



Llywodraeth Cymru
Welsh Government

WRITTEN STATEMENT BY THE WELSH GOVERNMENT

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.