



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

Date of Submission:	22.08.18
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1.6. b) When is a response
required?

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.

- 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 1, 3 of 3)

Local Authority Mergers and Restructuring

The Local Government and Elections (Wales) Bill will include provision to enable the Welsh Ministers to make regulations to give effect to:

- (i) A voluntary merger between two or more principal local authorities;
- (ii) A restructuring of a principal local authority, which could entail amalgamating the council with one or more of its neighbouring councils or splitting its area among two or more of its neighbours

The Bill will introduce a procedure whereby two or more principal local authorities may voluntarily submit a joint application to Welsh Ministers for the abolition of their areas and their replacement by a single new principal local authority covering the entire area of the applicants. The applicant authorities will be required to consult locally and to have passed resolutions in favour of submitting the application.

The Bill will enable the Welsh Ministers to make regulations to restructure a principal local authority which is considered to be unsustainable. The restructuring could entail amalgamating the council with one or more of its neighbouring councils or alternatively, splitting its area among two or more of its neighbouring principal councils. The restructuring could be triggered either by the council in question submitting a request for its abolition or the available evidence suggesting that the council is struggling and various support mechanisms and interventions have been tried to no avail. In all circumstances where restructuring regulations may be made, Ministers will first have to consult on a proposal to use the power and identify the evidence they have drawn on to support the decision.

Whether a voluntary merger or a restructuring, the regulations (or consequential, supplementary, incidental etc regulations) will also provide for the transfer of staff, property, liabilities (including criminal liabilities) etc.

The purpose of the above is to ensure that effective and convenient local government is maintained in the areas concerned.

Local authorities are creations of statute, so the abolition of local government areas and the creation of new local government areas require legislation.

- 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?

Proposed legislation:

The Local Government and Elections (Wales) Bill will include provision giving Welsh Ministers the enabling power to give effect to the various changes by regulations.

Regulations to give effect to a voluntary merger or a restructuring of a principal local authority will be subject to the affirmative procedure of the National Assembly for Wales.

- 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 – see below)

- 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)

No offences involved - Not Relevant

- 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?

The Welsh Ministers have no powers at present to give effect to voluntary mergers; the existing power in section 162 of the Local Government (Wales) Measure 2011 to enable amalgamations is considered to be effectively unworkable and there are no powers enabling the Welsh Ministers to give effect to the abolition of a single local authority and to split its area among several neighbouring authorities. Such powers are considered necessary should Ministers have to confront the most serious potential implications of the range of financial and service delivery circumstances confronting local government in the present time.

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)

Not Relevant

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?

Not Relevant

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

Not Relevant

- 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?

Not Relevant

- 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.

Not Relevant

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

Not Relevant

- 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>.

No new offences are being created

- 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?

Not Relevant

- 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.

It is highly debateable whether someone would seek to take Ministers or a local authority to judicial review for *not* exercising the powers to merge or restructure. The decisions to merge or restructure are likely to be much more controversial and thus might persuade those opposed to particular proposals for the exercise of those powers to seek to apply for judicial review.

Another possible scenario that could result in an application for judicial review might be where a group of local authorities have submitted an application for voluntary merger and Ministers have rejected the application.

Accordingly, the legislation governing the process and procedures for the lead-up to the exercise of the powers will include clear requirements for consultation and the obtaining and publication of relevant evidence.

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.

Not relevant

- 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 of a decision to merger etc would use the existing routes by which applications for judicial review of Ministerial decisions may be brought.

- 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?

Not relevant

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?

Not relevant

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.

Not relevant

- 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.

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?

No

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

No

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?

Possible cost implications might arise from an attempt to refer a Ministerial decision to judicial review.

- 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)

As above

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

As above

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.

No

- 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					
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:-					

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)
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>