

**LEGISLATION COMMITTEE MEETING****MINUTES:**

**Date:** 18 March 2003  
**Time:** 9:30 a.m.  
**Venue:** Committee Room 1, National Assembly Building

**Attendance:**

Mick Bates	(Liberal Democrat)
Rosemary Butler	(Labour)
Pauline Jarman	(Plaid Cymru)
Huw Lewis	(Labour)
Dr Dai Lloyd	(Plaid Cymru)

**Officials**

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

**Apologies for absence:** Ron Davies, Tom Middlehurst

**Item 1: Minutes of the previous meeting and matters arising: LEG-07-2003(min)**

1.1 The Committee agreed the minutes of the meeting held on 11 March 2003.

**Item 2: Chair's Report**

The Chair welcomed to the Committee the Clerk to the House of Lords Select Committee on Delegated Powers and Regulatory Reform Ms Christine Salmon. The Chair stated that the Committee would have a discussion with her after consideration of Statutory Instruments.

**Item 3: Assembly Orders for Consideration****LC659 - The Care Homes (Wales) (Amendment [No.2]) Regulations 2003**

3.1 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

3.2 Having considered the Legal Adviser's report Members concluded that there was a matter to raise under Standing Order 11.5. The Committee invites the Assembly to pay special attention to an apparent drafting defect in regulation 2(3). This would be capable of correction by means of a Memorandum of Corrections.

3.3 The Committee also made an observation which they felt should be recorded in their report.

3.4 The Committee's report to the Assembly on the Regulations is attached as LC659 (Report).

**LC660 - The Health and Social Care Act 2001 (Commencement No. 5) (Wales) Order 2003**

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

3.6 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 an observation which they felt should be recorded in their report.

3.7 The Committee's report to the Assembly on the Order is attached as LC660 (Report).

**LC661 - The National Assistance (Residential Accommodation) (Disregarding of Resources) (Wales) Regulations 2003**

3.8 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard 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 an observation which they felt should be recorded in their report.

3.10 The Committee's report to the Assembly on the Regulations is attached as LC661 (Report).

**LC662 - The National Assistance (Residential Accommodation)(Additional Payments, Relevant Contributions and Assessment of Resources)(Wales) Regulations 2003**

3.11 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

3.12 Having considered the Legal Adviser's report Members concluded that there were matters to raise under Standing Order 11.5. The Committee invites the Assembly to pay special attention to apparent drafting defects in the citation of powers, in regulation 6(2) and in regulation 6(2)(b). These would be capable of correction by means of a Memorandum of Corrections.

3.13 The Committee's report to the Assembly on the Regulations is attached as LC662 (Report).

**LC667 - The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2003**

3.14 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

3.15 Having considered the Legal Adviser's report Members concluded that there were matters to raise under Standing Order 11.5. The Committee invites the Assembly to pay special attention to apparent drafting defects in regulation 2(3), regulation 3, regulation 4, regulation 7(1) and regulation 8. These would be capable of correction by means of a Memorandum of Corrections.

3.16 The Committee also made two observations which they felt should be recorded in their report and which also would be capable of correction by means of a memorandum of corrections.

3.17 The Committee's report to the Assembly on the Regulations is attached as LC667 (Report).

**LC668 - The National Assistance (Sums for Personal Requirements) (Wales) Regulations 2003**

3.18 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

3.19 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 an observation which they felt should be recorded in their report.

3.20 The Committee's report to the Assembly on the Regulations is attached as LC668 (Report).

**LC669 - The Fostering Services (Wales) (Amendment) Regulations 2003**

3.21 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

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

3.23 The Committee's report to the Assembly on the Regulations is attached as LC669 (Report).

**LC670 - The Local Authorities (Allowances for Members of Community Councils) (Wales) Regulations 2003**

3.24 Mr Turnbull presented the report to the Committee. The Regulations will be made under the Standard Procedure.

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

3.26 The Committee's report to the Assembly on the Regulations is attached as LC670 (Report).

**LC663 - The Education (Remission of Charges Relating to Residential Trips) (Wales) Regulations 2003**

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

3.28 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 observations.

3.29 The Committee's report to the Assembly on the Regulations is attached as LC663 (Report).

**LC664 - The Miscellaneous Food Additives (Amendment) (Wales) Regulations 2003**

3.30 Mr Rowlands presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

3.31 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 observations.

3.32 The Committee's report to the Assembly on the Regulations is attached as LC664 (Report).

**LC671 - The Local Authorities (Capital Finance) (Amendment) (Wales) Regulations 2003**

3.33 Mr Rowlands presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

3.34 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 observations.

3.35 The Committee's report to the Assembly on the Regulations is attached as LC671 (Report).

**LC672 - The Local Authorities (Capital Finance) (Amendment) (Wales) Regulations 2003**

3.36 Mr Rowlands presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

3.37 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 observations.

3.38 The Committee's report to the Assembly on the Regulations is attached as LC672 (Report).

**LC673 - The Education (Outturn Statements) (Wales) Regulations 2003**

3.39 Mr Rowlands presented the report to the Committee. The Regulations will be made under the Accelerated Procedure.

3.40 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 observations.

3.41 The Committee's report to the Assembly on the Regulations is attached as LC673 (Report).

**LC674 - The Sheep and Goats Identification and Movement (Interim Measures) (Wales) (No.2) (Amendment) (No.2) Order 2003**

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

3.43 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 observations.

3.44 The Committee's report to the Assembly on the Order is attached as LC674 (Report).

#### **LC665 - Disease Control (Interim Measures) (Wales) Order 2003**

3.45 Mr Rowlands presented the report to the Committee. The Order had been made under the Executive Procedure.

3.46 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 observations which they felt should be recorded in their report.

3.47 The Committee's report to the Assembly on the Order is attached as LC665 (Report).

#### **LC666 - The Local Health Boards (Transfer of Property, Rights and Liabilities) (Wales) Order 2003**

3.48 Mr Rowlands presented the report to the Committee. The Order had been made under the Executive Procedure.

3.49 Having considered the Legal Adviser's report Members concluded that there were matters to raise under Standing Order 11.5. The Committee invites the Assembly to pay special attention to apparent drafting defects in article 6, article 8(1), schedules 1 and 2 and schedule 3. The Committee expressed a view that these drafting defects be corrected by an amending order and the Committee's report should be changed accordingly. **Action: Legal Adviser**

3.50 The Committee also made four observations which they felt should be recorded in their report.

3.51 The Committee's report to the Assembly on the Order is attached as LC666 (Report).

#### **LC675 - The Tir Gofal (Amendment) (Wales) Regulations 2003**

3.52 Mr Rowlands presented the report to the Committee. The Regulations had been made under the Executive Procedure.

3.53 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 observations.

3.54 The Committee's report to the Assembly on the Regulations is attached as LC675 (Report).

#### **Item 4: Discussion with Clerk to the Select Committee on Delegated Powers and Regulatory Reform Christine Salmon**

4.1 The Chair introduced Christine Salmon and suggested that Ms Salmon should give a brief presentation to the Committee on the role of her Committee, this would be followed by a brief presentation by Mr Turnbull on the role of the Legislation Committee. The Chair stated that there would be time for questions and discussion after the presentations.

4.2 Ms Salmon introduced herself as the Clerk to the House of Lords Delegated Powers and Regulatory Reform Committee. Ms Salmon informed the Members that her Committee had two separate functions: to scrutinise the provisions in Bills for delegated powers and to scrutinise regulatory reform orders. The Committee has 9 Members, is chaired by Lord

Dahrendorf and meets every 2 or 3 weeks. The Committee is supported by herself as the Clerk and by a Legal Adviser.

4.3 Regarding the first function, the Committee scrutinises every bill that comes before the House of Lords and endeavours to report to the House on a bill before its second reading. The purpose of the scrutiny is to look at the powers delegated by the bill, to decide whether they are appropriately delegated and, if so, whether the appropriate level of Parliamentary scrutiny is applied. It is the role of the Legal Adviser to identify the delegated powers and advise the Committee on the legal aspects of the appropriateness of the delegation (for example, whether they are precedented powers).

4.4 The second part of the role of the Committee concerns scrutiny of regulatory reform orders, (whereby the Government can alter primary legislation without using the primary legislative procedure). In considering a regulatory reform order the Committee applies a number of criteria (contained in the Regulatory Reform Act 2001) including whether the order relieves burdens, maintains any necessary protection and whether adequate consultation with interested parties has taken place. The Committee reports to the House on whether the orders are acceptable. An order will later return to the Committee for second stage scrutiny and, if acceptable, then goes before the House. The Committee's report may be discussed. The Committee's reports, in relation to both functions, are usually highly effective.

4.5 Mr Turnbull gave a brief overview of the work of the Legislation Committee, mentioning that the Legislation Committee is the counterpart of the Parliamentary Joint Committee on Statutory Instruments in the House of Commons and the Subordinate Legislation Committee of the Scottish Parliament. However, he pointed out that unlike other institutions the National Assembly for Wales is a corporate body. Consequently, the Legislation Committee looks at draft legislation which is proposed to be made by the Assembly.

4.6 The questions that followed raised the following points:

- The Select Committee on Delegated Powers and Regulatory Reform has a wide consultation process, what does this mean? Ms Salmon replied that a government department promoting a regulatory reform order is obliged to undertake adequate consultation and the Cabinet Office guidance is that there should be a 12 week consultation with all interested parties. The Committee then scrutinises this consultation to make sure all the right questions have been asked and that the whole process was carried out correctly.
- Due to the increasing demand for accountability, should there be a one-step removed body to undertake all impact assessments of regulatory reform orders? Ms Salmon indicated that she did not feel that she had the expertise to offer a view on this save to say that it was the natural function of parliament to scrutinise those orders.
- How does the Committee on Delegated Powers and Regulatory Reform influence government policy? Ms Salmon replied that the Committee was not a policy Committee. It looked at whether a delegation and the level of scrutiny applied were appropriate.
- How does the Select Committee on Delegated Powers and Regulatory Reform look at subordinate legislation delegation to the National Assembly for Wales? Ms Salmon pointed out that, since devolution, the Committee's decision was whether to delegate power to a Minister and, in some cases, to the Assembly. She welcomed the Legislation Committee Members' opinion on whether the delegation would mean the

same in both cases and asked to be informed about the way the legislation was treated in the Assembly. An opinion was expressed that the Assembly would be more justly able to absorb the sweeping delegated powers. The Legislation Committee Members indicated that they would like to see the examples of the Bills which prompted such question. Ms Salmon promised to send copies of her Committee's reports to the Clerk of the Legislation Committee so that they could be distributed to Members. **Action: Clerk**

- Did the transfer of powers under Government of Wales Act show what should be delegated to whom? Ms Salmon replied that the Committee on Delegated Powers and Regulatory Reform considered delegation on a case-by-case basis. The underlying principles determining when a given level of delegation was appropriate had not been laid down.
- If the Assembly were to challenge the Committee's recommendation on the appropriateness of a delegation, what should it do? It was explained that any such problems should be resolved through representations to the Secretary of State for Wales.

4.7 The Chair thanked Ms Salmon for interesting and informative presentation and her participation in discussion.

#### **Item 5: Any Other Business and Date of Next Meeting**

5.1 The next meeting would be held on 25 March 2003.