

Cardiff Third Sector Council

Your local county voluntary council

11. Campaigning and influencing

11.6 Making Legislation



Overview

This information sheet will explain how legislation is made in Wales and how the sector can influence this.

Introduction

In March 2011 the citizens of Wales voted in a referendum to change the way that legislation is made in Wales.

We used to have a very complicated system which meant that in order to make laws in Wales, the National Assembly first had to obtain permission from the UK Parliament in the form of a Legislative Competence Order (LCO). Once the Assembly had secured legislative competence, it could then go on to make Welsh laws that were known as Measures.

This system has now changed. The Assembly no longer have to go through the LCO process because all the necessary permissions are now in place. But remember, laws can only be made in the 20 devolved areas that the Assembly has jurisdiction over. The Assembly cannot make laws over things such as defence, immigration or taxation that the UK Parliament retains jurisdiction over.

The precise detail of the areas in which the Assembly can now make laws can be found in Schedule 7 of the Government of Wales Act 2006. This explains what is covered in the 20 devolved policy areas and sets out whether there are any exceptions within each area. Schedule 7 is the place to start looking if you are thinking about developing legislative proposals to suggest to the Assembly.

Nor will Welsh laws continue to be called Measures. From now on proposed laws will be called Bills and enacted laws will be called Acts. But any Measures made since 2007 will continue to be called Assembly Measure and will continue to have the same legal effect.

Who can introduce legislation?

The process for making legislation now means that a Bill must first be introduced into the Assembly. A Bill is a draft law and once it has been considered and passed by the Assembly and given Royal Assent by the Monarch, it becomes an Act of the Assembly

A Bill can be introduced by:

- The Welsh Government (most Bills will be introduced by Government Ministers)
- Assembly Committees
- An Assembly member who wins a private members ballot – AMs can put their name forward for the ballot along with an outline proposal of what they would like to introduce.
- The Assembly Commission - but only relating to its own functions. A separate Information Sheet on the Assembly Commission is available.

What is the legislative approval process?

The following process is for considering a Government Bill in the Assembly:

Stage 1

This involves the consideration of the general principles of a Bill by a Committee, followed by the agreement of the general principles by the Assembly. The Committee will focus on the main purpose of the Bill, rather than looking at the fine detail as this will happen at a later stage of the process. The Committee may invite representations from interested parties and may open a consultation period to invite oral and written evidence to inform its work.

Once the Committee has reported, the Assembly will be asked to debate and agree the general principles, by a vote in Plenary. If the Assembly does not agree the general principles at Stage 1 and the vote is lost, then the Bill will not progress any further.

Stage 2

Once the Assembly has agreed to the general principles, the Committee will then consider the Bill in detail including voting to accept or reject individual amendments put forward by Assembly Members. Any Assembly Member may table amendments to the Bill and there is no limit to the number of amendments that can be tabled. However, only the Committee Members can vote on the amendments. This stage can only be finished when all amendments have been considered and voted on.

Stage 3

This follows the completion of Stage 2 and involves the detailed consideration of the Bill by the Assembly in Plenary and amendments made by Assembly Members. Any Member may table amendments to the Bill, but this time not all amendments have to be considered. The Presiding Officer decides which amendments are considered at Stage 3 and they are each voted on.

Stage 3a

There is an optional, additional amending stage, called the Report stage, which can take place between stages 3 and 4, if proposed by the Member in Charge and agreed by the Assembly.

Stage 4

This is the final Assembly stage and it entails a final vote in Plenary to pass the final text of the Bill. No amendments are allowed at this stage and if the Assembly does not agree at this stage then the Bill fails

Stage 5

If passed by the Assembly at Stage 4, a Bill must receive Royal Assent from the monarch before formally becoming a piece of law – an Act of the Assembly.

Other Bills

Bills can also be introduced by Assembly Committees, individual Assembly Members of the Assembly Commission and will generally follow a similar procedure to that set out above.

Opportunities to influence legislation

There are opportunities for the sector to influence Assembly Bills both pro-actively and reactively.

The Welsh Government and Assembly Members need to hear from the sector, with its wealth of front-line experience and expertise, on what legislation is needed. The evidence base that the sector can bring forward can be extremely powerful in lobbying for change.

Lobbying the Welsh Government and Assembly Members could influence the legislative programme that the Welsh Government commits to each year, or influence the Bills that could be brought forward by Assembly Committees or Members who win the ballot. Likewise, using the public Petitions route might be another way of generating interest in legislation around a specific issue that might then be taken forward by a Committee or AM.

The Members' Research Service (MRS), which is a service available to all Assembly Members is also a useful body to be in contact with. They provide background and research reports as requested by AMs and Committees and by providing reports and information to the MRS, the sector can potentially get its messages across.

In terms of influencing Bills, there are opportunities to contribute to pre-legislative consultation and to continue to lobby for amendments in stages 2 and 3 of the process, although stage 3 is more limited because not all tabled amendments are selected for consideration. There is also sometimes a consultation stage even before the Bill is laid before the Assembly for general consideration. The Welsh Government or an Assembly Member may undertake a consultation exercise before starting the official legislation process in order to ensure that any Bill they do propose has already been scrutinised and amended by key stakeholders thus increasing its chances of successful passage through the official process.

Subordinate Legislation

Acts of the Assembly are primary legislation, as are Acts of the UK Parliament. Subordinate legislation is an umbrella term for laws made under the authority of an Act. Subordinate legislation is also known as secondary or delegated legislation or statutory instruments.

In passing an Act, the Assembly approves its principles, general objectives and important points of detail. However, the Act will usually give Welsh Ministers, or some other body, subordinate legislation powers to make detailed rules and regulations or compel action relating to how the main law is implemented.

How is subordinate legislation made?

Although, it can be made by a number of bodies, including local authorities and other statutory bodies, most subordinate legislation of concern to the Assembly will be made by Welsh Ministers.

There are three main categories of subordinate legislation depending on the procedure used for scrutinising and approving it. These are known as:

- No Procedure – usually published, but requiring only approval by Ministers (or their officials).
- Negative Resolution – published, but, within 40 days, the Assembly can agree to annul (cancel) the legislation if a Member tables a motion requesting it.
- Affirmative Resolution – published in draft and requiring the whole Assembly to approve it before it can come into force

Occasionally, for particularly important or contentious legislation, a so-called **super affirmative** procedure is used. This is the affirmative procedure but with additional requirements for a period of consultation before legislation can be put before the Assembly for approval.

How is subordinate legislation scrutinised?

The Assembly's Standing Orders ensure that an Assembly Committee is allowed up to 20 days to report to the Assembly on any issues raised by subordinate legislation.

Affirmative resolution subordinate legislation is always debated and must be approved by the whole Assembly before it can come into force. Negative resolution subordinate comes into force automatically unless an Assembly Member requests that it is debated by the Assembly (by tabling a motion asking that the legislation is annulled).

Further information

Wales Council for Voluntary Action

Tel: 0800 2888 329

www.wcva.org.uk

National Assembly for Wales

www.assemblywales.org

For further information on the Measures currently being considered by the Assembly see: www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures.htm

Disclaimer

The information provided in this sheet is intended for guidance only. It is not a substitute for professional advice and we cannot accept any responsibility for loss occasioned as a result of any person acting or refraining from acting upon it.

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