

## **The Government of Wales Act 2006 (Amendment) Order 2015 – Report by the Environment and Sustainability Committee**

### **Background**

The Government of Wales Act 2006 (Amendment) Order 2015 was laid before the Assembly by the Minister for Natural Resources (the Minister) on 5 November. The proposed Order, if approved by the Assembly, would confer competence on the Assembly to amend section 79 of the Government of Wales Act (GOWA) (Sustainable Development). The Explanatory Memorandum accompanying the proposed Order says that the Welsh Government would hope to bring forward such an amendment to section 79 during the course of the Well-being of Future Generations (Wales) Bill (the Bill).

The proposed Order was referred to the Environment and Sustainability Committee by the Business Committee for consideration.

The Minister subsequently provided a proposed draft amendment setting out how the Welsh Ministers intend to amend section 79 of GOWA.

### **Evidence from stakeholders**

Due to time restrictions, we were unable to take oral evidence from stakeholders, however the Sustainable Development (SD) Alliance and the Commissioner for Sustainable Futures were given an opportunity to respond to the proposed Order in writing.

The Commissioner provided views on the proposed Order only and stated:

“I would fully endorse the importance of this Order in order to enable the proper functioning of the Well-being of Future Generations Bill and to avoid duplication of processes between the new legislation and the existing duties under section 79.”

The SD Alliance provided views on both the proposed Order and draft amendment. It raised the following key points:

- The Order should provide that the section 79 duty can only be strengthened and not diluted;
- 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;

- The key elements of OWOP [One Wales, One Planet].....should be incorporated into the FG Bill;
- The Bill must be absolutely clear that in respect of the Welsh Government, the objectives and annual reports replace the provisions of section 79 of GOWA, in regard to the SD Scheme and Programme for Government;
- 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.

It concluded that:

“The draft amendment allows the Government to fulfil its duty for sustainable development by delivering less than required under the current Government of Wales Act. We do not think the amendments as stated, particularly sub-section 3, will be sufficient to replace the important provisions of the current scheme.”

### **Evidence from the Minister**

We took evidence from the Minister on 27 November.

In response to questioning on the timing of laying the proposed Order, the Minister told us that the Welsh Government had stated its intention to amend section 79 of GOWA in the White Paper on the Sustainable Development Bill published in December 2012. He said that while the intention had not changed, he did not raise the issue with the Committee during previous evidence sessions as part of the Stage 1 scrutiny of the Bill as it would have been premature to do so prior to obtaining consent from the UK Government.

The Minister told us that it was necessary to amend section 79 of GOWA in order to align its provisions with those of the Bill so as to avoid confusion. He said he believed that the draft amendment he had presented improved the SD duty on the Welsh Ministers as, although the existing provision includes an obligation to have an SD scheme, it doesn't specify its content, whereas the Bill would include a duty to produce well-being objectives.

The Minister also said that he believed there to be broad support among environmental stakeholders for conferring SD competence on the Assembly and for the draft amendment.

### **Our view**

Although we support the principle of conferring power on the Assembly to amend GOWA in relation to SD, we are concerned by the process followed by the Welsh Government to obtain the necessary consent on this occasion. Whilst the Minister may not have been able to lay the proposed Order until he had concluded discussions with UK Government, given the role of Parliament in the process, there was no barrier to him being clear about his intentions at the point at which he introduced of the Bill.

This would have allowed us to consider this important issue during our Stage 1 scrutiny of the Well-being of Future Generations Bill and for stakeholders to offer their views.

We are disappointed that the Minister laid this proposed Order at such a late stage of our scrutiny of the Bill. A consequence of this is that the duties and arrangements that apply to all public bodies have been subject to a higher level of scrutiny than those that apply only to the Welsh Ministers. We note the Minister's comment in relation to being unable to discuss his intention to lay the proposed Order with us prior to obtaining consent from the UK Government. However we are unclear as to why this would be the case since, as the Minister said, the Welsh Government was able to make its intention known in the White Paper of 2012. However, the fact that the White Paper consulted on a possible provision of this nature cannot be considered a reasonable level of notice that an order to amend the GOWA was to be brought forward after the introduction of the Bill.

We believe that sufficient scrutiny is essential when amending such a significant piece of legislation and that the process should include time for stakeholder engagement. We are disappointed that due to time constraints and other legislative pressures we have been unable to allocate as much time to considering the proposed Order as we believe to be necessary. We do not believe that this is satisfactory.

We note the Minister's comments in relation to aligning the provisions of GOWA with those of the Bill, although we would be concerned if this led to a weaker SD duty being placed on the Welsh Ministers. Our report on the Bill highlighted that it should be strengthened in many areas to be effective. We believe that the Minister should take on board our recommendations in that report, particularly in relation to defining SD and ensuring the broader issues included in One Wales One Planet are reflected in the definition, to ensure that any new duties on the Welsh Ministers are enhanced rather than reduced. The need to reflect One Wales One Planet in the Bill's SD definition is particularly important since the draft amendment published by the Minister removes the duty to have an SD scheme.

Whilst we support the principle of conferring this power on the Assembly, we do not believe the approach adopted by the Welsh Government to be good practice. We would be very concerned should this set a precedent for any future amendments to GOWA to be announced in such a way.

We will consider whether further time can now be allocated to the scrutiny of the Minister's intended use of the powers to be conferred by this Order.

**Recommendation: We recommend that the Welsh Government should make it clear in the amendment it intends to table to the Bill, that any further changes to section 79 of GOWA should only be made through primary legislation to ensure that sufficient scrutiny is included in the process.**