

Thank you for the opportunity to input views from the SD alliance on the draft Order to amend section 79, GOW Act. Due to the shortness of the response time, we have not had time to fully consult and agree these points with the full membership of the Alliance. These views represent the views of members who were able to respond within this time frame.

COMMENTS ON THE ORDER

1. Section 79 can be seen as a vestige of very limited and largely executive devolution in Wales, where defining the powers and duties of the Welsh executive (whether it be the Assembly in GOWA 1998 or the Welsh Ministers under GOWA 2006 pre-2011 referendum) was considered to be the proper job of the UK Parliament, and not that of the National Assembly.
2. With the continuation of the devolution process, we are now considering the draft of an Order in Council to amend GOWA 2006, so as to bring section 79 of GOWA within the Assembly's competence.
3. Section 79 of GOWA contains the sustainable development duty which applies to Welsh Ministers, i.e. to have a Sustainable Development Scheme (but no duty to implement it). This is a historically significant duty, appreciated widely as a cornerstone of Wales duty on Sustainable Development.
4. The Wellbeing of Future Generations Bill creates a more complex set of obligations and processes which apply to Welsh Ministers and also to public bodies and which give rise to the more extensive duties.
5. How section 79 sits alongside the Bill has been an open question. The Bill does not contain any reference to section 79 GOWA.
6. The Explanatory Memorandum that came with the draft Order in Council (para 19) says that "the amendment to section 79 of the 2006 Act will ensure alignment and consistency between the two pieces of legislation and provide clarity in the statute book."
7. So it is clear that there is an intention to align the two pieces of legislation, but unfortunately it is not clear how this is to be done. There is no draft amendment or amendments to section 79 (which it is stated will be tabled to the WFG Bill) on which we or the committee can comment.
8. This is a very wide enabling power. The instrument as drafted gives carte blanche to the Ministers and could result in a much weaker form of words than exists currently.
9. It does not contain any constraints on the changes which could be made. It does not for instance provide that the section 79 duty can only be strengthened and not diluted. So in future the Assembly or Welsh Ministers could (if this Order were made) repeal section 79 entirely.
10. From one perspective, Section 79 can be seen as a "safety net" – it is the minimum that Welsh Ministers must do in relation to Sustainable Development (SD), and

therefore it may be appropriate to ensure that they cannot promote legislation in the Assembly to remove or weaken that safety net.

11. It would not be appropriate to pass such an open ended order without seeing draft amendments which the Minister intends to table.
12. A potential outcome of amending section 79 is that the provisions of the FG Bill replace the duty to have an SD scheme. Therefore, the existing SD scheme, One Wales One Planet (OWOP), would cease to function.
13. OWOP has gained widespread and cross party support for its ground breaking approach to SD, reflecting ten years experience of developing SD schemes.
14. Specifically we are concerned to ensure the following key elements of OWOP are not lost as a result of this Order.
 - 1) The comprehensive definition of sustainable development, which incorporates the key concepts of 'living within environmental limits, using a fair share of the Earth's resources' and is set in a specifically Welsh context.
 - 2) The comprehensive explanation of internationally recognised SD principles
 - 3) The clear structure of long term visions (goals), key outcomes and measurable and time-bound aims, such as 'reducing greenhouse gas emissions by 3% a year by 2011....'
 - 4) Independent review of the effectiveness of the Scheme.

Recommendations

We consider that a number of issues in the Order and Explanatory Memorandum should be clarified in order to ensure that the current protections afforded by section 79, GOWA are not weakened or put at risk.

15. Request the Minister lays draft amendments before the committee, prior to the committee passing the Order.
16. The Order should provide that the section 79 duty can only be strengthened and not diluted.
17. Due to the high constitutional significance of this clause, we recommend that the Committee seek to ensure that, in future, section 79 should only be amended by primary legislation, with the full scrutiny of the Assembly.
18. The key elements of OWOP, outlined in paragraph 14, should be incorporated into the FG Bill.
19. The Bill must be absolutely clear that in respect of Welsh Government, the objectives and annual reports (clauses 9 and 13) replace the provisions of section 79 GOWA, in regard to the SD Scheme and the Programme for Government.

20. If it is the intention that the Future Generations report replaces the independent effectiveness review, then the powers and the duties of the Commissioner should be reviewed to ensure this is achieved.

12.11.14

For further information, please contact either of the authors of this response.

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