

LEGISLATION COMMITTEE MEETING

MINUTES:

Date: 13th June 2000
Time: 10.30 am
Venue: Committee Room 1, National Assembly Building

Attendance

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| Michael German, Chair | (Liberal Democrat) |
| Nick Bourne | (Conservative) |
| Jocelyn Davies | (Plaid Cymru) |
| Huw Lewis | (Labour) |
| Dai Lloyd | (Plaid Cymru) |
| Lynne Neagle | (Labour) |
| Karen Sinclair | (Labour) |
| Owen John Thomas | (Plaid Cymru) |

Officials

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| John Turnbull | Legal Adviser |
| Dylan Hughes | Assistant Legal Adviser |
| Adrian Green | Committee Clerk |
| Julie Owen | Deputy Clerk |

Apologies for absence:

John Marek

Item 1: Minutes of the previous meeting and matters arising: LEG-14-2000 (min)

1.1 The Committee agreed the minutes of the meeting held on 6 June 2000.

Item 2: Chair's Report

2.1 The Chair reported that the Clerk had informed the Clerk to the Business Committee of the Legislation Committee's views expressed during the previous meeting that the new SO22.12A would provide greater flexibility for correcting minor drafting errors if SO 11.6 (the delegations provision) had been amended as well. This would allow a Memorandum of Corrections to include minor amendments identified by the Executive (subject to the approval of the Committee through the Chair or another member) as well as those identified by the Legislation

Committee itself.

2.2 The Chair stated that as agreed in the last meeting he had written to Sue Essex regarding the Disabled Persons (Badges for Motor Vehicles) (Wales) Regulations (LC96) as the Committee had raised serious concerns as to whether the draft regulations complied with the Human Rights Act 1998 and were strictly within the enabling powers. The problem had arisen in relation to the rights of appeal and whether or not the enabling power provided for such appeals. In her response Sue Essex had stated that the prospect of a legal challenge to the provisions on the grounds that they exceeded the Assembly's powers was very remote and that even if there was doubt as to whether the further appeal provisions within the draft regulations were within the Assembly's powers, it would be wise to interpret those powers the same way as England and Scotland had done. Mr Turnbull explained that he had contacted Speaker's Counsel (the senior legal adviser to the Joint Committee on Statutory Instruments in the House of Commons) who "acknowledged that the enabling legislation did not allow the Regulations to create a right of appeal to the magistrates' court and that this should have been identified

2.3 During a lengthy discussion it was pointed out that whilst the Regulations would be open to challenge in the Courts if they included the right of appeal, it was more likely that someone would seek to challenge them if they did not include the right of appeal. The Committee were clear that they did not want the Assembly to disadvantage Welsh disabled badge holders. Jocelyn Davies stated that the Human Rights Act encouraged courts to be more flexible in their approach to interpreting legislation and that the regulations needed to be consistent with the way England and Scotland had drafted their equivalent regulations particularly, as the possibility of a legal challenge was likely to be remote. She was therefore content to accept the Regulations as drafted. Nick Bourne stated although it would be undesirable for Wales to have fewer rights of appeal than those existing in England and Scotland, the Regulations as drafted appeared to be ultra vires, and the Committee must report this to the Assembly because that is its remit

2.4 The Chair moved the following motion:

That the Committee accept the advice contained in the Legal Adviser's report, that the regulations as drafted are not within the powers of the Assembly.

Votes for: Mike German, Nick Bourne, Huw Lewis and Lynne Neagle

Votes against: Jocelyn Davies and Karen Sinclair.

Owen John Thomas and Dai Lloyd were absent for the vote. The motion was carried.

2.5 The Committee then agreed that the Chair should speak to the Committee's report in

Plenary, so that the Assembly could be fully informed of the situation. It was also agreed that no recommendation should be made to the Assembly to accept or reject the legislation as drafted as that is not the role of the Committee. The Committee's Report is attached as LC96

2.6 The Chair stated that at the previous meeting the Committee had asked Mr Turnbull to consider with colleagues in OCG the issue of the upper age limit of 65 for Board and Committee members imposed by The British Wool Marketing Scheme (Amendment) Order (LC100). The Committee had felt that that restriction might infringe the Assembly's statutory duties towards equality of opportunity. Mr Turnbull advised that this did not, in his view, contravene section 120 of the Government of Wales Act 1998 and was thus solely a matter of policy for the Assembly to determine.

2.7 The Committee's report to the Assembly on the draft Order is attached as LC100 (Report).

Item 3: Assembly Legislation for Consideration

LC103 The Education (Transition to New Framework) (New Schools, Groups and Miscellaneous) Regulations 1999 (Amendment) (Wales) Regulations 2000

3.1 Mr Turnbull presented his report to the Committee.

3.2 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.

3.3 The Committee's report to the Assembly on these Regulations is attached as LC103 (Report).

Item 5: Any Other Business and date of next meeting

5.1 The Chair informed the Committee that he had received two letters from Christine Gwyther (dated 12th June) in response to his letters of 7th April and 18th May relating to drafting defects in connection with The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000 (LC70), The Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000 (LC87) and The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 (LC88). These letters were circulated at the meeting. In her replies, Ms Gwyther stated that the drafting defects identified by the Committee were fully recognised and accepted.

5.2 As regards "The Sea Fishing (Enforcement of Measures for the Recovery of the Stock of Cod) (Irish Sea) (Wales) Order 2000" (LC70) Ms Gwyther stated that ordinarily she would have corrected such a defect at the earliest opportunity by way of an amending instrument but as the operative life of the order came to an end on 30th April 2000 such action was now unnecessary.

5.3 In relation to the Sea Fishing (Enforcement of Community Quota and Third Country Fishing Measures) (Wales) Order 2000 (LC87) Ms Gwyther stated that the inclusion of references to "petty sessions" were a clerical error which had been deleted prior to the order being printed. She also stated that references in this order and The Sea Fishing (Enforcement of Community Satellite Monitoring Measures) (Wales) Order 2000 (LC88) to section 90 of the Magistrates Courts Act 1980 were included in error but that their inclusion had no consequences for Wales and did not affect the validity of the Orders. Ms Gwyther stated that these errors were noted and would be remedied when the Orders are next amended.

5.4 The Chair noted that when the Committee identified defects like these in legislation made under the urgency procedure, there is no procedure to draw the Assembly's special attention to these defects because the Committee's Report to the Assembly would be laid and would not be considered in plenary. The Committee agreed that the Chair should write to the Presiding Officer and Chair of the Business Committee asking that in the circumstances action be taken to ensure that such reports were formally brought to the attention of Assembly members.

ACTION: Clerk

5.5 The next meeting would be held on 20th June 2000 when there are expected to be five or six items to consider.

Associated Papers

- **LC96 (Report)**
- **LC100 (Report)**
- **LC103 (Report)**