



Our ref MA-L/JM/0662/19

Mick Antoniw AM
Chair
Constitutional and Legislative Affairs Committee

13 September 2019

Dear Mick,

I would like to thank the Constitutional and Legislative Affairs Committee for their consideration of the Children (Abolition of Defence of Reasonable Punishment) (Wales) Bill during Stage 1 and for the report which was published on 2 August 2019.

I have noted the committee's view that the Explanatory Memorandum accompanying the Bill should have included a fuller explanation of the assessments undertaken in relation to human rights.

Ahead of Stage 3 I have asked my officials to review the balance between what is in the Explanatory Memorandum and the impact assessments that were undertaken and published on the Welsh Government website. In doing so officials will be mindful of the letter from the former First Minister which set out the Government position that 'due to the change to reserved powers and there no longer being a need to refer to conferred subjects, the legislative competence section of Explanatory Memoranda in the future are more likely to accord with the statement in the Fees Bill (Renting Homes (Fees etc.) (Wales) Act) Explanatory Memorandum'.

In responding to the recommendations of the three committees which have scrutinised the Bill, I have tried to strike a careful balance, but there have inevitably been occasions when I have had to fall on one side rather than the other.

I have set out responses to the two recommendations made in the Committee's Stage 1 Report on the Bill below.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

1. *The Deputy Minister should work with the Crown Prosecution Service and make available to Assembly Members the revised Charging Standard Guidance and any associated guidance in draft format ahead of Stage 3 proceedings on the Bill.*

I **accept the principle** of this recommendation.

I agree with the Committee's view that I, and my officials, should continue to work with the CPS to effectively implement the Bill, however, we are unable to influence the CPS on the development or timing of their guidance.

The CPS is an independent body. Its guidance is issued by the Director of Public Prosecutions, and it is not appropriate for its guidance to be influenced by Welsh Ministers, or for the CPS to be answerable to scrutiny by a legislature in this way.

CPS guidance will always consider the intent of legislation which has been passed, and if it is called into question by the courts, then the judiciary may consider whether the CPS guidance is consistent with that intent. However, it is not for a Government or the legislature to direct or suggest to the CPS how guidance should be drafted.

During the Children, Young People and Education Committee evidence session on 6 June 2019, Barry Hughes (Chief Crown Prosecutor for Wales) was asked whether the Assembly could see draft changes to CPS guidance before making final decisions on the scrutiny of the Bill. His response was that he didn't "think that would necessarily be helpful" and could "run the risk of putting the cart before the horse".¹

2. *The Bill should be amended to require the Welsh Ministers to:*
 - *Undertake a post-implementation evaluation of the Bill, within three years of the legislation coming into force, and*
 - *Report the findings of such an evaluation to the National Assembly.*

I **accept** this recommendation

I am proposing to bring forward an amendment to bring effect to this recommendation. The Welsh Government has already committed to carrying out a post implementation review and Chapter 10 of the Explanatory Memorandum sets out the intended approach for monitoring and reviewing the effect of the legislation. In line with the recommendation of the Finance Committee we will provide further details and costing of the post implementation review in a revised Regulatory Impact Assessment at Stage 3.

The effect of the Bill will be measured in a number of ways, including through research and evaluation as well as developing routine data collection with stakeholders.

We will procure contractors to conduct attitudinal studies, periodically during the scrutiny of the Bill, its implementation phase and following commencement. These will allow us to track the changes in people's attitudes to the use of physical punishment, and in their levels of awareness of the law. As now, these reports will be published in accordance with our Welsh Government Social Research requirements.

We will work with the police, social services and the courts to agree the collection of relevant data for a period prior to implementation in order to try to establish baselines. Our intention is that data collection will continue following commencement in order to monitor the impact of the Bill. Data collection will, wherever possible, be aligned with existing activity or

¹ Paragraph 54, <http://record.assembly.wales/Committee/5520>

other relevant work. This detailed work is being taken forward through the dedicated Data Collection and Monitoring task group.

We would expect to be undertaking post implementation review of the legislation, assuming it receives Royal Assent, starting as soon as practically possible after the commencement date and continuing for a period of five years rather than the three recommended. A five year period provides for a similar timeframe to New Zealand enabling more effective trend analysis.

I note the Children, Young People and Education Committee and Constitutional and Legislative Affairs Committee have proposed recommendations relating to post implementation review.

I hope this letter is helpful in setting out responses to the Committee's Report.

I will also be writing to the Chairs of the Children, Young People and Education Committee and the Finance Committee with respect to their Stage 1 Reports, and will copy the letters to all three Committee Chairs.

I look forward to continuing to work with Members as the Bill progresses through the Assembly process.

Yours sincerely

A handwritten signature in cursive script, appearing to read 'Julie', is positioned below the text 'Yours sincerely'.

Julie Morgan AC/AM

Y Dirprwy Weinidog Iechyd a Gwasanaethau Cymdeithasol
Deputy Minister for Health and Social Services