

Brian Gibbons AC/AM
Y Gweinidog dros Gyfiawnder Cymdeithasol a Llywodraeth
Leol
Minister for Social Justice and Local Government



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

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Ein cyf/Our ref LF/BG/0034/08

Dr Dai Lloyd AM,
Chair,
Subordinate Legislation
Committee,
National Assembly for Wales,
Cardiff Bay.

18 November 2008

Dear Dai

Many thanks for your letter. I am happy to accept your invitation and I believe my office has already been in contact to confirm that I will attend the meeting of the Subordinate Legislation Committee on 25 November, 2008.

In preparation for the meeting you have asked for a paper which set out the provisions within the Measure to make Subordinate Legislation. Chapter 5 of the Explanatory Memorandum produced to support the proposed Local Government (Wales) Measure provides this information in detail.

This chapter (attached at the Annex) provides details of each provision to make subordinate legislation within the Measure. In each case, such powers allow the Welsh Ministers to make minor amendments to the details of the Measure to cover matters or developments which are not known at this stage. By doing so this avoids the need to bring forward an amending Measure to deal with issues such as administrative deadlines.

I hope this will be of assistance to the Committee Members and I look forward to seeing you on the 25 November, 2008.

Yours sincerely

Brian Gibbons AM/AC

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8522
Correspondence: Brian.Gibbons@Wales.gsi.gov.uk

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Power to make subordinate legislation

1. This chapter provides details of each provision to make subordinate legislation within the Measure. In each case, such powers allow the Welsh Ministers to make minor amendments to the details of the Measure to cover matters or developments which are not known at this stage. This avoids the need to bring forward an amending Measure to deal with issues such as administrative deadlines.

Local Government Improvement

Section 7 - General Improvement Duty

2. A Welsh improvement authority must make arrangements to secure continuous improvement in the exercise of its functions. In discharging its duty, an authority must have regard in particular to the need to improve the exercise of its function in terms of:
 - a) strategic delivery
 - b) service quality
 - c) fairness
 - d) sustainability
 - e) efficiency; and
 - f) innovation
3. The above set of categories seeks to be comprehensive but given the breadth of authority services and their longer-term impact we cannot rule out the possibility that it might need to change. Therefore it is the desire that the Welsh Ministers should have an Order making power to add to, amend or remove elements of the above improvement objective or add or remove objectives.
4. As the exercise of such a power could fundamentally reshape or expand the strategic focus of authorities, we believe that such an order should be subject to the **affirmative procedure**.

Section 8 - Performance indicators and standards

5. Welsh Ministers are provided with a power to prescribe by order factors of performance (performance indicators) against which a Welsh improvement authority's performance will be measured. In addition Welsh Ministers may set performance standards in respect of the performance standards set by them. The Measure also gives Welsh Ministers by order the discretion to specify different performance indicators and standards for different authorities or types of authorities. Such an order would be concerned only with the detailed definitions of performance indicators and standards. These necessarily change over time to reflect wider changes in law, policy and professional practice relating to local government services. Accordingly, these powers should be subject to the **negative procedure** (as is currently the case with the equivalent powers of the Welsh Ministers in s4 of the Local Government Act 1999, which the Measure would repeal and replace).

Section 15 - Improvement planning and publication of improvement information

6. One aim for the Measure is that the proposals relating to service improvement should be broader and more reactive to the circumstances of each particular relevant authority than the 1999 Act.

7. It is intended to replace the concept of best value performance plan (section 6 of the 1999 Act) with an Improvement Plan.
8. Authorities are under an obligation to prepare and publish specified information by specified dates. The Welsh Ministers would like the power to amend these dates. That Order should be subject to the **negative procedure** as such an order would merely alter an administrative deadline; it could not alter the overall effect of section 15. It might also be necessary to make an order rapidly to with exceptional circumstances which prevented a local authority from issuing a report on time.

Section 16 - Meaning of “relevant regulators” and “relevant functions”

9. The Measure makes several provisions about the audit, regulation and inspection of local authorities, and about the roles of the various bodies which carry out such work. In particular, it includes provisions requiring them to co-ordinate their activities in each local authority and to assist the Auditor General for Wales in reaching overall conclusions about how far a local authority has improved and might continue to do so.
10. The regulatory and inspection bodies covered by these provisions are:
 - the Auditor General for Wales;
 - an auditor appointed by him under section 13 of the Public Audit (Wales) Act 2004;
 - Her Majesty’s Inspectorate of Education and Training in Wales or Prif Arolygydd Ei Mawrhydi dros Addysg a Hyfforddiant yng Nghymru – ie Estyn;
 - the Care and Social Services Inspectorate for Wales or, any person authorised to carry out the functions of the Welsh Ministers under Chapter 6 of Part 2 of the Health and Social Care (Community Health and Standards) Act 2003;
 - Bwrdd yr Iaith Gymraeg or the Welsh Language Board;
 - a fire inspector, assistant inspector or any other officer appointed under section 28 of the Fire and Rescue Services Act 2004; and
 - any other body which has a responsibility for auditing, regulating or inspecting relevant authorities and/or the services they provide at which the Welsh Ministers specify by Order. The configuration of such bodies changes from time to time – for instance, the Benefit Fraud Inspectorate was abolished in April 2008 – and it would be necessary to deal with the consequences of any such changes. Additionally, the Assembly Government may also wish to consider extending the coverage of this section to include existing bodies not currently listed, although we have no plans to do so at this stage. Such an order would make textual amendments to the Measure and would confer duties directly on named audit, regulatory or inspection bodies. Accordingly, orders under this provision should be subject to the **affirmative procedure**.

Section 20 - Audit and Assessment Reports

11. It is intended that auditors should no longer be responsible for undertaking any audit other than the audit of the relevant authority’s accounts under section 13 of the Public Audit (Wales) Act 2004.
12. It is desired that the Auditor General for Wales should be responsible for auditing each relevant authority to check whether it has complied with the provisions of the Measure relating to the publication of specified information and any associated guidance. This audit must happen annually.

13. The Auditor General for Wales should prepare a report on the basis of his/her audit.
14. It is the intention that the Auditor General for Wales' report should be submitted by 31 November after the financial year to which the plan relates ends (or such other date as the Welsh Ministers specify by Order) to the relevant authority and the Welsh Ministers if he recommends support or intervention. Such an order would merely change an administrative deadline: it could not alter the overall effect of section 20. It might also be necessary to make an order rapidly to deal with exceptional circumstances which prevented the Auditor General from issuing a report on time. Accordingly, such an order should be subject to the **negative procedure**.

Sections 32 - 33 - Powers of Welsh Ministers to modify enactments and confer new powers

15. The Measure also provides Welsh Ministers with a power (by order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities. The Welsh Ministers may do so only if they are satisfied that such an enactment prevents or obstructs a Welsh improvement authority from complying with the provisions of Part 1 of the Measure.
16. The Welsh Ministers also have a power to confer upon a Welsh improvement authority any additional power they consider necessary in order to facilitate compliance with Part 1 of the Measure.
17. The law covering local government and its services is very extensive and these powers are necessary to deal with any unforeseen obstructions and impediments to authorities' overriding improvement duties as set out in Part 1. Accordingly, the powers in ss32-33 are wide-ranging and could allow the amendment of Measures and Acts by Order. Orders under these provisions should thus be subject to the **super-affirmative procedure** as described in s33. This reflects the position with the similar powers of the Welsh Ministers in ss17A-B of the Local Government Act 1999 (which the Measure would repeal and replace).

Community Planning

Section 38 - Bodies which should be subject to the duty to participate

18. To address the inconsistency and weakness of local co-operation in community planning the Measure imposes a duty on relevant public bodies to participate in community planning.
19. The Measure applies to the following bodies in each local authority area:
 - a) Local authorities;
 - b) Fire and rescue authorities;
 - c) Police authorities;
 - d) Chief constable of police
 - e) National Park authorities, where relevant;
 - f) Town and community councils;
 - g) Local health boards; and
 - h) NHS Trusts (which are specified in relation to the authority's area by direction of the Welsh Ministers)

20. The Welsh Ministers also have a power to amend or add to the list of bodies by order. As such an order would create a significant new duty on a public body who has functions of a public nature, it should be subject to the **affirmative procedure**. Where additions are made to the list, an order could only be made following consultation with the body concerned, and with the local authority or authorities which would co-operate with it.

Section 51 - Consequential etc amendment and transitional and saving provision

21. The Welsh Ministers are given a power by order to amend, repeal, revoke enactments for the purpose of making consequential amendments to give full effect to any provision made by the Measure. This aims to deal with any unknown loopholes and obstacles to the implementation of the Measure. As is normal practice for powers of this nature, such an order should be subject to the **negative procedure** unless it amends an Act or a Measure, in which case the **affirmative procedure** must be used.

Section 53 - Commencement

22. Section 53 contains a power for the Welsh Ministers to make an order to commence provisions of the Measure. Such an order may specify different days for different purposes, but could not make any other provision. As is normal practice for commencement orders, **no procedure** will apply to such orders.

Section 51 and section 53 relate to Part 1 and 2 of the Measure