

Subordinate Legislation Committee

SLC(3) 08-08 (p1)

Meeting Date: 15 April 2008
Meeting Time: 8.15 – 9:15am
Meeting Venue: Committee Room 2, Senedd

Proposed Healthy Eating in Schools (Wales) Measure 200-

Purpose

1. Under Standing Order 15.6(ii) the Committee may consider the appropriateness of provisions proposed Assembly Measures that grant powers to make subordinate legislation to the Welsh Ministers. This paper outlines the subordinate legislation provisions in the proposed Healthy Eating in Schools (Wales) 200- for the Committee's consideration.

Background

2. In June 2007 Jenny Randerson AM was successful in the first ballot held in the National Assembly for Wales for the right to seek agreement to introduce a Member proposed Assembly Measure (Standing Order 23.99).

3. On 19 September 2007 the Assembly agreed that the proposed Measure could be introduced for consideration by the Assembly (Standing Order 22.50).

4.. The Explanatory Memorandum to the proposed Measure states that its aim is to establish a comprehensive policy on nutrition which ensures that healthy eating is promoted and supported for all registered pupils of schools maintained by local education authorities in Wales. Healthy eating is defined in the proposed Measure as:

"...eating (and drinking) food (and drink) whose nature, quality and quantity –
(a) benefit the health of the person consuming it;
(b) do not damage the health of the person consuming it; and
(c) cause as little damage as is reasonably possible to the environment during the course of its production, processing and distribution" (section 3)

5. The proposed Measure intends to impose a duty on schools and local education authorities to promote healthy eating generally which would have implications for the curriculum. It also imposes duties on governing bodies (as party of their annual report to parents) to report on the promotion of healthy eating and requires the Welsh Ministers to report annually on the progress being made in relation to the promotion of healthy eating in schools. The proposed Measure also imposes a duty on schools and education authorities to encourage the uptake of school meals.

6. The proposed Measure does not set out in detail the content of food served in schools, including qualities of fat, sugar, salt and artificial additives; as nutritional requirements and guidelines change from one year to another this is to be done through regulations made by the Welsh Ministers. It is envisaged that an incremental approach to the introduction of healthy nutritional standards will be used as the most effective way of introducing healthier foods.

Subordinate Legislation Powers and Procedures

7. The proposed Measure contains limited powers for the Welsh Ministers to make subordinate legislation. The powers conferred relate to the implementation and detail of the principles contained in the Proposed Measure.

8 The proposed Measure contains the following regulation and order making powers.

8.1 Section 4: Duty of governing bodies to report

The Welsh Ministers may make regulations prescribing the form of such reports and the means by which they are to be communicated to parents and the public.

Procedure: Negative. Section 4 amends section 30 of the Education Act 2002. Section 30 requires the governing body of a maintained school to provide an annual report on matters prescribed in regulations. The Education Act 2002 provides that regulations made under section 30 are made under the negative procedure.

8.2 Section 7: Requirements for food and drink provided on school premises

The Welsh Ministers may make regulations in relation to the food and drink provided on school premises. The regulations may specify the maximum amounts of fat, salt, sugar and artificial additives which the food or drink may contain and in particular may specify the nutritional standards or other nutritional requirements which are to be complied with and may require that that specified descriptions of food or drink are not to be provided.

Before making regulations under this section the Welsh Ministers are required to ascertain the views of pupils as to the provisions proposed to be made by the regulations and to consult such other persons as they consider appropriate.

Procedure: Negative – the Explanatory Memorandum asserts that it is justified on the grounds that these regulations will replace similar regulations made under section 114A of the School Standards and Framework Act 1998 and

enables the regulations to be amended whenever it is considered that appropriate.

8.3. Section 13: Orders and Regulations

This section provides that whilst regulations are normally to be subject to the negative procedure there are two exceptions:-

- Subordinate legislation which amends an Act of Parliament or Assembly Measure are to be subject to the affirmative procedure; and
- No procedure is to apply to commencement orders.

8.4 Section 14 Power to make further supplementary and consequential provision

This provision permits the Welsh Ministers, by regulations, to make supplementary or consequential provisions to enable the Measure to be fully effective.

Procedure: Negative – save in the circumstances referred to in section 12 above.

8.5 Additionally the proposed Measure confers on the Welsh Ministers the power to bring the Measure into force at some future date by commencement order and to make, by regulations, further supplementary and consequential provisions.

Guidance

9. The proposed Measure also enables the Welsh Ministers to issue guidance on how local education authorities are to exercise their functions so as to promote healthy eating in schools or during incidental activities such as visits, walks etc (section 1 – Duties in relation to the promotion of healthy eating in Schools). Welsh Ministers may also issue guidance to local education authorities as to the discharge of their duty to provide drinking water on the premises of any maintained school (section 8 – drinking water in schools) and in relation to the protection of the identity of pupils receiving free school lunches (section 10 - Protection of the identity of pupils receiving free school lunches).

Procedure: None – but these matters may be included in the annual report to be laid before the Assembly by the Welsh Ministers under section 6.

Standing Order 15.6

10. Standing Order 15.6(ii) provides that the Committee may consider and report on:

“the appropriateness of provisions in proposed Assembly Measures...that grant powers to make subordinate legislation to the Welsh Ministers...”

11. In considering the appropriateness of the powers conferred on the Welsh Ministers Members may wish to take in to account the following:-

- the proposed draft Measure does not provide for the content of food served in schools; this is to be done by the Welsh Ministers by way of regulations to be made under section 7 utilising the negative procedure.
- In exercising the powers under section 7 the Welsh Ministers are placed under a statutory obligation to ascertain the views of pupils as to the provisions proposed to be made by the regulations and to consult such other persons as they consider appropriate.
- Regulations made under sections 4 (inclusion in governors' reports of information on the promotion of healthy eating) and 7 requirements for food and drink on school premises etc) are to be made under the negative procedure. This is put forward as appropriate on the grounds that regulation 4 amends section 30 of the Education Act 2002 and regulations made under section 30 are made under the negative procedure and regulations made under section 7 will replace similar regulations currently made under section 114A of the School Standards and Framework Act 1998 which are made under the negative procedure and also enables amendment to be undertaken whenever considered appropriate.
- That Standing Order 24.9 provides that once a motion (which is not amendable) has been laid under Standing Order 24.4 (Motion for Approval (Affirmative Resolution Procedure)) the instrument to which it applies cannot be amended;

Action for the Committee

12. The Committee is invited to consider whether, and if so how, it wishes to give further consideration to the powers to be granted to Welsh Ministers to make subordinate legislation under this proposed Measure. To assist in its consideration of the proposed Measure under Standing Order 15.6(ii) the Committee may wish to avail itself of the facility afforded by Standing Orders 10.43 (invitation to give evidence) and 10.44 (summoning of witnesses).

Legal Advisers
Subordinate Legislation Committee
April 2008