



Llywodraeth Cymru
Welsh Government

Justice System Impact Identification

Form

Overview

Welsh Government officials are submitting this form

- **For assessment by the Ministry of Justice**
(Delete the statement which does not apply)

The Welsh Government's assessment of the impacts of this legislation on the justice system is that it has no or negligible potential impact (in this case complete the JSII form only up to and including question 4.5)

This is because:

Undue influence offence

The re-drafting of the undue influence offence introduced by the Elections and Elected Bodies (Wales) Bill (EEBB) in respect of local election in Wales replicates that included in the Elections Act 2022 (The 2022 Act) in respect of reserved elections.

The changes to the undue influence offence mirror exactly those brought forward by the UK Government through the 2022 Act. The supporting documentation for the 2022 Act estimated the redrafting would have a low impact on the justice system with between 81%-86% of allegations across the UK leading to no further action for reserved elections, with only one court case initiated in the last 8 years.

The impact for devolved elections, which are the focus of this JSII, is considerably lower with data collected by the Electoral Commission ("EC") recording no cases of undue influence pursued since 2013 for those elections that are now devolved to Welsh Government leading to the conclusion that replicating the language of the 2022 Act for devolved elections will have no or negligible impact on the justice system.

Incurring controlled expenditure in contravention of section 89B Political Parties, Elections and Referendums Act 2000 ("PPERA")

A new offence will be introduced through the EEBB as a part of new provisions which will regulate how third parties may incur controlled expenditure during a regulated period for standalone Senedd elections. These provisions and the offence will mirror those introduced to PPERA by the 2022 Act in respect of the regulated period for elections to the House of Commons or the Northern Ireland Assembly (new section 89A).

An offence will be committed when third parties who are not registered with the EC in accordance with section 88(2) of PPERA incur controlled expenditure over £700 during a regulated period of a standalone Senedd election (as defined by paragraph 6 of Schedule 10 to PPERA). The same penalties are to apply for any breach as apply for a breach of the equivalent provision in section 89A of PPERA, (on summary conviction in England and Wales: fine. on indictment: fine.). Existing offences concerned with incurring third-party expenditure when it is prohibited (e.g. spending more than the registration thresholds without being registered) can be resolved by either civil or criminal means. In practice, the EC would generally resolve such offences themselves.

Although this is a new offence, as a proxy for estimating the impact on the justice system, consideration has been given to third-party spending offences committed in recent years in Wales as well as evidence presented as part of the supporting documentation for the 2022 Act. The 2022 Act documentation concludes the impact of the third party changes on the justice system is expected to be low, as no relevant cases have had criminal proceedings. Overseas enforcement of rules against foreign spending is already required in respect of the existing third-party campaigner registration thresholds. As with undue influence there have been no prosecuted third party spending offences in Wales or allegations raised since 2013. For these reasons and that the impact of both provisions is assessed to be no or negligible impact, the JSII has been completed up to section 4.5 only.



1. Bill Title

Elections and Elected Bodies (Wales) Bill

1.1.

Working title of Bill

2. Policy lead contact details

2.1. Name / Job Title

2.2. Department / office /
business area

2.3. Telephone number

2.4. Email address

2.5. a) Date of submission of
this form

2.6. b) When is a response
required?

3. Additional contact details

3.1. Legal Contact

3.2. Telephone number

3.3. Email address

4. General information

- 4.1. Please provide a) contact details of your lead official for the appraisal of costs or savings and;
b) the Justice Policy lead if known.

- 4.2. Have you notified the judicial office of your proposals by completing Desk Instruction 7? (please seek advice from your legal advisors)

Yes

Yes

- 4.3. In brief, what is your proposal? (no more than half a page) *(This information is provided to help MoJ officials to understand the intent of the proposed change in order to be able to comment as fully as possible on its potential impacts).*

Undue influence offence

The undue influence electoral offence is one of the classic electoral offences and is committed where an individual seeks to apply pressure to force an elector to not vote or vote in a way they would not have done if pressure had not been applied.

The offence already exists in legislation in the Representation of the People Act 1983 (section 115 for devolved elections and section 114 A for reserved elections) and at Article 81 of the National Assembly for Wales (Representation of the People) Order 2007. The offence exists as part of a suite of measures which seek to act as a deterrent to those who would do harm to democratic processes.

The current legislation describing the offence is outdated and lacks the clarity needed to prosecute incidents of undue influence. As a result, the current legislation does not provide adequate protection for electors. This was one of the conclusions of Commissioner Mawrey's 2015 judgment in Erlam & Ors vs.

The main beneficiaries of the updated legislation will be electors and police and prosecutors who are required to consider whether undue influence has been committed. The clarified language of the redrafted offence will provide disincentives to those who would seek to apply undue pressure to an elector. The intent is that the offence will be more straightforward to prosecute should cases be brought forward. However, we do not anticipate larger numbers of prosecutions as evidence collected by the Electoral Commission since 2013 suggest potentially no offences of undue influence have been prosecuted (see below for figures).

Of four possible accusations at local and Senedd elections in total since 2013 at Senedd and local elections in Wales no further action was taken in three cases and data is unavailable on one case i.e no cases prosecuted since 2013. As set out for the impact assessment for the UK Election Act 2022, there is no data to indicate how many additional prosecutions there will be as we do not know how many allegations / election petitions would have led to further action, had the law been clearer at the time. Any estimates of short, medium and long term impacts based on the current limited data would not be robust. This is in line with the assessment included in the UK Elections Act 2022.

Incurring controlled expenditure in contravention of section 89B of PPERA

Section 26 of the 2022 Act inserted a new section into 89A into PPERA that prevents a third party who is not able to register as a recognised third party under section 88 of PPERA, or which is not an unincorporated association with the requisite UK connection, from incurring controlled expenditure (including notional controlled expenditure) of over £700 during a regulated period of a UK Parliamentary election and an election to the Northern Ireland Assembly. The Bill will insert another new section into PPERA (section 89B) which will largely replicate this restriction in relation to regulated periods of standalone Senedd elections and will apply the same penalties for any breach. In relation to standalone Senedd elections, only third parties who are registered with the EC under section 88 PPERA will be able to incur controlled expenditure during the relevant regulated period.

Convictions for electoral fraud across the UK is low and is particularly low in Wales. Both offences in the main will work with the suite of electoral offences to act as a deterrent to those who would commit offences. Success will be determined by the Police and Returning Officers reporting increased confidence in applying the clarified legislation in operational situations. Prosecutors would report increased confidence in prosecuting offenders.

However, although increased confidence would be considered success, we do not anticipate these changes to result in many more cases being brought as there are very few electoral offences committed in devolved elections generally, and no cases of undue influence or third party spending offences pursued in Wales since 2013.

4.4. Please indicate when you will be undertaking a post-implementation review of this legislation and the enforcement actions arising from it?

The legislation will be implemented in time for the Senedd elections in May 2026 and the next ordinary local elections in 2027. The Electoral Commission work with the Single Point of Contact Officers from the four police authorities in Wales to record numbers of cases after each election. This information will be compared to previous years elections to determine any increase in cases.

4.5. Is this legislative proposal similar in any way to legislation being brought forward in England? If so, please name that legislation and identify below any ways in which the legislation brought forward in Wales will differ.

If the legislation has no substantive difference from that in England, there may be no need to complete all parts of the JSII form.

Undue influence

The 2022 Act inserts a new section 114A into the Representation of the People Act 1983 (via part 1, schedules 5 and 8). The new section 114A includes clarified language for the undue influence offence for reserved elections. This is being replicated for devolved elections so that there is not divergence in the definition of the offence.

Incurring controlled expenditure in contravention of section 89A of PPERA

Section 26 of the 2022 Act inserted a new section into PPERA (section 89A) that prevents a third party who is not able to register as a recognised third party under section 88 of PPERA, or which is not an unincorporated association with the requisite UK connection, from incurring controlled expenditure (including notional controlled expenditure) of over £700 during a regulated period of a UK Parliamentary election or an election to the Northern Ireland Assembly. This is being largely replicated for the regulated periods of standalone Senedd elections.

4.6. Please specify the name of any other related legislation. How do you expect the relevant provisions of this (new) legislation to be enacted?

N/A

4.7. 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.

N/A

4.8. 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)

N/A

4.9. 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)

N/A

4.10. 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?

N/A

4.11. What are the options under consideration and how does this change the existing situation?

N/A

4.12. If you are creating a new civil sanction or penalty which court or tribunal, in your opinion, should deal with it?

N/A

Criminal Offences and Civil Penalties and Sanctions

4.13. 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)

N/A

4.14. 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)

In cases where the maximum penalty is to be an unlimited fine, and a triable either way offence is warranted, please explain why a summary only offence is not considered appropriate. This is especially relevant if few, if any, cases are anticipated.

N/A

4.15. Who will be responsible for the enforcement of your legislative proposal and how will they take this role forward? Will there be an increased / reduced need for enforcement action? Please also include the anticipated costs of enforcement and how it will be funded.

N/A

4.16. What is the anticipated number of cases per year? Please provide details of any evidence of assumptions on which estimates are based.

N/A

4.17. Do you expect proceedings to be heard in the Magistrates' Court, the Crown Court, or a Civil Court? What will the proportions be?

N/A

4.18. 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.

N/A

4.19. Please itemise details of any proxy or current offences and / or penalties on which the proposed penalties are based. If mirroring / comparing existing legislation, ensure that reference is made to the most recent versions of the legislation (via Westlaw, the online legal research service) as this is not always available online. Please refer to page 8 of the JSII guidance on how to obtain data relating to the number of cases brought forward under the legislation you have identified.

Legislation / Section	Offence	Number of cases

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4.20. 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>.

N/A

4.21. 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?

N/A

4.22. 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.

N/A

5. HM Courts & Tribunals Service and the Welsh Tribunals Service

Estimating the change to caseload of the Courts and Tribunals Service (including devolved tribunals)

5.1. 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.

N/A

5.2. 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)

N/A

Appeal Rights

5.3. 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)?

N/A

5.4. Do you expect to establish a new tribunal jurisdiction? If so, has this been discussed with the Welsh Tribunals Unit / Ministry of Justice?

N/A

Alternative Dispute Resolution

5.5. To what extent could the use of alternative dispute resolution (ADR) procedures (including mediation) be appropriate? How will success in ADR be measured?

N/A

Prosecution and Enforcement

5.6. 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.

N/A

5.7. Will the proposal require enforcement mechanisms for civil debts, civil sanctions or criminal penalties? If yes, who do you expect to enforce these?

N/A

HMCTS Procedural Rules, Sentencing and Penalty Guidelines

5.8. 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?

N/A

5.9. Will the proposals require sentencing and / or penalty guidelines to be amended?

N/A

6. Legal Aid and Court Fees

6.1. What evidence is there that individuals affected by your proposal will be able to secure and 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?

N/A

6.2. 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)

N/A

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

N/A

7. Prisons and Offender Management Services

Impact on HM Prison Services

7.1. 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.

N/A

7.2. 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.

N/A



8. Main Justice System Impacts Identified

8.1. Volumes (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. **Please see above – no impact.**

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.)	Additional Information
Criminal Offences and Sanctions			
Civil Penalties			
HM Courts & Tribunals Services			
Welsh Tribunals			
Legal Aid			

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.)	Additional Information

8.2. Prisons and Offender Management Services (lengthen if necessary, only complete if maximum penalty is something other than a fine): Please see above – no impact.

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
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.