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Jenny Randerson AM,
Chair, National Assembly for Wales
Standing Orders Committee,
National Assembly for Wales,
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Dear Jenny

Oxfam Cymru comments on future legislative workings of the National Assembly for Wales

I write to you in your capacity as chair of the standing orders committee. As your committee considers procedural arrangements for the new National Assembly for Wales, post-May 2007; I thought it would be helpful to outline some of Oxfam Cymru's thoughts on how the legislative process should work, and in particular how interested stakeholders might best be involved.

I base my comments around a series of questions posed by Tomorrow's Wales. I understand Tomorrow's Wales is currently engaging with some civil society organisations, in order to inform their own position on these issues. However I would like to make it clear that Oxfam Cymru is not represented by Tomorrow's Wales and we are instead taking the opportunity of writing to you directly to detail our position.

Essentially, Oxfam Cymru believes that:

- The National Assembly for Wales and the Welsh Assembly Government must award to all external stakeholders maximum opportunity to comment upon, inform and seek to influence the passage of Orders in Councils and resultant Assembly Measures;
- In doing so, the National Assembly for Wales and the Welsh Assembly Government must uphold the political principles of transparency and accountability;
- In order for external stakeholders to fully play a part in the governance of Wales; the clear separation of powers between the executive branch and the legislative branch, contained within the Government of Wales Act (2006), should not be compromised.

In addressing some of the points raised by Tomorrow's Wales, I have focused on the procedure for Assembly Measures presented to the National Assembly for Wales by the Welsh Assembly Government. Given the separation of powers contained in the Government of Wales Act (2006), I would envisage that the majority of Assembly Measures would be proposed by the Welsh Assembly Government, as is the 'right' of the executive branch; however Oxfam Cymru is mindful that, as is the case with the UK Parliament, important provisions remain which enable private members to introduce bills. Our comments below focus on procedures for Assembly Measures introduced by the Welsh Assembly Government; however assuming some mechanism is developed for individual members to propose Assembly Measures, as is currently the case with the current Standing Order 31 on subordinate legislation, Oxfam Cymru would envisage that points 5 – 14 or some variation of, ought to apply.

Orders In Council

1. There ought to be some means by which external stakeholders including civil society, but not limited to civil society can comment upon draft Orders in Council before they are presented to the Secretary of State for Wales by the Welsh Assembly Government.
2. Rather than a formal consultation, it would be sufficient for the Welsh Assembly Government to place before the National Assembly for Wales, its intention to request an Order in Council. External stakeholders would then be able to communicate their views on the principle to the Welsh Assembly Government, individual Assembly Members; and others including the Secretary of State for Wales, members of the House of Commons Welsh Affairs Select Committee; and other MPs.
3. With sufficient time, external stakeholders would be able to inform the various parties of their views, and where they wish, seek to influence the opinion of the Welsh Affairs Select Committee and the decision of the Secretary of State for Wales with regards to whether the proposed Order in Council should be accepted in current form.
4. In an incidence where the Secretary of State for Wales recommends to the First Minister that an amendment to the proposed Order in Council be made; and where subsequent changes are adopted by the Welsh Assembly Government; Oxfam Cymru would advocate an additional opportunity for external stakeholders to comment upon the redrafted Order in Council (essentially, repetition of the process recommended under point 2) before it is re-presented to the Secretary of State for Wales.

Assembly Measures

5. In seeking to formulate a draft Assembly Measure, the Welsh Assembly Government should be first required by the National Assembly for Wales to publish a paper similar to a Whitehall white paper, outlining in broad terms, the proposed action it seeks to take. External stakeholders including civil society, but not limited to civil society; together with assembly members should then have an opportunity to comment upon the white paper: in order to inform the drafting of the Assembly Measure.
6. After consideration of views on the 'white paper', the Welsh Assembly Government should then publish a proposed draft-Assembly Measure (similar to a draft Bill), outlining in specific terms the detailed action it wishes to take.
7. A second opportunity for external stakeholders and assembly members to comment upon the proposed draft-Assembly Measure should be provided. Oxfam Cymru has no preference as to whether the pre-legislative scrutiny of such proposed draft-Assembly Measures by Assembly Members should take place in an ad-hoc committee, a relevant subject committee, or on the floor of plenary. Whatever form the pre-legislative scrutiny by assembly members of proposed draft-Assembly Measures takes, Oxfam Cymru believes there ought to be a political opportunity for external stakeholders to inform Assembly Members of their views. In the case of committee pre-legislative scrutiny, key external stakeholders as determined by the committee may be invited to present written or oral evidence for consideration. If such pre-legislative scrutiny occurs on the floor of plenary, external stakeholders would presumably seek to brief all Assembly Members ahead of the debate – as is the case now with plenary business.
8. With both Assembly Members and external stakeholders having had the opportunity to comment upon and propose changes to the proposed draft-Assembly Measure; the Welsh Assembly Government should consider the views presented to it, and revise the proposed draft-Assembly Measure where it sees fit, before the proposed draft-Assembly Measure (draft Bill) is formally presented to plenary as a draft-Assembly Measure (Bill).
9. Once the draft Assembly Measure has been agreed in principle by plenary, I understand the draft Assembly Measure would then, formally enter into its 'committee stage'. As outlined above, Oxfam Cymru does not have a view as to what form such a legislative committee should take (ad-hoc standing committee; subject committee; or other).

10. Some have questioned whether civil society organisations should be enabled to propose amendments to draft Assembly Measures through such committees and indeed become non-voting members of such committees. Oxfam Cymru would caution against this for two reasons.
11. Firstly, while the effort to involve civil society in the legislative process is, of course most welcome, such efforts by the assembly should not be exclusive to civil society. Both local government and other public sector bodies; and the private sector, should be involved, equally in the legislative process.
12. It ought to be for the individual committee to determine whether it seeks to obtain written or oral evidence to inform its deliberations, and from whom. Regardless of such a decision, there would, of course, be a political opportunity for all external stakeholders, including individuals with an interest, to seek to petition and inform committee members of their views via direct advocacy. As is the case now with subject committees, individual Assembly Members would be free to raise such points as they see fit.
13. Secondly, while efforts should be made to treat all stakeholder sectors equally, Oxfam Cymru believes that by formalizing the involvement of external stakeholders by means of appointing non-voting committee members, is inappropriate. Assembly Members are directly elected and politically accountable to the people they represent: external stakeholders are not. For this reason, civil society or any other external stakeholders, ought not to be non-voting committee members, nor formally propose amendments (although if giving evidence, or engaging in direct lobby work they may wish to advocate certain amendments be made).
14. Finally, on the return of a draft-Assembly Measure to plenary, adequate time should be provided for all external stakeholders to comment upon the committee's recommendations and seek to make individual representations to Assembly Members, as is the case now when, for example, a subject committee makes a policy recommendation to plenary; and external stakeholders may seek to inform Assembly members of their views prior to a plenary debate.

Yours sincerely,

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Cc: All Members of the National Assembly for Wales Standing Orders Committee; Clerk to the National Assembly for Wales Standing Orders Committee.