



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

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, 1 of 3)

General Power of Competence

1. The primary objective is to provide principal authorities and eligible community councils in Wales with a general power of competence (GPOC). It is intended that this power should replace the current well-being power (section 2 of the Local Government Act 2000) with a broad power to enable the relevant authorities to do anything an individual generally may lawfully do, subject to limitations or restrictions under other legislative provisions that overlap with the general power.
2. The GPOC forms part of a suite of provisions which will allow relevant authorities to act in their communities' financial interests to generate efficiencies and secure value for money outcomes, and to take on financial risk. It would also enable authorities to have greater confidence in pursuing innovative policy solutions than is currently possible while relying on the well-being power. It is intended that the introduction of a GPOC will engender a culture of change, so that local authorities move away from a position under which they are required to ask whether they have a power to undertake a particular activity, to one in which it is assumed they can do something unless there is a statutory limitation or restriction preventing it.
3. The UK Government introduced a general power of competence for local authorities in England by way of section 1 of the Localism Act 2011. Sections 2 to 8 of that Act form the rest of the suite of GPOC provisions applying to England.
4. The main beneficiaries will be the area and residents of the local authorities who make use of the power.
5. The main positive effects will be a more clearly-drawn general power of competence for authorities, with a reduced risk of legal challenge on vires grounds than is currently the case. There are no negative effects.
6. Primary legislation is required to give effect to this proposal.

- 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?

Related legislation:

Sections 111 and 137, Local Government Act 1972
Section 2, Local Government Act 2000
Part 8, Local Government Act 2003

Proposed legislation:

Local Government and Elections (Wales) Bill Part 2 [j033 – j046]. The relevant provisions of this legislation will be implemented by commencement 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 impact is anticipated to be minimal – 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)

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)

Similar provisions were introduced in England by the Localism Act 2011 (section 1) and brought into force for local authorities in England on 18 February 2012.

- 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?

1. **Do Nothing** – local authorities would continue to rely on the well-being power in the Local Government Act 2000. Uncertainties over the scope of the power which have arisen from decisions of the courts would remain. This would leave use of the power by local authorities susceptible to legal challenge, but would otherwise have no impact on the justice system.
2. **Introduce a general power of competence through provisions in a Local Government and Election (Wales) Bill** - these would replace the well-being power with a broader power. There is a potential impact on the justice system if the use of the power by an authority is challenged. However, the experience from England following the introduction of the general power in the Localism Act 2011 suggests the risk of successful challenge would be lower if the GPOC replaces the well-being power.

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.

There have been a number of prominent cases where reliance on the well-being power to support engagement by a local authority in certain speculative activities has been challenged. For example, in the case of Brent London Borough Council v Risk Management Partners Ltd, the appellate courts held that the well-being power did not extend to permit authorities to participate in a mutual insurance company despite the costs savings the authorities would make. The decision in the Brent case had a chilling effect on authorities' willingness to rely on the well-being in section 2 of the Local Government Act 2000 and provided the catalyst for the UK Government to confer the GPOC on authorities in England.

In the six years since the General Power was introduced in England by the Localism Act 2011 the extent and effect of the GPOC has not been called into question in the way the well-being power was in the Brent case and the body of case law on it is relatively slight. As at the time of writing, there have been very few leading cases on the GPOC as it applies in England, none of which have called into question its clarity, extent or effect.

It is not possible accurately to anticipate the number of applications for judicial review that would be brought each year alleging that authorities have exceeded the actions that the GPOC permits. However, the breadth of the power and the experience of how the courts have interpreted the GPOC in cases involving English authorities suggests that the number of court challenges substantively relating to GPOC would be very small. Reliance on the GPOC in itself would not provide a defence if an authority's process leading up to a decision contravened public law principles so much turns on the quality of individual authority's decision-making processes.

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?

High Court (Administrative 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.

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>.

Not relevant

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.

No.

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.

The introduction of the general power could potentially lead to a decrease in cases to the High Court. As outlined above, however, it is anticipated the impact, in terms of difference to the number of challenges brought, is likely to be slight.

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

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?

Not relevant

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?

Unknown.

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)

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

Subject to satisfying strict eligibility criteria, legal aid may be available to individuals wishing to apply for judicial review of a decision to exercise the GPOC or of a failure to exercise the GPOC. Detailed information is not available, but the Welsh legal sector includes providers with expertise in public law challenges.

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

It is not possible to give an accurate estimate of the effect on the amount of legal aid costs, but it is not anticipated that enactment of the GPOC would in itself lead to a significant increase in legal aid costs, and it may lead to a decrease.

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>