

**LEGISLATION COMMITTEE MEETING****MINUTES:****Date:** 23 April 2002**Time:** 9:30 a.m.**Venue:** Committee Room 3, National Assembly Building**Attendance:**

Mick Bates (Chair)	(Liberal Democrat)
Lorraine Barrett	(Labour)
Ron Davies	(Labour)
Glyn Davies	(Conservative)
Delyth Evans	(Labour)
John Griffiths	(Labour)
Pauline Jarman	(Plaid Cymru)
Dr Dai Lloyd	(Plaid Cymru)

**Visitors**

Lord Skelmersdale	House of Commons Joint Committee on Statutory Instruments
Peter Pike MP	Chairman of the Deregulation and Regulatory Reform Committee
Dai Havard MP	Deregulation and Regulatory Reform Committee
Mark Lazarowicz	Deregulation and Regulatory Reform Committee
Alan Preston	Counsel, Legal Adviser to Deregulation and Regulatory Reform Committee and House of Commons Joint Committee on Statutory Instruments

**Officials**

John Turnbull	Legal Adviser
D Huw Davies	Assistant Legal Adviser
Olga Lewis	Committee Clerk
Julie Owen	Deputy Committee Clerk

**Apologies for absence:** None**Item 1: Minutes of the previous meeting and matters arising: LEG-09-2002(min)**

1.1 The Committee agreed the minutes of the meeting held on 16 April 2002

**Item 2: Chair's Report**

2.1 The Chair welcomed members of the House of Commons Joint Committee on Statutory Instruments and Deregulation and Regulatory Reform Committee who were visiting the Assembly to observe the procedures used by the Assembly to process legislation.

2.2 The Chair reminded members that a seminar on drafting legislation would be held for outside bodies and the press on Wednesday, 1 May, at 12.45pm. He urged members to attend.

2.3 The Chair informed members that there were eleven orders to discuss and all had been made under the executive procedure. It was suggested that a letter be sent to the

Business Committee asking why so many pieces of legislation were being made this way. The matter would then be discussed further at a future meeting. **Action: Clerk.**

### **Item 3: Assembly Orders for Consideration**

#### **LC456 - The Disabled Facilities Grants and Home Repair Assistance (Maximum Amounts) (Amendment) (Wales) Order 2002**

3.1 Mr Davies presented the report to the Committee. The Order had been made under the Executive Procedure.

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

3.3 The Committee's report to the Assembly on the Order is attached as LC456 (Report).

#### **LC457 - The Sheep and Goats Identification and Movement (Interim Measures) (Wales) (Amendment) Order 2002**

3.4 Mr Davies presented the report to the Committee. The Order had been made under the Executive Procedure.

3.5 Having considered the Legal Adviser's report, Members concluded that there were drafting defects which needed to be reported under SO 11.5:

- Article 6(3), "Ym mharagraff" should have been "Yn erthygl"; and
- Article 8(5), inserted paragraph (v) - the word "to" should appear after "grazing land".

3.6 These matters had been the subject of referral under Standing Order 11.4.

3.7 The Committee's report to the Assembly on the Order is attached as LC457 (Report).

#### **LC458 - The Local Government (Whole Authority Analyses and Improvement Plans) (Wales) Order 2002**

3.8 Mr Davies presented the report to the Committee. The Order had been made under the Executive Procedure.

3.9 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 two general observations which they felt should be recorded in their report.

3.10 The Committee's report to the Assembly on the Order is attached as LC458 (Report).

#### **LC459 - The Child Minding and Day Care (Wales) Regulations 2002**

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

3.12 Having considered the Legal Adviser's report, Members concluded that there were matters to raise under Standing Order 11.5.

- **Regulation 4(1) and (2)** - queries were raised as to whether the circumstances referred to in paragraph (2) were intended to be the sole circumstances in which a person was not to be regarded as "suitable" under paragraph (1). Note was taken of the more specific wording in regulation 16(2) –

“(2) For the purposes of paragraph (1), a person is not suitable to look after relevant children unless ...”

If regulation 4(2) was not intended to encompass all circumstances under which a person might not be “suitable” under paragraph (1) was the Minister content that regulation 4(1) provided a sufficiently precise basis for a provision in relation to which non compliance was a criminal offence under regulation 24?

3.13 The Committee therefore agreed to invoke the procedure set out in Standing Order 11.4. This provides that before reporting to the Assembly that it should pay special attention to any legislation, the Chair must first notify the relevant Assembly Minister of the Committee's intention to make such a report and give the Assembly Minister an opportunity of responding either orally or in writing. **Action: Legal Adviser/Clerk.**

#### **LC460 - The Care Standards Act 2000 (Commencement No.8 (Wales) and Transitional, Savings, Consequential and Amendment Provisions) Order 2002**

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

3.15 Having considered the Legal Adviser's report, Members agreed that there were matters to raise under Standing Order 11.5. Paragraphs 2(5) and (11), and 4(5)(b) and (11) of Schedule 1 stated that certain provisions of that Schedule were to be without prejudice to provisions in the Interpretation Act and the Government of Wales Act. There may have been justification for these references in respect of the Interpretation Act, given that sections 16 and 23 of that Act only applied “unless the contrary intention appears”. However, attention was drawn to the references to section 63 of the Government of Wales Act as these appeared to constitute defective drafting as being inappropriate and unnecessary given that secondary legislation would necessarily be subordinate to primary legislation.

3.17 These matters had been referred under standing Order 11.4.

3.18 The Committee appreciated that in using ‘mental nursing home’ in article 1 the drafting lawyer was using a term defined in the enabling Statute, however it expressed concern at the appropriateness of the term in general.

3.19 The Committee's report to the Assembly on the Order is attached as LC461 (Report).

#### **LC461 - The Care Standards Act 2000 (Commencement No. 11) Order 2002**

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

3.21 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 two general observations which they felt should be recorded in their report.

3.22 The Committee's report to the Assembly on the Order is attached as LC461 (Report).

#### **LC462 - The Registration of Social Care and Independent Health Care (Wales) Regulations 2002**

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

3.24 Having considered the Legal Adviser's report, Members agreed that there were matters to raise under Standing Order 11.5.

- **Regulation 2(1) – “relative”** - “husband and wife” should have been “husband or wife”.
- **Regulation 9(a)** - required details of the “appropriate office of the National Assembly” to be included in the certificate. In the definition of that term, however, it was acknowledged that there might not have been a specifically identified office, and the term was then to refer to any office of the Assembly. In view of this it was not clear how paragraph (a) of regulation 9 was to be complied with where there was no specified office
- **Regulation 9(f)** - This required a certificate of registration to contain details of any condition to which the registration was subject, and listed specific aspects of condition requirements which were to be included. The implication of this was that the definitive text of the condition would be set out somewhere else and that details of the condition, including the matters specifically referred to, then had to be copied into the certificate of registration.
- **Regulation 18(f)(g)** - paragraphs were printed within square brackets which it is assumed had been unintentionally retained from a draft version of the regulations.
- **Schedule 2, paragraph 10(2)(a) and (c)** The references to “section 113(313)” were clearly not correct.

3.25 These matters had been the subject of referral under Standing Order 11.4.

### **LC463: The Registration of Social Care and Independent Healthcare (Fees)(Wales) Regulations 2002**

3.26 Mr Davies presented the report to the Committee. The Regulations had been made under the Executive Procedure.

3.27 Having considered the Legal Adviser's report, Members agreed that there were matters to raise under Standing Order 11.5.

- **Enabling powers** - The reference to section 79F of the Care Standards Act 2000 appeared to be incorrect. There was no such section in that Act. Section 79(1) of the Care Standards Act 2000 amended the Children Act 1989, by inserting a section “79F” into the 1989 Act. This section 79F was correctly cited separately as a section of the 1989 Act. Also, in relation to section 79F it would have been appropriate to specify subsections (1) and (2) as these appeared to be the only provisions of that section which operate as enabling powers in respect of the present regulations
- **Regulation 3(1)** - Given that paragraphs (6) and (7) made specific provision with regard to “the registration fee” it was thought that the opening wording of paragraph (1) should have been expressed to be subject to “paragraphs (2) to (7)” rather than “paragraphs (2) to (5)”.
- **Regulation 7(2)** - clarification was required as to the use of the term “clinic home”.
- **Regulation 7(5)(c)** - clarification was required as to the use of the term should “home”.

3.28 The Committee therefore agreed to invoke the procedure set out in Standing Order 11.4. This provides that before reporting to the Assembly that it should pay special attention to any legislation, the Chair must first notify the relevant Assembly Minister of the Committee's intention to make such a report and give the Assembly Minister an opportunity of responding either orally or in writing. **Action: Legal Adviser/Clerk.**

### **LC464: The Dairy Produce Quotas (Wales) Regulations 2002**

3.29 Mr Davies presented the report to the Committee. The Regulations had been made under the Executive Procedure.

3.30 Having considered the Legal Adviser's report, Members agreed that there were matters to raise under Standing Order 11.5.

- Regulation 31(2)(c) referred to "monthly" statistics when there did not appear to be anything in regulation 28(2) or in Article 3(2) of the Council Regulation which required the statistics to be monthly. It was been confirmed to the Committee that neither regulation 28(2) nor Article 3(2) required statistics to be monthly, although the power in regulation 28(2) could be so exercised as to require statistics to be submitted on a monthly basis
- It appeared that regulation 31(2)(c) has been drafted by reference to an adopted (or intended) procedure whereby statistics were required on a monthly basis. The effect was that the penalty provision in regulation 31 will only apply if statistics are required on a monthly basis. If a different period was to be applied under regulation 28(2) there would be no penalty provision. Attention was accordingly drawn to this as an apparent drafting defect in that regulation 31(2)(c) has been drafted without due regard to the actual nature of the provision in regulation 28(2).

3.31 These matters had been the subject of referral under Standing Order 11.4.

### **LC465: The Local Authorities (Capital Finance and Approved Investments) (Amendment) (Wales) Regulations 2002**

3.32 Mr Davies presented the report to the Committee. The Regulations had been made under the Executive Procedure.

3.33 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 one general observation which they felt should be recorded in their report.

3.34 The Committee's report to the Assembly on the Regulations is attached as LC465 (Report).

### **LC466: The National Health Service (General Medical Services) (Amendment) (Wales) Regulations 2002**

3.35 Mr Davies presented the report to the Committee. The Regulations had been made under the Executive Procedure.

3.36 Having considered the Legal Adviser's report, Members agreed that there were matters to raise under Standing Order 11.5.

- **References to "area"** - Clarification was sought as to the meaning intended to be given to "area" as used in the amendments made by these regulations. It was queried whether it was intended to refer to part of a health authority area or the whole of a health authority area. It was noted that regulation 13(9) of the main regulations (as inserted by regulation 8(6) of the present regulations) provided for the situation where patients were in more than one Health Authority area, but it was not immediately apparent whether, even in those circumstances, the reference was meant to cover both health authority areas or just the particular cross border locality in which the patients reside.

- **Regulation 19(3)** - The insertion of paragraph (2A) into regulation 18F, after paragraph (1), assumed that paragraph (2) had been revoked. However, paragraph (2) had only been revoked for England. Thus paragraph (2A) should have been inserted after paragraph (2).
- **Regulation 27(3)(b)** - “the Committee” should have been “that Committee”.
- **Regulation 31** - Reference was made to “Secretary of State”, however, it was understood that Secretary of State functions under the main regulations transferred to the Assembly under Article 3 of the National Assembly for Wales (Transfer of Functions) Order 1999.

3.37 The Committee therefore agreed to invoke the procedure set out in Standing Order 11.4. This provides that before reporting to the Assembly that it should pay special attention to any legislation, the Chair must first notify the relevant Assembly Minister of the Committee's intention to make such a report and give the Assembly Minister an opportunity of responding either orally or in writing. **Action: Legal Adviser/Clerk.**

#### **Item 4: Visit of the delegation from the Joint Committee on Statutory Instruments and the House of Commons Deregulation and Regulatory Reform Committee.**

4.1 The Chair welcomed the visitors from the **Joint Committee on Statutory Instruments (JCSI)** and **Deregulation and Regulatory Reform Committee (DRRC)**. The Chair invited the Chairman of the DRRC Mr Peter Pike MP to give a brief outline of their work. This was followed by a brief introduction by Lord Skelmersdale outlining the role of the Lords Delegated Powers and Regulatory Reform Committee.

4.2 Mr Peter Pike explained that the DRRC was founded by a Conservative Act of Parliament which had originally been opposed by the Labour Party as they thought that the Committee would not fully scrutinise orders. However all now found it to be a useful system and believed that legislation now went through more scrutiny as full consultation needed to take place before anything was sent before the DRRC. Indeed, if the Committee felt that an important body had been omitted from the consultation then they would consult them. Each proposal has to be considered within a fixed time scale. Also their report has to show that each proposal has been considered against certain criteria, eg ultra vires and whether or not it complied with European requirements. The Committee then has to report to the House whether they recommend approval of the proposal or that amendment is required. To date no proposal has been passed without at least a minor amendment. If Committee opinion was divided on an issue when the proposal returned for its second reading the order would need to be debated on the floor of the House (this had only happened on one occasion). If the Committee recommended rejection at this second stage then the item would fall. The House of Lords committee operated in a similar manner. The procedures in place meant that proposals could be dealt with in a more speedy manner than would be likely if they had to be included in a Bill. For example, a recent order was passed within three months and so become operational at the start of the financial year rather than awaiting a suitable slot in a Bill.

4.3 Lord Skelmersdale explained that the House of Lords' Committee checked the appropriateness of the level of scrutiny proposed for each power to make Statutory Instruments in each Bill and its reports to the House of Lords tended to reduce possible disagreements when the bill came before the House.

4.4 Legislation Committee members then raised a number of points.

- On the question as to who decides the appropriateness of a proposal for the regulatory reform procedure, it was explained that this was down to the DRRC committee, although the Minister will often sound members out before hand.
- The effect of devolution on the work of the DRRC was discussed. It was explained that members from the devolved regions were members of the Committee and looked at legislation which affected their areas.

4.5 The Chair thanked the visitors for their contribution.

**Item 5: Any Other Business and Date of next meeting**

5.1 The next meeting would be held on 30 April 2002.