



Committee Report on 'Legislative competence for culture and other fields'

This briefing provides a summary of the Committee Report on the Proposed National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009. This briefing is provided to local authority chief executives, council leaders and all APSE contacts in Wales and to England, Scotland and Northern Ireland contacts for information.

Key Issues:

- This Committee Report follows on from APSE providing written and verbal evidence on the proposed order.
- There was widespread support for the proposed Order and the Committee have agreed in principle that legislative competence should be conferred on the National Assembly for these areas.
- The Report provides further clarity on a number of areas raised by APSE, such as on the definition of sports and recreation.

1. Introduction

The National Assembly for Wales (Legislative Competence) (Culture and other fields) Order 2009 proposes enhancing the National Assembly's current legislative competence by inserting 3 new matters into Schedule 5 of the Government of Wales Act 2006:

i) **Matter 2.1 (ancient monuments and historic buildings):** The functions of local authorities in the support, improvement and promotion of the appreciation by the public of archaeological remains, ancient monuments, buildings and places of historical or architectural interest, and historic wrecks.

ii) **Matter 3.1 (culture):** The functions of local authorities in the support, improvement and promotion of museums, galleries and libraries, arts and crafts, archives and historical records, and cultural activities and projects.

iii) **Matter 16.4 (sport and recreation):** The functions of local authorities in the support, improvement and promotion of sport and recreational activities.

The principle of the proposed Order is to enable the National Assembly to make measures that will “improve the delivery of high quality cultural experiences across the whole of Wales by placing all local authority cultural services and activities on a statutory footing”. This will, in turn, “widen participation to the full range of arts, cultural, sport and recreational services and activities”. The Welsh Government also said that it aims, through the statutory duty to “improve cultural service provision by local authorities over time and bring the poorer performers in line with the better performers.”

The Welsh Assembly Government issued a consultation paper in 2009 and APSE responded to the consultation (click here: <http://www.apse.org.uk/briefings/09/09-54%20Legislative%20competence%20culture%20briefing.pdf>). Following on from this written response, APSE were called for evidence and the Principal Advisor for Wales together with John Pearce, Operational Manager for Cardiff Council represented APSE at this committee. A copy of the full transcript is available by clicking on the following link: <http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-lc4-agendas.htm?act=dis&id=145648&ds=10/2009>

The Committee has since published their report and the main points from the report are summarised below in this briefing paper. A copy of the full report is available by clicking on the following link: <http://www.assemblywales.org/cr-ld7778-e.pdf>

2. Principle of the proposed Order

There was widespread support for the proposed Order: most of the 37 responses to the consultation exercise were in favour of legislative competence, including APSE. The Committee Report states:

The Association of Public Service Excellence (APSE) supported “the laudable aims of the Order to improve cultural service provision by local authorities over time and bring the poorer performers in line with the better performers.” Nevertheless, they commented that some of their members thought the proposed Order is too narrowly drawn, in that “the interface with Health, Culture and Wellbeing should be further developed”. (Page 10)

One of the issues raised in evidence was the different ways in which statutory and non-statutory services are treated during a challenging financial climate. The WLGA pointed out in their evidence that “making a service statutory does not necessarily save it. It is the level of that statutory basis that is all-important”. They went on to acknowledge the importance of statutory provision, noting that no members of the chief leisure officers group: “... are opposed to statutory provision; the general wish is that we could wind the clock back and have statutory provision five, six or even 10 years ago. We would be in a stronger position now if we had that protectionism, if you want to call it that.”

The Minister suggested that the inconsistency in provision has arisen because “... the present system has not worked for everyone”, noting that “one way to improve that is to place a statutory duty on local authorities so that they feel obliged to take such provision into account.” The Minister said that “imposing a statutory duty is the best way to reach our goal”.

The report states that the Committee have agreed in principle that legislative competence should be conferred on the National Assembly for the areas identified in the proposed Order.

Many respondents, including APSE commented on the need for the duty to be appropriately funded. However, in the Committee's view, this is a matter for the subsequent Measure arising from the conferral of legislative competence on the National Assembly.

3. Scope of the proposed Order

In terms of the scope of the proposed Order:

a) Definition of local authorities

The Committee agree that the proposed Order should only apply to county and county borough councils in Wales.

b) General wording on Matters 2.1, 3.1 and 16.4

A number of organisations suggested that the words 'support, improvement and promotion' in Matters 2.1, 3.1 and 16.4 of the proposed Order were too weak and needed strengthening because they do not encompass 'encouraging collaboration', 'participating', 'provision', 'protecting' and equality of opportunity.

When questioned, the Minister indicated that all the suggestions for additional wording were already covered by the existing wording of 'support, improvement and promotion'. The Committee concluded that they consider that the words 'support, improvement and promotion' in Matters 2.1, 3.1 and 16.4 are appropriate. In their view, the addition of further words could have the effect of inadvertently narrowing the National Assembly's competence and hinder the ability of the Welsh Government to deliver its objectives.

c) Matter 2.1 (ancient monuments and historic buildings)

The Committee recommends that the words 'of the appreciation by the public' should be removed from Matter 2.1. They also recommend that the fixed exceptions in Matter 2.1 are removed as they are unnecessary and it is important for the National Assembly to have the powers to legislate in all the areas covered in 2.1.

d) Matter 3.1 (culture)

Many organisations, including APSE expressed concerns that the current wording of Matter 3.1 may exclude some cultural activities and therefore prevent the National Assembly from legislating in those areas in a subsequent Measure. When questioned about whether the terms used adequately covered the full range of arts activity, the Minister confirmed that the headings were intended to be umbrella headings and should be interpreted broadly and covered the full range of cultural venues, for example. Therefore, the Committee concluded that they were content with Matter 3.1 as drafted.

In addition, the Committee recommends that the fixed exceptions in Matter 3.1 are removed from the proposed Order as they are unnecessary and it is important for the National Assembly to have the powers to legislate in all the areas covered in 3.1. If the Welsh Government decides to retain the fixed exception (a) under Matter 3.1, they recommend that it is re-worded.

e) Matter 16.4 (sport and recreation)

The report states that:

"APSE also stressed the need to ensure that the definition of sports and recreation is wide enough so that it is "inclusive of children's play, physical activity and other such areas" and that

“the definition is not focused solely on sport, in the traditional meaning of sport, and includes a wider physical activity agenda.” (Page 31)

The Minister has confirmed that the wording of Matter 16.4 would cover ‘play’ and relevant local authority functions regardless of whether they relate to cultural provision for children, young people or adults. The report states that Committee is content with Matter 16.4 as drafted.

f) Article 3

The Committee considers that the floating exceptions in Article 3 of the proposed Order are appropriate.

Debbie Johns
Principal Advisor