



Ministry
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Lynne Neagle AM
Cadeirydd/Chair
Y Pwyllgor Plant, Pobl Ifanc ac Addysg/
Children, Young People and Education Committee
Cynulliad Canedlaethol Cymru/National Assembly for Wales
Caerdydd/Cardiff
CF99 1NA

14th May 2019

Dear Ms Neagle AM

Children (Abolition of Defence Of Reasonable Punishment) (Wales) Bill

Thank you for your letter of 9 April regarding the Committee's inquiry into the Children (Abolition of defence of reasonable punishment) (Wales) Bill and your call for evidence from the Ministry of Justice (MoJ).

You may be aware that the MoJ has received a Justice System Impact Identification ("JSII") form from the Welsh Government in relation to the Bill. The JSII process provides an opportunity for the Welsh Government to outline the potential impacts of proposed legislation on the justice system, and for the MoJ to respond with an assessment of those potential impacts.

Having reviewed the Committee's online consultation, we do not think that it would be helpful for us to submit information this way: given the Assembly's competence to legislate in relation to this matter, it would not be appropriate for us to comment on whether we support the Bill's general principles and we have already provided information for the latter sections of the portal via the JSII process and the direct engagement we have had with Welsh Government. I am, however, happy to respond to the questions in your letter.

I understand that the Welsh Government has provided you with the justice impact assessment for the Bill (which is also available publicly). As the assessment incorporates the JSII and our response, I would direct you towards this resource regarding the information requested via the online portal.

Q1. Do you believe there are any implications of implementing this Bill on the Ministry of Justice's work and/or workload?

The Crown Prosecution Service (CPS) does not anticipate a significant increase in workload, but has asked that the MoJ incorporate the monitoring of data following the Bill's implementation into its

workload, as that may prove useful in the future for reasons such as comparisons between the English and Welsh approaches.

Her Majesty's Courts and Tribunals Service (HMCTS) has identified three areas of expected impacts:

Regarding criminal courts, HMCTS expects a minimal impact on caseload for the Magistrates Courts, however they note potential issues around child witnesses (most magistrates' courts are not set up to accommodate the needs of child witnesses) and ensuring the legal profession is aware of the wider expected impact of the Bill on the police.

The main concern expressed by HMCTS relates to family courts. They note that there are 6,500 private law cases where separating parents cannot agree arrangements for their children and CAFCASS Cymru are involved. HMCTS have serious concerns that feuding parents may, following removal of the defence, use the change to further their cause against the other parent in a separation or divorce. Following the change, it would be easy for an allegation of smacking to be made which may lead to the involvement of the police and a concurrent criminal investigation. This would inevitably cause delays in proceedings when the family court which is already under pressure. Currently 60% of cases are resolved within 6 weeks – if a more formal investigation is needed then this may not be possible.

HMCTS also raised the issue of parental alienation (where one parent tries to turn the child against another), one parent may fabricate an episode of smacking as a reason for non-contact with the other parent and for the involvement of the police. This is a complex problem that is recognised as an issue in other countries as well as in the UK.

Q2. What discussions are you aware of with Welsh Government about this Bill?

We have discussed the proposals through direct engagement with Welsh Government policy officials and via the JSII process, which allows officials from across the MoJ to discuss specific details with counterparts in the Welsh Government. In these discussions with the Welsh Government, our primary concerns have centred around: the unintended criminalisation of parents or adults with caring responsibilities for children, and the impact that might have on family justice; the unknown effect that the policy (and publication thereof) will have on the number of cases reported, with corresponding impact on policing, the CPS and court volumes; the need for changes to be made to CPS and court procedures to account for the difference in defence; and impacts on legal aid provision and sentencing relating to the offence.

HMCTS has met the team drafting the Bill on two occasions formally: once in July 2018, and more recently in April 2019. Both meetings were to update HMCTS on the progress of the Bill and to discuss any potential unintended consequences of the Bill implementation. HMCTS has also subsequently been invited to be part of the Implementation Working Group in relation to the Bill, which they have accepted. The aim of this group is to work alongside WG officials to explore if there are any unintended consequences for HMCTS.

CPS responded to the Welsh Government consultation that ran from 9 January 2018 to 2 April 2018. The Chief Crown Prosecutor for Wales has also led subsequent discussions with the Welsh Government, the output of which is reflected in the explanatory memorandum.

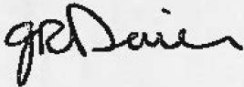
Q3. Any comments you wish to make in relation to the divergence in law that the Bill, if passed, would create.

With regard to divergence in law, the Bill achieves its effect by removing a defence to an existing offence, rather than creating a new or different offence. In terms of the impact on the justice system, as above we are considering the effect this may have on different stages of the justice system, from initial charging, through to prosecution decisions and procedure through the courts. There is likely to be an impact on volumes of prosecutions and prosecuting authorities will need to be aware of the effect of the removal of the defence and the impact on bringing prosecutions and there will be impact on courts in Wales both in terms of volume and procedure.

HMCTS noted that The Judicial College will need to be aware of the difference in England and Wales. If tourists from England are charged with an offence they would likely appoint a lawyer in England from their local area. Therefore, it is important that solicitors operating in England are also made aware of the law changing in Wales. They suggested the Solicitors Regulation Authority is one way of raising awareness among solicitors about the divergence between England and Wales.

This is a matter on which the MoJ, CPS and the police will need to continue to work closely with the Welsh Government to ensure that it is delivered effectively in Wales.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Gerald Davies', written in a cursive style.

Gerald Davies

09 Ebrill 2019

Annwyl Mr Davies,

Bil Plant (Diddymu Amddiffyniad Cosb Resymol) (Cymru)

Mae'r [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) yn cynnal ymchwiliad i egwyddorion cyffredinol [Bil Plant \(Diddymu Amddiffyniad Cosb Resymol\) \(Cymru\)](#) ('y Bil'). Mae rhagor o wybodaeth am y Bil a gwaith y Pwyllgor arno ar gael fel Atodiad i'r llythyr hwn.

Galwad am dystiolaeth ysgrifenedig

O ystyried perthnasedd y Bil hwn i waith y Weinyddiaeth Gyfiawnder, mae'r Pwyllgor yn awyddus i glywed gennych. Byddai'r Pwyllgor yn ddiolchgar o gael dau beth:

1. Ymateb i'w ymgynghoriad ar-lein

Mae'r Pwyllgor wedi cyhoeddi galwad agored am dystiolaeth a byddai'n croesawu ymateb gan y Weinyddiaeth Gyfiawnder. O gofio faint o wybodaeth a ddisgwylir, a'r amserlen a bennwyd inni gyflwyno adroddiad, dyma ofyn i chi ddefnyddio **porth ar-lein** i gyflwyno gwybodaeth bob tro. Bydd gwneud hyn yn ein helpu i sicrhau y caiff barn pawb ystyriaeth ddigonol. Os oes gennych unrhyw gwestiynau am y porth, cysylltwch â Chlerc y Pwyllgor: SeneddPPIA@cynulliad.cymru.

2. Ymateb i'r cwestiynau penodol isod (naill ai fel rhan o'ch ymateb i'r ymgynghoriad ar-lein neu mewn gohebiaeth ar wahân, pa un bynnag sydd hawsaf i chi)

Er mwyn llywio ei ystyriaeth o'r Bil, byddai'r Pwyllgor yn croesawu ymateb i'r cwestiynau canlynol:

- A ydych chi'n credu bod unrhyw oblygiadau o ran gweithredu'r Bil hwn ar waith a/neu lwyth gwaith y Weinyddiaeth Gyfiawnder?
- Pa drafodaethau yr ydych chi'n ymwybodol ohonynt gyda Llywodraeth Cymru ynghylch y Bil hwn?
- Unrhyw sylwadau yr hoffech eu gwneud ynghylch y gwahaniaeth yn y gyfraith a fyddai'n cael ei greu gan y Bil pe byddai'n cael ei basio

Mae'r Pwyllgor yn gofyn a fyddai modd i'r wybodaeth hon gael ei chyflwyno erbyn **dydd Mawrth 14 Mai** fan bellaf.



Polisi dwyieithrwydd

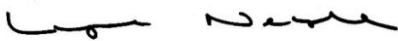
Mae gan Gynulliad Cenedlaethol Cymru ddwy iaith swyddogol, sef Cymraeg a Saesneg. Yn unol â **Chynllun Ieithoedd Swyddogol y Cynulliad**, mae'r Pwyllgor yn gofyn i ddogfennau neu ymatebion ysgrifenedig i ymgynghoriadau y bwriedir eu cyhoeddi neu eu defnyddio yn nhrefodion y Cynulliad Cenedlaethol gael eu cyflwyno yn ddwyieithog. Pan na chaiff dogfennau neu ymatebion ysgrifenedig eu cyflwyno yn ddwyieithog, byddwn yn cyhoeddi yn yr iaith a gyflwynwyd, gan ddweud eu bod wedi dod i law yn yr iaith honno'n unig.

Rydym yn disgwyl i sefydliadau eraill weithredu eu safonau neu eu cynlluniau eu hunain a chydymffurfio â'u rhwymedigaethau statudol.

Datgelu gwybodaeth

Mae rhagor o fanylion am sut y byddwn yn defnyddio eich gwybodaeth yn www.cynulliadcymru.org/cy/help/privacy/help-inquiry-privacy.htm. Dylech sicrhau eich bod wedi ystyried y manylion hyn yn ofalus cyn cyflwyno gwybodaeth i'r Pwyllgor.

Yn gywir,



Lynne Neagle AC

Cadeirydd



Bil Plant (Diddymu Amddiffyniad Cosb Resymol) (Cymru)

Diben y Bil yw diddymu'r amddiffyniad y cosb resymol o dan y gyfraith gyffredin, fel na fydd yr amddiffyniad i ymosod ar blentyn neu ei guro bellach ar gael yng Nghymru i rieni nac i'r rheini sy'n gweithredu in loco parentis.

Ar hyn o bryd, mae'r amddiffyniad yn berthnasol i gyfraith trosedd a chyfraith sifil. O dan gyfraith trosedd, mae'n berthnasol o ran troseddau ymosod a churo yn y gyfraith gyffredin; ac o dan y gyfraith sifil, mae'n berthnasol o ran camwedd tresmasu yn erbyn y person.

Bwriad y Bil yw helpu i amddiffyn hawliau plant gan wahardd defnyddio cosb gorfforol, drwy ddileu'r amddiffyniad hwn. Bwriad effaith y Bil, ynghyd ag ymgyrch i godi ymwybyddiaeth a chefnogi rhieni, yw lleihau ymhellach ar yr arfer o gosbi plant yn gorfforol yng Nghymru ac ar y graddau y caiff yr arfer ei oddef.

Mae [Crynodeb o'r Bil](#) ar gael.

Gwaith y Pwyllgor

Mae'r [Pwyllgor Plant, Pobl Ifanc ac Addysg](#) yn un o bwyllgorau trawsbleidiol Cynulliad Cenedlaethol Cymru sy'n cynnwys wyth Aelod Cynulliad. Mae'r Pwyllgor yn gyfrifol am graffu ar bolisi, deddfwriaeth a chyllid Llywodraeth Cymru yng nghyd-destun plant, pobl ifanc ac addysg yng Nghymru.

Rhwng mis Mawrth a mis Gorffennaf 2019, bydd y Pwyllgor yn craffu ar egwyddorion cyffredinol y [Bil Plant \(Diddymu Amddiffyniad Cosb Resymol\) \(Cymru\)](#). Gallwch ddarllen rhagor am y [ffordd y mae'r Cynulliad yn craffu ar ddeddfwriaeth](#) ar y wefan.

Hoffai'r Aelodau glywed barn sefydliadau ac unigolion am y Bil i helpu i lywio'r adroddiad y bydd y Pwyllgor yn ei lunio, yn enwedig mewn perthynas â'r cylch gorchwyl canlynol:

- egwyddorion cyffredinol y Bil Plant (Diddymu Amddiffyniad Cosb Resymol) (Cymru) ac a oes angen deddfwriaeth er mwyn cyflawni'r amcanion polisi a nodwyd yn y Bil;
- unrhyw rwystrau posibl rhag rhoi'r darpariaethau hyn ar waith ac a yw'r Bil yn eu hystyried;
- a oes unrhyw ganlyniadau anfwriadol yn deillio o'r Bil;
- goblygiadau ariannol y Bil (fel y nodir yn Rhan 2 o'r Memorandwm Esboniadol);
- priodoldeb y pŵer yn y Bil i Weinidogion Cymru wneud is-ddeddfwriaeth (fel y nodir yn Rhan 1: Pennod 5 o'r Memorandwm Esboniadol).

