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Llywodraeth Cymru
Welsh Government

Welsh Government
Consultation – summary of responses

The Welsh Government Prosecution Code

January 2018

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

This document provides a summary of the responses received by the Welsh Government to the consultation on *The Welsh Government Prosecution Code*

Audience

Legislators, legal professionals, the judiciary, public sector bodies, interest groups, the voluntary sector, and individuals with an interest in the prosecution functions of the Welsh Government.

Action Required

For information only

Further Information

Enquires about this document should be directed to:

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Additional Copies

This document can be accessed from the Welsh Government website at:

<http://gov.wales/legislation/justice/welsh-government-prosecution-code/?lang=en>

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Introduction

Proposals

1. On 24 May 2017 *The Welsh Government Prosecution Code* was published¹ for public consultation on the Welsh Government website. The consultation period lasted 12 weeks and closed on 16 August 2017.
2. The consultation sought views on the proposed *Welsh Government Prosecution Code* (“the Code”). The Code is intended to give guidance to Prosecutors on the principles to be applied when making decisions about Welsh Government prosecutions.

Consultation responses

3. The Welsh Government consultation document received 102 views to the English language version, and 2 views to the Welsh language version. Respondents were able to submit their views and comments on paper or online, in either Welsh or English.
4. A total of six written responses were received from stakeholders. Reflecting the subject matter of the consultation, responses were received predominantly from those with an interest in prosecutions and the operation of the criminal justice system.
5. A summary of the responses to each question is provided below. A list of respondents to the consultation is provided at Annex A. The individual consultation responses are available on the Welsh Government website.
6. We are grateful to everyone who responded to the consultation. The responses represent an invaluable source of views, information and ideas which have informed the final edition of the Code.

Analysis of responses

7. A number of respondents provided comments only on particular sections of interest, whilst others provided comment on the Code as a whole.

Overall position

8. In the main all of the responses received were supportive of the proposal for a Welsh Government Prosecution Code issued by the Counsel General.

Responses to the questions

Question 1: Are the roles of the Counsel General and the Welsh Ministers in relation to Welsh Government prosecutions explained clearly enough?

9. Most respondents agreed that the role of the Counsel General and the Welsh Ministers in relation to Welsh Government prosecutions was explained clearly. One response suggested that further clarity would be welcome as to the applicability of the Code in relation to private prosecutors.

Question 2: Is the sufficient evidence stage of the Prosecution Test explained clearly enough?

10. The majority of respondents considered that the Prosecution Test was explained clearly. One respondent commented that there may be merit in adding that the evidential test in the Code is different from the one that the criminal courts apply.

Question 3: Is the public interest stage of the Prosecution Test explained clearly enough?

11. Of the respondents that commented, all confirmed that the public interest stage of the Prosecution Test was clearly explained. However, one respondent noted that there was no reference in this part of the Code to culpability or the physical or mental health of suspects, but also noted that the factors listed were not intended to be exhaustive.

Question 4: Are the public interest factors explained clearly enough?

12. There was a broad consensus that the public interest factor element had been explained clearly within the Code. The recognition of the 'General Prosecution

Principles' was also welcomed, as was the fact that prosecutors should have due regard to the requirements of the United Nations Convention on the Rights of the Child.

13. Additional comments received included:
 - a. One respondent was of the view that the draft Code did not provide sufficient guidance on how primary caring responsibilities should be taken into account when applying the public interest factors, most notably the in the section dealing with 'circumstances of the suspect'.
 - b. A second respondent also queried whether the list of factors that should be considered when deciding the public interest (at paragraph 18 of the Draft Code) would adequately meet the aim of the Code, given the range of prosecution functions the Welsh Government has.
 - c. Another respondent suggested there may be merit in adding that it is possible that one public interest factor alone could outweigh a number of factors which tend in the opposite direction.

Question 5: Is the relationship between the Code and the Code for Crown Prosecutors explained clearly enough?

14. The majority of respondents were of the view that the relationship between the Code and the Code for Crown Prosecutors was explained clearly. However it was also highlighted that the explanation might not be clearly understood by all (particularly non-lawyers) and there could be merit in producing an explanation that is easier to understand.

Question 6: Is there any section of the Code that you think should be expanded, and, if so, what do you think should be included?

15. A variety of views were expressed in response to this question, including:
 - a. one respondent who stated they welcomed the discretion granted to prosecutors when applying the 'prosecution test' with the recognition that in appropriate cases *"the public interest can be properly served by offering the offender the opportunity to have the matter dealt with by way of Simple Caution rather than bringing a prosecution"*;
 - b. another respondent sought expansion on the text in relation to venue for trial so as to further explain the distinct nature (and features) of the youth court,

as well as seeking inclusion of text noting young people should not be tried at the Crown Court where this can be avoided.

Question 7: We would like to know your views on the effects that the Code would have on the Welsh language, in particular in respect of:

- i. opportunities for people to use Welsh, and***
- ii. on treating the Welsh language no less favourably than English.***

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question 8: Please also explain how you believe the proposed Code could be formulated or changed so as to have:

- i. positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language, and***
- ii. no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.***

16. One respondent considered it was difficult to anticipate any positive impact in terms of providing opportunities for the use of Welsh as the Code does not provide any guidance about the use of the Welsh language.

17. They also suggested that the Code could make clear that prosecutions could be taken forward using the Welsh language.

Question 9: We have asked a number of specific questions. If you have views on any related issues that we have not specifically addressed, please set them out here:

18. One respondent commented on the use of “must” and “should” in the Code.

Annex A – List of respondents

Name of respondent	Name of organisation
-	Constitutional and Legislative Affairs Committee
-	The Crown Prosecution Service
Kay Powell	The Law Society, Wales
Claire Lawson	RSPCA Cymru
Darren Trollope	Youth Justice Board
Thomas Guiney	Prison Reform Trust