating to special inspections, the number of special inspections themselves is likely to be small so the number of offences is likely to be very small indeed. Welsh Government officials are not aware of any offences under the equivalent provisions in the Local Government (Wales) Measure 2009 having been prosecuted.

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

Applications for a mandatory order would be brought in the Administrative Court. Offences relating to special inspections would be tried in the Magistrates' Court.

- 3.15. 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.

No custodial penalties are involved. A fine would not exceed level 3 on the standard scale (£1,000).

- 3.16. Please provide details of any proxy or current offences and / or penalties on which the proposed penalties are based.

The proposed penalties are based on those set out in section 26 of the Local Government (Wales) Measure 2009 under which a person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- 3.17. 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>.

Confirmed. It is considered that the sanction is proportionate as a person convicted of it cannot be imprisoned and the sanction mirrors that made in provision that has been in place for several years without concern having been expressed about the level of sanction applicable.

- 3.18. 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?

As a person cannot be sentenced to prison for the offences, such a person would not have a criminal record.

- 3.19. 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.

The proposed duties imposed on principal local authorities in Wales, the intervention powers the Welsh Ministers would have and the Auditor General for Wales' special inspection powers and the mechanisms for enforcement of those directions are described above. It is very difficult to express any view on how likely it is that a Ministerial decision to issue an intervention direction would be challenged because the likelihood of challenge very much depends on the specific context in which a particular intervention direction is made, including the stance taken by organisations and individuals in relation to specific directions. However, the experience of the existing improvement regime under the Local Government (Wales) Measure 2009 suggests that the number of challenges would be likely to be very low.

As per the intervention directions, it is very difficult to express any view on how likely it is that a AGW' decision to undertake a special inspection would be challenged because the likelihood of challenge very much depends on the specific context in which a special inspection is made. The special inspection powers already exist under the Local Government (Wales) Measure and will be replicated in the Bill. The experience of the existing improvement regime suggests that the number of challenges would be likely to be very low. There have been none under the current legislation.

Local authorities will have duties to comply with the AGW's special inspection powers but it is not considered likely that anyone other than the AGW and the police would take action arising from breach of the special inspection requirements.

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

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

- 4.1. 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.

An increase in the number of cases is not envisaged. Judging by the experience of operating under the present set of provisions, the expectation is that the number of cases would be statistically insignificant and may be nil.

- 4.2. 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

- 4.3. 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)?

Not relevant. Anyone seeking judicial review would use the existing routes by which applications for judicial review of Ministerial decisions. As regards the offences relating to special inspections, the normal criminal routes of appeal would apply.

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

No.

Alternative Dispute Resolution

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

Alternative dispute resolution procedures are not proposed.

Prosecution and Enforcement

- 4.6. 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.

Yes although it is not a new offence.

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

No new enforcement mechanisms are required – the same enforcement mechanisms will apply as apply in relation to section 26 of the Local Government (Wales) Measure 2009.

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

- 4.8. 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?

We do not anticipate that Court or Tribunal procedural rules will need to be amended as the new provision mirrors that under the existing provisions, but we will liaise further with relevant organisations.

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

The proposals will not require sentencing or penalty guidelines.

5. Legal Aid and Court Fees

- 5.1. What evidence is there that individuals affected by your proposal will be able to 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?

It is considered that legal aid will not be available as the criminal sanctions do not include imprisonment. Possible cost implications might arise from an attempt to refer a Ministerial decision to judicial review but the amount of legal costs is not known at this time.

- 5.2. 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)

It is anticipated that the number of offences relating to special inspections that are prosecuted will be statistically insignificant and may be nil.

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

It is considered that legal aid would not be available but, in any event, the experience of operating under the present provisions is that the number of cases would be likely to be statistically insignificant and may be nil.

6. Prisons and Offender Management Services

Impact on HM Prison Services

6.1. 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.

Not relevant – the criminal sanctions relating to special inspection powers do not include custodial sentences.

6.2. 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.

No.

7. Main Justice System Impacts Identified

7.1. 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	0	Magistrate court	0	0	Existing equivalent provision, which has never been used
Failure to comply with an inspection requirement without reasonable excuse		In the case of both offences, summary conviction to a fine not exceeding level 3 on the standard scale			
Intentional obstruction of an inspector					
Civil Penalties	0	0	0	0	
HM Courts & Tribunals Services	0	0	0	0	Existing equivalent provision for enforcement by mandatory order, which has never been used.
Enforcement of intervention directions by mandatory order					

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
Welsh Tribunals	0	0	0		
Legal Aid	0	N/A	0	0	
Notes:-					

7.2. 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)

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>

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.