

Carl Sargeant AC / AM
Y Gweinidog Cyfoeth Naturiol
Minister for Natural Resources



Llywodraeth Cymru
Welsh Government

Dame Rosemary Butler AM
Chair of Business Committee

14 November 2014

Dear 

On 5 November I laid an Order under section 109 of the Government of Wales Act 2006 ("GoWA") which, if approved by the National Assembly and by Parliament, would grant legislative competence to the Assembly to legislate to modify section 79 of GoWA – sustainable development.

My intention, should the Order be made in time, is to bring forward such a modification to GoWA through an amendment to the Well-being of Future Generations (Wales) Bill, ("the Bill"). A shorter period of Committee scrutiny would help ensure that the Order can be made in time to bring forward the amendment to the Bill at the earliest possible time, in Stage 3 of scrutiny.

I also wrote to the Environment and Sustainability Committee, and to the Constitutional and Legislative Affairs Committee (as the two Committees which I have appeared before on the Bill) to draw their attention to the laying of the section 109 Order and to express my willingness to appear again for scrutiny on the Order.

I understand that Business Committee has requested further information about the Government's intentions in relation to amending section 79 of GoWA and considers the provision of a draft amendment would be particularly beneficial in this instance.

The section 109 Order confers legislative competence on the Assembly to make legislation which amends the duty (in section 79 of GoWA) of Welsh Ministers in respect of sustainable development. I would like to emphasise therefore that the merits of the Order, and the merits of the amendment I intend to bring forward in the Well-being of Future Generations (Wales) Bill – which will be subject to separate scrutiny as part of the Bill process – are separate matters. The section 109 Order will confer competence; the Well-being of Future Generations (Wales) Bill will be the first opportunity for the National Assembly for Wales to make use of that competence.

In reflecting the legal context, any revision to section 79 must take account of the new sustainable development duties on Welsh Ministers set out in the Bill, but retain the critical role that promoting sustainable development should have as part of our constitution. To

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illustrate the wider framework of sustainable development duties for Wales, I have set out in Annex A what is required of the current provisions in section 79 of GoWA and the comparative provisions in the Bill and the proposed revision to section 79, which I also include as an annex to this letter.

Should the section 109 Order be made law, but the Bill is not passed by the Assembly, then the proposed amendment to GoWA would fall away with the Bill, although the Assembly would retain legislative competence over section 79 and could pass other legislation making modification to the duty Welsh Ministers are under in respect of sustainable development.

In presenting the draft amendment to you at the annex to this letter, I must of course emphasise that it may be subject to minor changes when the drafting is finalised before it is formally tabled at Stage 3.

I am copying this letter to the members of Business Committee. If you are content, I am happy for this letter and draft amendment to be shared with committees scrutinising the section 109 Order.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Carl Sargeant', written over a horizontal line.

Carl Sargeant AC / AM

Y Gweinidog Cyfoeth Naturiol

Minister for Natural Resources

C.C. Paul Davies AM; Jane Hutt AM; Elin Jones AM; Aled Roberts AM; David Melding AM

Annex A – Proposed draft provision amending GoWA section 79

This provision would be brought forward as a Government amendment to the Well-being of Future Generations (Wales) Bill as soon as possible, at Stage 3 of scrutiny.

X Promotion of sustainable development

For section 79 of the Government of Wales Act 2006 (sustainable development) substitute—

“79 Sustainable development

- (1) The Welsh Ministers must, in the exercise of their functions, make appropriate arrangements to promote sustainable development.
- (2) After each financial year the Welsh Ministers must publish a report containing a statement of the arrangements made in pursuance of subsection (1) that had effect during that financial year and must lay a copy of the report before the Assembly.
- (3) The arrangements referred to in subsection (1) may be made by the Welsh Ministers exercising their functions under section 8(1) of the Well-being of Future Generations (Wales) Act 2014 (duty of Welsh public bodies to set objectives and take steps to meet them in accordance with the sustainable development principle).”.

Annex B : Comparison of duties in respect of sustainable development

| GoWA 2006 s79 | WFG Bill | Draft Revised s79 GoWA |
|-----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------|
| Make a scheme to promote SD (s.79(1)) | <p>Set well-being objectives which are designed to contribute to the well-being goals (s7).</p> <p>Apply the sustainable development principle in setting and achieving sustainable development (s8).</p> | Make appropriate arrangements to promote sustainable development |
| Comparison | WFG is more prescriptive as to what the Welsh Ministers should do and moves beyond a 'promote' duty and separate scheme, to well-being objectives that are the core principles of Welsh Ministers plans. | |
| Keep the SD scheme under review and may remake or revise | Make a statement including how the Welsh Ministers propose to keep the duty under review (s8 (3)). | No requirements. |
| Comparison | Rather than keeping the scheme under review, the Bill focuses on reviewing how the Welsh Ministers propose to fulfil the duty. | |
| Publish a report on how scheme proposals have been implemented in the year | Publish a report on the progress it has made in meeting its well-being objectives, including the application of the sustainable development principle (s13). | Report on the arrangements made in that financial year |
| Comparison | A reporting mechanism has been retained. | |
| Following an election publish a report containing an assessment of effectiveness | No requirements. | No requirements. |
| Comparison | Whilst there is no specific requirement for an assessment of effectiveness by the Welsh Ministers, the Future Generations Commissioner is separately under a duty to publish a regular Future Generations | |

Report (s.21 of the Bill). As the scope of the new sustainable development duty covers identified public bodies in comparison to s79 GoWA it is therefore an assessment of the improvements which public bodies should make in applying the sustainable development principle.