

Wales Council for Voluntary Action

Supporting charities, volunteers and communities

11. Campaigning and influencing

11.5 Legislative Competence Orders



Overview

This information sheet explains what legislative competence is, what Legislative Competence Orders are and how they are made and discusses how the third sector can influence them.

What is legislative competence?

Legislative competence is the legal power to make laws and this authority must be obtained from the UK Parliament.

The Government of Wales Act 2006 allows the National Assembly for Wales to make legislation in certain policy areas (known as 'Fields') that have been devolved from the UK Parliament. More specifically laws can only be made in relation to specific sub-topics (called 'Matters') within the devolved policy Fields. It is the presence of a Matter which signals that the Assembly has the legislative competence to make law on that particular issue.

So, the Assembly must have the legislative competence (i.e. the legal permission) to make laws on Matters (i.e. specifically defined topic areas) in a particular Field (i.e. one of the 20 broad policy areas that have been devolved from the UK Parliament).

Fields and Matters

There are 20 Fields contained within Schedule 5 of the 2006 Act, which means there are 20 possible policy areas where the Assembly has the potential to make laws. They are:

- Field 1 - agriculture, fisheries, forestry and rural development
- Field 2 - ancient monuments and historic buildings
- Field 3 - culture
- Field 4 - economic development
- Field 5 - education and training
- Field 6 - environment
- Field 7 - fire and rescue services and promotion of fire safety
- Field 8 - food
- Field 9 - health and health services
- Field 10 - highways and transport
- Field 11 - housing
- Field 12 - local government
- Field 13 - National Assembly for Wales
- Field 14 - public administration
- Field 15 - social welfare
- Field 16 - sport and recreation
- Field 17 - tourism
- Field 18 - town and country planning
- Field 19 - water and flood defence
- Field 20 - Welsh language

However, at the moment not all the Fields of Schedule 5 have Matters within them. This means that the Assembly cannot make laws in those areas yet because it does not have the legal authority (the legislative competence) to do so. Matters can be viewed as specific areas of legislative competence.

Matters are very specifically worded. For example, Matter 12.4 states,

‘Provision for and in connection with strategies of county councils and county borough councils for promoting or improving the economic, social or environmental well-being of their areas or contributing to the achievement of sustainable development in the United Kingdom, including provision imposing requirements in connection with such strategies on other persons with functions of a public nature.’

This means that the Assembly can bring forward Measures (i.e. laws) in this specific area because it has the legislative competence to do so. Assembly Measures are the subject of another Information Sheet.

Information on all of the Matters is not contained here, partly because there is a lot of very specific information, but mainly because this is a dynamic area of information. Further Matters are being proposed all the time and the information will continue to change as the Assembly’s legislative powers are extended. For up to date information on this please visit either of the following websites:

Voices for Change Cymru at www.voicesforchangecymru.org.uk

National Assembly for Wales at www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-documents/legislation_fields.htm

Acquiring legislative competence

There are two ways of acquiring legislative competence from Westminster:

1. Matters can be inserted into the Fields in Schedule 5 directly by UK Acts of Parliament
2. The Assembly can seek legislative competence itself via a Legislative Competence Order (LCO) which requests that additional Matters be added to the Fields in Schedule 5

Legislative Competence Orders (LCOs)

It is through LCOs that the National Assembly for Wales can acquire further legal powers to make laws, by adding Matters into the Fields in Sch 5 of the 2006 Act. In legal terms, an LCO is a type of legislation known in the UK as an ‘Order in Council’.

Please remember that LCOs are not laws in themselves, they simply transfer the power to make laws from Westminster to Cardiff Bay. It is the Assembly Measures that are the laws.

Who can propose an LCO?

LCOs can be proposed by:

- The Welsh Assembly Government.
- An Assembly Member who wins a ballot - AMs can put their names forward for the ballot along with an outline proposal of what they would like to introduce.
- An Assembly Committee.
- Members of the general public via the Public Petitions process. Please note that a petition will not automatically result in an LCO proposal - a separate Information Sheet is available on this topic.

What is the LCO approval process?

Legislative Competence Orders go through the following process:

Stage 1 - pre-legislative scrutiny of the proposed Order by the Assembly

- The proposed Order is laid.
- The Business Committee decides whether or not the proposal needs to be considered by one of the legislation Committees. If not, then a motion is proposed in Plenary (i.e. a meeting of the full Assembly) that there should be no Committee consideration and if this is agreed a draft Order is taken forward by the Member proposing the Order. If this is not agreed, then it must go forward to a legislation Committee.
- At this stage in the process the proposed Order will also be considered by Committees in the

House of Commons and House of Lords. This is normally done by the Welsh Affairs Select Committee in the Commons and the Constitution Committee in the Lords.

- If the proposed Order goes to a legislation Committee, it scrutinises and reports on the proposed Order and the report (along with any reports from the Westminster committees) must be taken into account before a draft Order (see below) is laid before the Assembly.

The **proposed Order** then becomes a **draft Order**.

Stage 2 - legislative scrutiny of the draft Order by the Assembly

- Within 40 days of the draft Order being laid, the Assembly must decide whether or not to approve it. A draft order cannot be amended in any way only agreed or rejected.

Stage 3 - formal consideration of the draft Order by the UK Parliament

- The First Minister sends a copy of the draft Order and the Assembly approval resolution to the Secretary of State for Wales.
- Within 60 days the Secretary of State must either lay it before Parliament or give reasons for her/his refusal to do so.
- Debates and votes will take place in both the House of Commons and the House of Lords.
- Once again, the draft Order cannot be amended in any way only approved or rejected.

Stage 4 - royal approval

- Once approved by the Assembly and Parliament, the Queen in Privy Council gives Royal Assent - the LCO is now granted.

How can the third sector influence legislative competence?

There are a number of different ways that the sector can influence the legislative competence of the Assembly on both a pro-active and reactive basis.

Pro-actively, the sector can get involved in lobbying Welsh Assembly Government (WAG) Ministers and the Assembly on issues where they feel that legislative competence is required. This might result in an LCO being brought forward through the WAG legislative programme; via an Assembly Committee; or via an AM through the ballot process. Likewise, using the Public Petitions route might be another way of generating an LCO proposal (or at least raising awareness of a specific issue).

Reactively, the sector can be involved in the scrutiny processes that form part of the LCO approval process. In the pre-legislative stage, if the proposed Order goes to a legislation Committee, they will consult on the proposed order. This is an opportunity to submit written evidence, and the Committees also sometimes invite individuals and organisations to give direct oral evidence.

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 by providing reports and information to the MRS, the sector can potentially get their message across.

As well as involvement with the Assembly, it should be remembered that Westminster also has a role in the approval (or not) of LCOs and the power to affect legislative competence through UK Acts of Parliament. The sector's influencing voice is therefore just as important in London as well as Cardiff Bay. It is useful to know which MPs and Lords will be involved in the scrutiny of LCOs relevant to you so that you can contact them and make your views known.

Further information

Voices for Change Cymru is a WCVA project supported by the Big Lottery Fund. There are now more opportunities than ever to make your voice heard and this project provides services to help third sector organisations influence policy and legislation at local and national levels.

Tel: 0800 2888 329

vfcc@wcva.org.uk

www.voicesforchangecymru.org.uk

National Assembly for Wales

www.assemblywales.org

For further information on the LCOs currently being considered by the Assembly see:

www.assemblywales.org/bus-home/bus-legislation/bus-legislation-progress-lcos-measures.htm#lco

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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