

SOR 12

## Business Committee

### Response to the Review of Standing Orders

#### Welsh Local Government Association



Date/Dyddiad: 23 July 2010  
Please ask for/Gofynnwch am: Steve Thomas  
Direct line/Llinell uniongyrchol: 029 2046 8610  
Email/Ebost: steve.thomas@wlga.gov.uk

Lord Dafydd Elis-Thomas AM  
Presiding Officer  
Chair of the Business Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

Dear Dafydd,

### Assembly Review of Standing Orders

The WLGA welcomes the opportunity to contribute to the National Assembly's Review of Standing Orders. As you will be aware, I regularly meet with Claire Clancy and Adrian Crompton to discuss ongoing administrative and business issues between the Assembly and the WLGA.

Despite some distinct differences, there is much in common between local authorities and the National Assembly, particularly processes around business administration, member development and committee support. We therefore have an opportunity to share experience, expertise and best practice and I am therefore pleased at the joint work we are both sponsoring around the planned Scrutiny Conference in the Autumn, led by the Bevan Foundation and Voices for Change, which will consider scrutiny at all tiers of government in Wales and the UK. I am sure we can build on this in terms of sharing best practice and expertise, and I intend to explore this further at my next meeting with Claire and Adrian.

As a regular attendee of Assembly Committee meetings, rather than specifically consider the Assembly's Standing Orders, the accompanying submission offers views on some of the key themes in your consultation around the Assembly's business

Steve Thomas  
Chief Executive  
Prif Weithredwr

Welsh Local Government  
Association  
Local Government House  
Drake Walk  
CARDIFF CF10 4LG  
Tel: 029 2046 8600  
Fax: 029 2046 8601

Cymdeithas Llywodraeth  
Leol Cymru  
Tŷ Llywodraeth Leol  
Rhodfa Drake  
CAERDYDD CF10 4LG  
Ffôn: 029 2046 8600  
Ffacs: 029 2046 8601

[www.wlga.gov.uk](http://www.wlga.gov.uk)

processes, in particular where we could work together more effectively around:

- holding the government to account; and
- making laws.

I look forward to continuing our positive relationship with members and officials of the National Assembly and would welcome your continued constructive support to build on and share the expertise and experience established during the past decade across local government and the National Assembly.

Should you have any further queries, or would like to discuss any of the enclosed in more detail, please do not hesitate in contacting me.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Steve Thomas', written in a cursive style.

**Steve Thomas**

Chief Executive / Prif Weithredwr

# WLGA Response – July 2010



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## Assembly Review of Standing Orders

1. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales. The three national park authorities, the three fire and rescue authorities and four police authorities are associate members.
2. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

## Introduction

3. The WLGA welcomes the opportunity to contribute to the National Assembly's Review of Standing Orders.
4. Much comment has been made in recent years about the Assembly's finite capacity to manage increasing expectation and workload particularly around the expanding legislative process. Clearly, this capacity challenge is also one faced by stakeholders, particularly representative bodies such as the WLGA. A recent internal audit revealed that the WLGA had given evidence on nearly 50 occasions during an 18 month period. Whilst the WLGA recognises its position as a key stakeholder in the Assembly's business, this review provides a welcome opportunity to consider how committees in particular could more effectively engage with partner organisations during the Assembly's Third Term. This wider 'capacity challenge' for external stakeholders was highlighted as a common issue, particularly for third sector bodies, at the recent consultation event 'The Assembly's ways of working' at the Pierhead on 2<sup>nd</sup> July.
5. There is much in common between local government and the National Assembly around business administration, member development and committee support, in particular around the scrutiny function. There is an opportunity therefore to more effectively share experience, expertise and best practice. A positive example of this is the joint work around a planned Scrutiny Conference in the Autumn, led by the Bevan Foundation and Voices for Change, which will consider scrutiny at all tiers of government in Wales and the UK.
6. Whilst there is commonality, there is also inevitable difference. It is interesting to note that the recently published Proposed Local Government (Wales) Measure outlines a number of planned new duties and powers on local government which exceed those placed on the Assembly itself, such as: expectations around member development; a duty to produce scrutiny

forward work programmes; a duty on scrutiny committees to consult the public; and powers to appoint scrutiny co-optees with voting rights.

7. Rather than specifically focus on the Assembly's Standing Orders, the following outlines views on some of the Assembly's business processes in relation to two key themes in the Assembly's consultation:
  - holding the government to account; and
  - making laws.

## **Holding the government to account**

### **Notice regarding Requests for Evidence**

8. Relations with Committee Chairs and Clerks are typically constructive and positive and are facilitated through informal dialogue around the business process. A recent excellent example of this has been the approach of the Legislation Committee dealing with the Proposed Local Government (Wales) Measure, where early discussions allowed planning of timetables for evidence sessions, evidence deadlines and advice on relevant consultees and expert witnesses.
9. The WLGA however is occasionally called to give evidence at short-notice, which is a particular challenge when trying to negotiate the diaries of Leaders and senior council officials. This is exacerbated when factoring in travel from across Wales although we welcome the fact that the Assembly has previously supported video-conferencing at some committee sessions. The preparation of written evidence often requires significant officer time and consultation with authorities. The expectations placed on stakeholders should therefore be a key consideration of committees when planning inquiries and requesting evidence. Whilst we are not proposing a similar timeframe for committee business, it should be noted that the Assembly Government's statutory Local Government Partnership Scheme outlines a consultation period of 12 weeks with local government.

### **Forward work programming**

10. There does not appear to be a consistent approach to forward work planning across Assembly scrutiny committees and forward work programmes are not widely available. Forward work programmes would help focus committees' business, and also improve accessibility and transparency as the public and external organisations would be aware of forthcoming business and any potential opportunities or expectations on them around the submission of evidence.
11. The draft Local Government (Wales) Measure proposes a new duty on local authorities to produce scrutiny forward work programmes, and a number of local authorities' scrutiny committees already produce them, for example Wrexham County Borough Council's is available online at -

## **Scrutiny Inquiries**

12. Informal engagement with expert advisors or external organisations would help the selection of and focus of Committee Inquiries. Given limitations on time and capacity of all involved in the democratic process, this would ensure that committee activity was targeted at the most appropriate areas. It is not always clear how some inquiries are selected (given Standing Order 10.37 (ix) allows committees to resolve to exclude the public from matters of internal business to the committee or Assembly).
13. Whilst there is some scope to informally advise Chairs or Committees of key issues which may be a relevant subject of an Inquiry, it may be appropriate to consider formalising a process whereby Chairs invite proposals for or consult on potential topics of inquiry. These could also be informed by the increased use of External Expert Advisors.

## **Involvement of Witnesses and External Expert Advisors**

14. WLGA and local authority members and officials generally have extensive first-hand experience of scrutiny, either in local authorities or through the National Assembly. It was however highlighted by delegates at the Assembly's consultation event on 2<sup>nd</sup> July that many witnesses had limited experience of scrutiny, were not always provided with adequate guidance and that they often felt that they were the subject of scrutiny themselves rather than supporting the committees' work. It may be appropriate therefore to produce scrutiny guidance for the public or specifically for scrutiny witnesses which could be distributed prior to attendance at meetings. Many local authorities produce such guidance and some examples are attached for information.
15. The WLGA has long advocated the Assembly's use of informal or formal External Expert Advisors and is pleased that Assembly Committees are seeking to recruit Advisors through its website. The WLGA will continue to offer its officers and professional advisors from local authorities, where appropriate and practicable, as a source of expert advice to the Assembly's committees.

## **Making Laws**

16. The WLGA recently submitted evidence to the Welsh Affairs Committee's Inquiry into 'Wales and Whitehall' which included comments on the Welsh legislative process generally, this evidence is attached for information.
17. In addition, we would add that the amount of time and resources dedicated to the consideration of some Legislative Competence Orders can occasionally be disproportionate to the scope of the matters under consideration. Pre-

legislative scrutiny also occasionally strays from the principle of the legislative competence to focus on the potential future policy and resource implications of any subsequent legislation.

18. Perhaps of more significance is the apparently limited scope for scrutiny of framework powers included in Westminster legislation. Evidence suggests that the number of new executive or legislative powers conferred through Acts of Parliament is on a par with those originating through LCOs or Measures, which currently receive far more attention through the Assembly's scrutiny processes.
19. The WLGA notes the conclusions of the Welsh Affairs Committee's 'Wales and Whitehall' Inquiry: "We are concerned that framework powers are not scrutinised to the same degree as proposed Legislative Competence Orders, either within Parliament or the National Assembly for Wales...the National Assembly for Wales should have the opportunity to make observations on any proposal to legislate at Westminster in relation to devolved matters"<sup>1</sup>.
20. The Wales Governance Centre's evidence to the Inquiry highlights the challenges faced by the Assembly's Constitutional Affairs Committee, concluding "...it does not seem that for various reasons the Assembly is able to play any fundamental role in influencing the contents of Bills which either give the Assembly legislative powers to make Measures or give executive powers to Welsh Ministers including some extensive powers to make Subordinate Legislation"<sup>2</sup>. This is a matter that the Business Committee may seek to consider as part of the Standing Orders Review and in the context of the Assembly's ongoing relationship with Parliament.

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<sup>1</sup> P54, Para 166 – Welsh Affairs Committee, 'Wales and Whitehall' - Eleventh Report of Session 2009–10 [House of Commons, March 2010]

<sup>2</sup> P222 - Wales Governance Centre Evidence in Welsh Affairs Committee, 'Wales and Whitehall' - Eleventh Report of Session 2009–10 [House of Commons, March 2010]

# Wales and Whitehall

9 February 2010



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## INTRODUCTION

21. The Welsh Local Government Association (WLGA) represents the 22 local authorities in Wales, and the three national park authorities, the three fire and rescue authorities, and four police authorities are associate members.
22. It seeks to provide representation to local authorities within an emerging policy framework that satisfies the key priorities of our members and delivers a broad range of services that add value to Welsh Local Government and the communities they serve.

## WRITTEN EVIDENCE TO THE WELSH AFFAIRS COMMITTEE

23. It should be noted that much of the Welsh Local Government Association/Local Authorities' focus in Wales is on the interface with Assembly Government, rather than UK Government officials (except in non-devolved areas as specified below). Therefore, the Association is not regularly exposed to some of the issues highlighted in the Committee's key questions, such as relations between civil servants or protocols. The following evidence is specific therefore, to those issues which are of interest to local government in Wales:

- The increasing volume of Welsh law at primary and secondary level has an impact upon local government and indeed the public and private sector in Wales as the development of a Welsh jurisdiction. Even before the Government of Wales Act 2006 the increasing divergence of subordinate legislation was making it difficult to identify the law in Wales as it applied to specific issues. The anticipated growth in Assembly Measures will only add to this problem. There is an increasing need to ensure that all legislation and the common law flowing from it is easily accessible. This requirement is not only from a national level but also in the form of traditional legal texts.
- In relation to the first issue, professional legal training for local government lawyers associated with the new legislation risks being makeshift and ad hoc.
- The timing consuming process of the introduction of legislation pertaining to Wales impacts on the Welsh Assembly Government's ability to react to the particular needs of local government in Wales.
- Community Safety and Policing and the delivery of national strategies alongside devolved budgets can lead to confusion.
- Asylum and Immigration Policy and difficulties emerging when operating in a non-devolved policy area, that nonetheless depends on devolved areas of responsibility for delivery.

1. *The increasing volume of Welsh law at primary and secondary level has an impact upon local government and indeed the public and private sector in Wales as the development of a Welsh jurisdiction. Even before the Government of Wales Act 2006 the increasing divergence of subordinate legislation was making it difficult to identify the law in Wales as it applied to specific issues. The anticipated growth in Assembly Measures will only add to this problem. There is an increasing need to ensure that all legislation and the*



*common law flowing from it is easily accessible. This requirement is not only from a national level but also in the form of traditional legal texts.*

- 1.1 Those with responsibilities for advising on law relating to public policy in Wales have traditionally used commercially supplied encyclopaedias / electronic reference material as a means of identifying the relevant legislation. Since 1999 these suppliers have increasingly focused on cataloguing the law as it relates to England and no longer attempt to provide comprehensive references regarding Wales. From the suppliers perspective the scale of the Welsh market does not justify the resource now required to reference all legislation applying only to Wales.
  - 1.2 As a result in Wales the process of preparing legal advice now requires complex and time consuming searches of the Welsh Assembly Government web-site in an attempt to identify what legislation actually exists, even before its impact can be assessed. This is time consuming. It duplicates efforts in different public service organisations. There is the potential for error in that there is no means of ensuring that all the relevant legislation has been identified.
  - 1.3 Any economies of scale associated with publishing a single Welsh encyclopaedia are lost to publishers (eg. Butterworth's/ Sweet and Maxwell). Linked to this, the jurisdiction of both English and Welsh law in Wales, requires lawyers and policy makers in Wales to have an understanding of and access to the law of England and Wales.
  - 1.4 An initial response in this regard, has been developed by Cardiff University: Welsh Legislation on line <http://www.wales-legislation.org.uk/> supported by the NAFW and WAG. However, while this is going in the right direction, the facility is **not** widely known and it does not deal with the common law, nor is there legal text support as found in published reference material.
  - 1.5 As the volume and complexity of Welsh legislation increases, so the case grows for some active intervention on the part of the Welsh Assembly Government or the National Assembly for Wales to facilitate the creation of a single comprehensive reference of legislation impacting on Wales. This case is supported by the findings of the Justice Select Committee, "We recognise that the process of enhancing the legislative competence of the National Assembly for Wales with the consent of Whitehall and Westminster is seen by some commentators as complex. It is a new process..." [para.146, Justice Committee, Devolution a Decade On, May 2009].
2. *In relation to the first issue, professional legal training for local government lawyers associated with the new legislation risks being makeshift and ad hoc.*
  - 2.1 Historically, continuous professional development has been sourced and delivered by reference to subject area rather than jurisdiction. As the amount of Welsh secondary legislation grows following devolution, so the relevance of much available training to Welsh local government lawyers diminishes due to the lack of relevance and reliance of trainers on English law. Local Authorities are responding to this matter by running bespoke courses among themselves and identifying relevant "experts."
  - 2.2 There is potential for a more organised and streamlined approach to this issue, one which could be of benefit to other public sector partners, including health or education. Equally recognition of the issues affecting the development of 'Welsh Law' and support for course providers in understanding those issues would benefit the legal profession in England and Wales.

3. *The timing consuming process of the introduction of legislation pertaining to Wales impacts on the Welsh Assembly Government's ability to react to the particular needs of local government in Wales.*
- 3.1 The impact of the time required and the reliance on Whitehall to progress LCO's is too early to measure but has the potential to impact on local government in Wales. There is no great demand in local government for ever more legislation. Nevertheless should there be a need for a timely legislative response to a change circumstance there is a concern that existing procedures may prove inflexible.
4. *Community Safety and Policing*
- 4.1 Community Safety Policy and Policing Policy in Wales is an area which does suffer to a fairly considerable degree from devolution. This is largely due to a lack of sufficient recognition by Whitehall departments of the devolved context in Wales. When the Home Office or Ministry of Justice develop policies that are purely of a non-devolved nature, such as changes to police powers, there isn't always an issue. The problems arise when the Home Office or Ministry of Justice develop policies in conjunction with other Whitehall departments, such as the department for Communities and Local Government, which have little or no remit in Wales. When this occurs, there often have not been the same discussions and joint working with the Welsh Assembly Government which can result in policies or strategies not being applicable in Wales. This can cause significant confusion for Community Safety Partnerships as they are uncertain to what extent strategies apply and whether funding streams attached to new policies or initiatives are available in Wales.
- 4.2 There are many examples of Strategies being developed in this way at the national level e.g. the National Community Safety Plan (this only applies to Wales where it refers to the Police); the Youth Crime Action Plan; and the RESPECT agenda.
5. *Asylum and Immigration Policy*
- 5.1 Some difficulties can occur when dealing with a non-devolved policy area that nonetheless depends on devolved areas of responsibility for delivery. An example of this would be the development of policy relating to asylum seekers and immigration or migration. Often, policies are developed at Whitehall but will require the active involvement of local authorities in its implementation. The recent consultation document from the United Kingdom Borders Agency (UKBA and part of the Home Office) on 'Earned Citizenship' proposes an increased role for local authorities in an enhanced 'check and send' service, verification of active citizenship and a co-ordination role in providing simple advice and sign posting. However, it is unclear as to whether there were previous discussions with the Assembly Government on the proposed role of local authorities and whether the approach being taken is in line with wider social policy in Wales.
- 5.2 Also, while communication from UKBA has improved significantly over recent years and discussions on initial policy ideas can be discussed with the LGA, there is little or no recognition that there is also a need for similar discussions with the WLGA, for example, the development of the strategy 'Enforcing the Rules'.

**For further information please contact:**

Sara Harvey, Regional Coordinator South West Wales

[Sara.Harvey@wlga.gov.uk](mailto:Sara.Harvey@wlga.gov.uk)

Welsh Local Government Association

Local Government House

Drake walk

Cardiff

CF10 4LG

Tel: 07787 578 873