

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**17 February 2014**

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Meeting time:  
**14:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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#### **1 Introduction, apologies, substitutions and declarations of interest**

#### **2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3 (Page 1)**

**CLA(4)-06-14 – Paper 1 – Statutory Instruments with clear reports**

#### Negative Resolution Instruments

#### **CLA358 – The Commons (Severance of Rights) (Wales) Order 2014**

Negative procedure; Date Made: 4 February 2014; Date Laid: 6 February 2014;  
Coming into Force Date: 1 March 2014

#### **3 Papers to Note (Pages 2 - 8)**

Written Statement from the Minister for Housing and Regeneration: Publication of consultation document on the draft statutory instruments to be made under the Mobile Homes (Wales) Act 2013.

#### **CLA(4)06-14 – Paper 2**

Written Statement from the Minister for Natural Resources and Food: The Deregulation Bill.

#### **CLA(4)-06-14 – Paper 3**

Written Statement from the First Minister: Response to Legislative Consent Motion vote on provisions in the Anti-social Behaviour, Crime and Policing Bill.

**CLA(4)-06-14 - Paper 4**

**CLA(4)-06-14 - Paper 4A**

**CLA(4)-06-14 - Paper 4B**

#### **4 Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

(vi) the Committee is deliberating, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

(ix) any matter relating to the internal business to the Committee, or of the Assembly, is to be discussed

#### **Consideration of final report on the Inquiry into Wales' role in the EU decision making process (Pages 9 - 35)**

**CLA(4)-06-14 - Paper 5 - Draft Report**

#### **Draft Wales Bill: Additional Briefing (Pages 36 - 41)**

**CLA(4)-06-14 - Paper 6 - Additional Briefing**

#### **Inquiry on Making Laws in the Fourth Assembly (Pages 42 - 58)**

**CLA(4)-06-14 - Paper 7 Approach to Inquiry on Making Laws in the Fourth Assembly**

**CLA(4)-06-14 - Paper 7 Annexe 1 Original Scoping Paper**

**CLA(4)-06-14 - Paper 7 Annexe 2 Terms of Reference**

**CLA(4)-06-14 - Paper 7 Annexe 3 Counsultees**

**CLA(4)-06-14 - Paper 7 Annexe 4 Consultation Questions**

**CLA(4)-06-14 - Paper 7 Annexe 5 Expert Adviser**

#### **Inquiry on Disqualification of Membership from the National Assembly for Wales (Pages 59 - 75)**

**CLA(4)-06-14 - Paper 8 Approach to Inquiry on Disqualification of Membership from the National Assembly for Wales**

**CLA(4)-06-14 - Paper 8 Annexe 1 Letter from First Minister**

**CLA(4)-06-14 - Paper 8 Annexe 2 The National Assembly for Wales (Disqualification) Order 2010**

**CLA(4)-06-14 - Paper 8 Annexe 3 Counsultees**

**CLA(4)-06-14 - Paper 8 Annexe 4 Extract from the Government of Wales Act 2006**

**CLA(4)-06-14 - Paper 8 Annexe 5 Suggested consultation questions**

#### **Forward Work Programme (Pages 76 - 78)**

**CLA(4)-06-14 - Paper 9** Forward Work Programme

**Paper to Note** (Pages 79 - 82)

Invitation to the Chair to attend a Seminar entitled '*Commissioners and Ombudsmen and the Infrastructure of Welsh Governance.*'

**CLA(4)-06-14 - Paper 10**

**CLA(4)-06-14 - Paper 10A**

# Agenda Item 2

## Constitutional and Legislative Affairs Committee

### Statutory Instruments with Clear Reports

17 February 2014

#### CLA358 – The Commons (Severance of Rights) (Wales) Order 2014

**Procedure:** Negative

Section 9 of the Commons Act 2006, prevents, subject to exceptions, the severance of a right of common from the land to which it is attached.

Article 3 of this Order permits the temporary severance of a right of common to graze animals from the land to which the right is attached by enabling the leasing or licensing of the right to a third party for no more than five years.



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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **Publication of consultation document on the draft statutory instruments to be made under the Mobile Homes (Wales) Act 2013**

**DATE**            **10<sup>th</sup> February 2014**

**BY**                **Carl Sargeant AM, Minister for Housing and Regeneration**

I would like to inform Members that a consultation document seeking views on a package of 3 draft regulations being made under the Mobile Homes (Wales) Act 2013 has been published today on the Welsh Government website.

My objective is to collate the views of those who will be using the new procedures set out in the new regulations so that they can be made as clear, effective and easy to use as possible as well as to help raise awareness about the forthcoming changes.

I am keen to hear the views of stakeholders and will consider these carefully when updating the regulations.

The consultation on these proposals will run for 12 weeks until 6 May 2014. Details of how to respond are set out in the consultation document.

<http://wales.gov.uk/consultations/housing-and-regeneration/mobile-homes/?lang=en>



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**WRITTEN STATEMENT  
BY  
THE WELSH GOVERNMENT**

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**TITLE**            **The Deregulation Bill**

**DATE**            **11 February 2014**

**BY**                **Alun Davies, Minister for Natural Resources and Food**

The Deregulation Bill was introduced in the House of Commons on 23 January 2014. The Bill was originally published in draft on 1 July 2013 for pre-legislative scrutiny.

This written statement is laid under Standing Order 30 – Notification in relation to UK Parliament Bills. This statement relates to a provision in the Bill that will modify the Welsh Ministers’ functions, but which does not require a Legislative Consent Motion under Standing Order 29.

The UK Government has stated that its policy objectives are to reduce the burden of excessive or unnecessary regulation on businesses, civil society, public bodies, the taxpayer or individuals, and thus to facilitate growth.

The Bill is wide ranging and includes a number of provisions which relate to matters which are devolved in Wales, either within the Assembly’s legislative competence or relating to Welsh Ministers’ functions. This statement is concerned with the provision in Schedule 16, Part 2, paragraph 17 of the Bill which repeals section 101A(5) of the Water Industry Act 1991.

Section 101A makes provision about the duty on sewerage undertakers to provide a public sewer for domestic sewerage purposes where the conditions prescribed by section 101A(2) are satisfied. There are properties in England and Wales that are served by private sewerage treatment systems that are not connected to a public sewer. Owners or occupiers of properties served by private sewerage treatment systems that are not connected to a public sewer, may apply to the licensed sewerage undertaker for the area where the premises is located for connection to a public sewer under the conditions prescribed by section 101A of the Act.

The undertaker must assess the situation and decide whether it believes it has a duty to provide a public sewer. In Wales, the undertaker must take into account any guidance issued by the Welsh Ministers when making any determination.

By repealing section 101A (5) of the Water Industry Act 1991, the Bill will remove the statutory requirement for the Welsh Ministers to consult the Natural Resources Body, OfWAT, (the economic regulator for the water industry); or any other appropriate bodies or persons, before issuing guidance on the provision of a public sewer under section 101A of that Act. It removes a similar requirement on the UK Government in respect of England.

The Welsh Government considers that it is appropriate for this provision to apply in Wales. The duty to consult is not required as the Welsh Government has well established policies and systems which go beyond the requirements that will be repealed in the Water Industry Act. Our policies and systems require us to engage with stakeholders, including the bodies named in the Water Industry Act 1991, when developing new policies and these are followed when developing and producing relevant guidance. This process of engagement is, in practice more extensive than that set out under section 101A(5) of the Water Industry Act 1991 to consult. This provision in the Deregulation Bill therefore removes an unnecessary legislative requirement which will not adversely affect any interested parties in Wales.

It is considered appropriate for this provision to be made by means of the Deregulation Bill, because the provision could not be made by an Assembly Act.



Llywodraeth Cymru  
Welsh Government

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## **WRITTEN STATEMENT BY THE WELSH GOVERNMENT**

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**TITLE**            **Response to Legislative Consent Motion vote on provisions in the Anti-social Behaviour, Crime and Policing Bill**

**DATE**            **11 February 2014**

**BY**                **Carwyn Jones, AM, First Minister of Wales**

On 7 October, the Home Office tabled an amendment to the Anti-social Behaviour, Crime and Policing Bill, to replace one of the current exceptions to the National Assembly for Wales' legislative competence with a new exception.

The exception in question is that for "Anti-social behaviour orders", which is listed under paragraph 12 of Schedule 7 to the Government of Wales Act 2006. The Home Office amendment, which was carried at Commons Report stage, would have the effect of replacing this with the following exception: "Orders to protect people from behaviour that causes or is likely to cause harassment, alarm or distress".

The Minister for Local Government and Government Business laid a legislative consent memorandum and motion on this issue. When this was debated on 26 November there was cross-party consensus in the Assembly that we should not consent to the UK Government's amendment of the ASBO exception.

As a consequence of the vote, the Minister for Local Government and Government Business wrote to the Home Office Minister for Crime Prevention, Norman Baker MP, to ask the UK Government to remove the relevant provision from the Anti-social Behaviour, Crime and Policing Bill. She reiterated that we would be prepared to accept an amendment which maintains the status quo, while we await the outcome of Silk Part 2, but could not accept the reduction in legislative competence which the UK Government's amendment represents.

I have written to the Secretary of State for Wales to explain our concerns about this amendment, and its effect on the National Assembly for Wales' legislative competence. He reaffirmed that the UK Government will not move from their position on this, and that they will not make a further amendment to the Bill. Therefore, the UK Government's replacement exception will take effect upon commencement of the relevant provision in the Bill. The Bill provides that the provision is to be commenced by order by the Secretary of State.

I am disappointed that the UK Government has proceeded with the replacement exception as drafted, despite the Welsh Government's objections and the cross-party consensus in the Assembly that the replacement exception should be rejected. We provided a number of examples of situations where the replacement exception could lead to a lack of clarity over the Assembly's legislative competence, and potentially have the effect of curtailing that competence. I consider that any amendment to the content of Schedule 7 to GOWA 2006, should be fully discussed and agreed with the Welsh Government and the Assembly, because of its significance for our devolution settlement.

While the UK Government has refused to make any amendment to the Bill in response to the Assembly's rejection of the LCM, the UK Government's Minister for Crime Prevention has made a written statement in the Commons and the Under Secretary of State for Criminal Information has made a written statement in the Lords to clarify what they consider to be the effect of the amendment to the ASBO exception.

The statement may help to mitigate the risk of future Assembly legislation in some devolved areas falling within the amended exception (for example, orders which have the purpose of protecting vulnerable individuals in care settings from third party behaviour causing distress). But it would be far better to have clarity about that on the face of the Bill. Furthermore, the statement does not address our concern about the potential effect of the exception on Assembly competence in other devolved areas in which we believe the Assembly can currently legislate to deal with behaviour causing harassment, alarm or distress (such as housing or the health service). I repeat that any amendments to Schedule 7 to GOWA should be agreed with the Assembly, and their effect on the Assembly's legislative competence should be clear – which is not the case here.

In the longer term, the Welsh Government's view is that there should be no "anti-social behaviour" exception at all, as explained in our evidence to the Silk Commission. If, as we have advocated, there is a move in the future to a reserved powers model of devolution for Wales, anti-social behaviour should not be included in the list of reserved matters.

**HOME OFFICE****Anti-social Behaviour, Crime and Policing Bill**

**The Minister of State for Crime Prevention (Norman Baker):** Currently Schedule 7 to the Government of Wales Act 2006 includes an exception to the National Assembly's competence in relation to 'anti-social behaviour orders'. As a result, an amendment to Schedule 7 to that Act is necessary to ensure the exception's continuing operation following the reforms made in this Bill.

In line with the devolution settlement, this amendment should have the same scope as the current exception. Criminal justice is not devolved to the Assembly but the exception is necessary to make clear that in legislating about social welfare or any other transferred subject, the Assembly does not have the competence to make provision for orders equivalent to those first created by the Crime and Disorder Act 1998. As this Bill abolishes these orders and repeals the relevant sections of the 1998 Act (amongst other things) an amendment to the exception was also necessary as a consequence. The amendment maintains the existing scope by relating only to orders that deal with the kinds of behaviour that could have been restricted under the existing regime and which we would reasonably regard as part of the criminal justice system.

In the Government's evidence to the Silk Commission in March this year, we highlighted that there was some confusion as to how the current exception should be interpreted. Since submitting that evidence, we have concluded that the exception should be interpreted narrowly, to mean the subject matter of orders under the Crime and Disorder Act 1998. The amendment is designed to reflect that conclusion.

**HOME OFFICE****Anti-social Behaviour, Crime and Policing Bill**

**Lord Taylor of Holbeach:** My hon Friend the Minister of State for Crime Prevention (Norman Baker) has today made the following Written Ministerial Statement:

Currently Schedule 7 to the Government of Wales Act 2006 includes an exception to the National Assembly's competence in relation to 'anti-social behaviour orders'. As a result, an amendment to Schedule 7 to that Act is necessary to ensure the exception's continuing operation following the reforms made in this Bill.

In line with the devolution settlement, this amendment should have the same scope as the current exception. Criminal justice is not devolved to the Assembly but the exception is necessary to make clear that in legislating about social welfare or any other transferred subject, the Assembly does not have the competence to make provision for orders equivalent to those first created by the Crime and Disorder Act 1998. As this Bill abolishes these orders and repeals the relevant sections of the 1998 Act (amongst other things) an amendment to the exception was also necessary as a consequence. The amendment maintains the existing scope by relating only to orders that deal with the kinds of behaviour that could have been restricted under the existing regime and which we would reasonably regard as part of the criminal justice system.

In the Government's evidence to the Silk Commission in March this year, we highlighted that there was some confusion as to how the current exception should be interpreted. Since submitting that evidence, we have concluded that the exception should be interpreted narrowly, to mean the subject matter of orders under the Crime and Disorder Act 1998. The amendment is designed to reflect that conclusion.

By virtue of paragraph(s) vi of Standing Order 17.42

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