

LEGISLATION COMMITTEE MEETING

MINUTES:

Date: 26 February 2002
Time: 9:30 a.m.
Venue: Committee Room 1, National Assembly Building

Attendance:

Christine Chapman	(Labour)
Ron Davies	(Labour)
Pauline Jarman	(Plaid Cymru)
Dr Dai Lloyd	(Plaid Cymru)
Huw Lewis	(Labour)
Tom Middlehurst	(Labour)
Owen John Thomas	(Plaid Cymru)

Officials

John Turnbull	Legal Adviser
Olga Lewis	Committee Clerk
Simon Thwaite	Deputy Committee Clerk

Apologies for absence: Mick Bates, Glyn Davies.

Item 1: Election of Temporary Chair

1.1 Dr Dai Lloyd was elected to be chair in the absence of Mick Bates.

Item 2: Minutes of the previous meeting and matters arising: LEG-05-2002(min)

2.1 The Committee agreed the minutes of the meeting held on 12 February 2002.

Item 3: Chair's Report

3.1 Members of the Committee were given two printed reports, namely the Report by the Chair on International Conference on Regulation Reform, Management and Scrutiny of Legislation and the Second Annual Report of the Legislation Committee.

3.2 The Committee thanked Olga Lewis and John Turnbull for all their hard work and effort in producing the above reports.

3.3 The Committee expressed the wish to be informed as to the reason why particular procedures were chosen for different Statutory Instruments. It was decided that the clerk would contact the Business Manager to inform them that the Committee would like to obtain this information in the future. **Action: Clerk**

3.4 Members were reminded of the Co-drafting Legislation Seminar to be held on the 27/2/02 at 12.45pm in Conference Room A.

3.5 The Committee was informed that a delegation from the Standing Committee of the Ontario Legislative Assembly would be present at the next meeting on the 5th of March. They are interested in the work of the legislation committee and asked if it would be possible to put their visit on the agenda so that they can take some active role in the meeting.

3.6 It was suggested that both our Committee and the Standing Committee of the Ontario Legislative Assembly should provide short presentations which would be informative to all members and would add structure to the Canadian delegation's participation in the meeting. It was agreed that John Turnbull would give a presentation on behalf on the Legislation Committee and on their part the Canadian delegation would be asked to make a short presentation. **Action: Legal Adviser/Clerk**

Item 4: Assembly Orders for Consideration

LC425 - The Local Government (Best Value Performance Indicators) (Wales) Order 2002

4.1 Mr Turnbull presented the report to the Committee. The Order will be made under the Standard Procedure.

4.2 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However, the Committee did make a number of general observations in relation to points, some of which would be corrected on printing and some by means of a Memorandum of Corrections. Additionally, the Committee noted that the Minister wished to make a drafting correction in item 10.12 in Schedule 10. This would change "strategy" to "policy". It was confirmed that this would be an appropriate matter for a Memorandum of Corrections.

4.3 The Committee's report to the Assembly on the Order is attached as LC425 (Report).

LC426 - The Advisory Committee for Wales (Environment Agency) Abolition Order 2002

4.4 Mr Turnbull presented the report to the Committee. The Order will be made under the Accelerated Procedure.

4.5 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However two typographical matters were identified which would need to be corrected before the order is made. Also, the Committee did make some general observations which they felt should be recorded in their report.

4.6 The Committee's report to the Assembly on the Order is attached as LC426 (Report).

LC427 - The Warm Homes and Energy Conservation Act 2000 (Commencement) (Wales) Order 2002

4.7 Mr Turnbull presented the report to the Committee. The Order will be made under the Accelerated Procedure.

4.8 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5 nor did they have any general observations.

4.9 The Committee's report to the Assembly on the Order is attached as LC427 (Report).

LC428 - The Local Government Best Value (Exclusion of Non-commercial Considerations) (Wales) Order 2002

4.10 Mr Turnbull presented the report to the Committee. The Order will be made under the Accelerated Procedure.

4.11 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. The Legal Advisers had the opportunity to see an early draft and identified a number of points which had been taken into account in the final draft.

4.12 The Committee's report to the Assembly on the Order is attached as LC428 (Report).

LC429 - The Fisheries and Aquaculture Structures (Grants) (Wales) Regulations 2002

4.13 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

4.14 In regulation 15(4) the provision relating to interest payments refers to interest "calculated as aforesaid". But there is no "aforesaid" provision to indicate how interest is to be calculated. It was understood that the intention was to refer to the calculation in regulation 16.

4.15 It thus appears that the provision for the payment of interest which is presently in regulation 15(4) needs both to indicate the rate at which interest is to be calculated and to be expressed as an exception to the provision under which interest is calculated from the day on which the financial assistance was paid. To this end it is suggested that this provision would be more appropriately located in regulation 16. It was agreed that as this was a minor drafting error it should be amended under SO22.13 by a Memorandum of Corrections. The Committee's report would indicate that if this error was not corrected this was something to which the Assembly would need to pay special attention.

4.16 The Committee did make a number of general observations which they felt should be recorded in the report.

4.17 The Committee's report to the Assembly on the Regulations is attached as LC429 (Report).

LC430 - The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 Amendment Regulations 2002

4.18 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

4.19 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Regulations on any grounds specified in Standing Order 11.5. However, the Committee did make some general observations which they felt should be recorded in their report.

4.20 The Committee's report to the Assembly on the Regulations is attached as LC430 (Report).

LC431 - The Lobsters and Crawfish (Prohibition of Fishing and Landing) (Wales) Order 2002

4.21 Mr Turnbull presented the report to the Committee. The Order will be made under the Accelerated Procedure.

4.22 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. The Legal

Advisers had the opportunity to see an early draft and identified a number of points which had been taken into account in the final draft.

4.23 The Committee's report to the Assembly on the Order is attached as LC431 (Report).

LC432 - The Housing (Right to Buy) (Priority of Charges) (Wales) Order 2002

4.24 Mr Turnbull presented the report to the Committee. The Order will be made under the Accelerated Procedure.

4.25 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However, the Committee did make a general observation which they felt should be recorded in their report.

4.26 The Committee's report to the Assembly on the Order is attached as LC432 (Report).

LC418 - The Pigs (Records, Identification and Movement) (Interim Measures) (Wales) Order 2002

4.27 Mr Turnbull presented the report to the Committee. The Order had been made under the Executive Procedure.

4.28 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However, the Committee did make some general observations which they felt should be recorded in their report.

4.29 The Committee's report to the Assembly on the Order is attached as LC418 (Report).

LC419 - The Disease Control (Interim Measures) (Wales) Order 2002

4.30 Mr Turnbull presented the report to the Committee. The Order had been made under the Executive Procedure.

4.31 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However, the Committee did make a number of general observations which they felt should be recorded in their report.

4.32 The Committee's report to the Assembly on the Order is attached as LC419 (Report).

LC420 - The Animal Gatherings (Interim Measures) (Wales) Order 2002

4.33 Mr Turnbull presented the report to the Committee. The Order had been made under the Executive Procedure.

4.34 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Order on any grounds specified in Standing Order 11.5. However, the Committee did make some general observations which they felt should be recorded in their report.

4.35 The Committee's report to the Assembly on the Order is attached as LC420 (Report).

LC421 - The Cattle (Identification of Older Animals) (Wales) (Amendment) Regulations 2002

4.36 Mr Turnbull presented the report to the Committee. The Regulations had been made under the Executive Procedure.

4.37 Regulation 2 refers to the substitution of “for the word “seven” in regulation 7(2)(e) the word “three”. In the 2000 regulations as published by the Stationery Office, however, “7” appears in the English text (but not in the Welsh text) as a figure rather than a word.

4.38 The Committee agreed that this drafting defect should be drawn to the attention of the Assembly so that it could be corrected in the printed version.

4.39 The Committee's report to the Assembly on the Regulations is attached as LC421 (Report).

LC422 - The Cattle Database (Amendment) (Wales) Regulations 2002

4.40 Mr Turnbull presented the report to the Committee. The Regulations had been made under the Executive Procedure.

4.41 The Committee agreed that it did not need to invite the Assembly to pay special attention to the regulations on any grounds specified in Standing Order 11.5 nor did they have any general observations.

4.42 The Committee's report to the Assembly on the Regulations is attached as LC422 (Report).

LC423 - The Sheep and Goats Identification and Movement (Interim Measures) (Wales) Regulations 2002

4.43 Mr Turnbull presented the report to the Committee. The Regulations had been made under the Executive Procedure.

4.44 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Regulations on any grounds specified in Standing Order 11.5. However, the Committee did make a number of general observations which they felt should be recorded in their report.

4.45 The Committee's report to the Assembly on the Regulations is attached as LC423 (Report).

LC424 - The Food and Animal Feedingstuffs (Products of Animal Origin from China) (Control) (Wales) Regulations 2002

4.46 Mr Turnbull presented his report to the Committee. The Regulations had been made under the Executive Procedure.

4.47 The Committee agreed that it did not need to invite the Assembly to pay special attention to the Regulations on any grounds specified in Standing Order 11.5. However, the Committee did make a number of general observations which they felt should be recorded in their report.

4.48 The Committee's report to the Assembly on the Regulations is attached as LC424 (Report).

Item 5: Committee Correspondance

**Letter from Carwyn Jones AM, Minister for Rural Affairs, dated February 5 2002
LC358 - The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No. 10) Regulations 2001**

5.1 The Chair stated that he had received a response to the letter of 6 November 2001 to Carwyn Jones AM Minister for Rural Affairs on **The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No. 10) Regulations 2001**. The Committee had considered the Regulations to be reportable under Standing Order 11.5 as they contained drafting which the committee considered to be defective.

5.2 Regulation 5(3)(d) refers in its opening wording to “the areas listed in the Schedule” and then refers in sub-paragraph (i) to “the group of counties listed in the Schedule”. The question which was raised with the Minister is that given that “counties” appear to be the areas named in the left hand column of the Schedule, what constitutes “the group of counties”? A further question which was raised with the Minister was that if “the group of counties” is intended to refer to the areas named in the left hand column, is the intended effect of Regulation 5(3)(d)(i) to prohibit dispatch only in cases where the outbreak has occurred within the particular left hand column area within which the animal was reared?

5.3 In response the Minister stated the wording at this stage followed a draft received from DEFRA based on the Commission Decision and that both DEFRA's and their drafts were prepared at short notice to come into force as soon as possible. The minister further submitted that the issue was addressed and the position clarified in the No 11 Regulations.

5.4 Regulation 27(2) is drafted on the premise that paragraphs (1A) and (1B) of Regulation 7 of the Minced Meat and Meat Preparations (Hygiene) Regulations 1995 remain in force. Butterworths Direct indicates, however, that those paragraphs were revoked in relation to Wales by SI 2001/1802 with effect from 9 May 2001. The question which was raised with the Minister was whether Regulation 27(2) was thus in error in referring to paragraphs (1A) and (1B)? The same point as above arises in relation to the reference to paragraphs (4A) and (4B) in Regulation 27(4).

5.5 The Minister responded yes to both points. The Minister submitted that as indicated in the Committee's letter in relation to both of them the previous paragraphs had already been revoked and the purported second revocation therefore had no effect that had to be remedied. The Minister further submitted that the Regulations were revoked shortly after by the No 11 Regulations.

5.6 A minor typographical point had been noted in that it appears that the side reference in the Schedule heading should be to Regulation 5 rather than Regulation 4.

5.7 Having had regard to the submissions made by the Minister the Committee acknowledges that the points have, effectively, been corrected by the making of replacement No.11 regulations. **However the Committee is obliged to formally report to the Assembly that it should pay special attention to these regulations on the grounds that they contain drafting defects.**

**Letters from Carwyn Jones AM, Minister for Rural Affairs, dated 5 February 2002
LC361 - The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No. 10) (Fees) Regulations 2001
LC370 - The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No.11) Regulations 2001 (No. 3589, W.293)**

5.8 The Chair stated that he had received a response to the letter of 13 and 20 November 2001 to Carwyn Jones AM Minister for Rural Affairs on **The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No. 10) (Fees) Regulations 2001** and **The Import and Export Restrictions (Foot-and-Mouth Disease) (Wales) (No.11) Regulations 2001 (No. 3589, W.293)**. The committee considered the Regulations to be reportable under Standing Order 11.5 as they contained drafting which the committee considered to be defective.

5.9 Regulation 2 refers to dispatch of “products” under the No. 10 Regulations. The question that was raised with the Minister was is it intended that charging be confined to supervision and inspection in relation to items which are identified in the No. 10 Regulations as “products” or is charging intended to be available on a wider basis?

5.10 In response the Minister submitted that the intention was that it should cover everything in relation to which eligibility for dispatch needed to be established.

5.11 Having had regard to the submission made by the Minister the Committee noted that charging was intended to be imposed on a wider basis than would be interpreted from the use of the word “products” in regulation 2. **Accordingly, the Committee needs to draw to the attention of the Assembly the fact that the regulations were defectively drafted in this respect.**

5.12 Charging is empowered where - “supervision or inspection is carried out for the purposes of establishing the eligibility for dispatch”. The question which was raised with the Minister was is this intended to mean that charging will only be permissible where the person proposing to dispatch a product has arranged for any necessary supervision or inspection, or is charging also to be available where inspection is carried out on the initiative of the inspecting authority for the purpose of ascertaining whether any breach of the regulations has taken place?

5.13 The Minister responded that the first alternative is the correct interpretation and was clarified in subsequent legislation.

5.14 Having had regard to the submission made by the Minister the Committee accepted that, given the element of uncertainty which exists, the courts would apply the narrower interpretation. **On this basis, the Committee draws to the attention of the Assembly the fact that this provision has needed the further explanation which the Minister has now provided.**

5.15 The Committee did make a general observation which they felt should be recorded in their reports.

Item 6: Any Other Business and Date of next meeting

6.1 The next meeting would be held on 5 March 2002