

Subordinate Legislation Committee

Report (SLC(3) 01-07)

Date: 26 June 2007

Time: 9.30am

Venue: Committee Room 1, Senedd

Remit:

The remit of the Committee is as follows:-

1. Subject to Standing Order 15.7, the Committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special attention to the instrument or draft on any of the following grounds:

- (i) that there appears to be doubt as to whether it is *intra vires*;
- (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly; or
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

2. Subject to Standing Order 15.7, the Committee may consider and report on whether the Assembly should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Assembly on any of the following grounds:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;
- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;
- (iv) that it inappropriately implements European Union legislation; or
- (v) that it imperfectly achieves its policy objectives.

3. The Committee must make any report under Standing Order 15.2 or 15.3 in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid.

4. In calculating for the purposes of Standing Order 15.4 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than 4 days.

5. Subject to 15.7, the Committee may also consider and report on:

- (i) any other subordinate legislation laid before the Assembly;
- (ii) the appropriateness of provisions in proposed Assembly Measures and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;
- (iii) consequences for legislation subject to the consideration of the Assembly of draft orders under Part 1 of the Legislative and Regulatory Reform Act 2006;

- (iv) the exercise of commencement powers by the Welsh Ministers; or
- (v) any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

6. The Committee may not consider:

- (i) any draft legislative competence order; or
- (ii) any statutory instrument or draft statutory instrument that is required to be laid before Parliament.

Membership:

The current membership of the Committee is:

Dr Dai Lloyd AM (Chair)
Eleanor Burnham AM
Andrew RT Davies AM
Alun Davies AM
Paul Davies AM
Irene James AM
Sandy Mewies AM
Janet Ryder AM
Karen Sinclair AM

Apologies:

None received

Legal Advisers:

Gwyn Griffiths
Joanest Jackson

Clerking Team:

Clerk to the Committee:

Chris Reading

Deputy Clerk to the Committee:

Olga Lewis

Administrative Support Officers:

Hasera Khan

Contacts:

To attend an Assembly committee meeting it is necessary to book a seat in advance; either by telephoning:

Assembly Booking Line; telephone 029 2089 8477 or

or by e-mailing assembly.bookings@wales.gsi.gov.uk You can contact the Committee by sending an e-mail to: Legislation.com@wales.gsi.gov.uk

or you can speak to the Clerk, Chris Reading; telephone 029 2089 8164.

Contents

The Committee reports to the Assembly as follows:

Legislation to which the Government of Wales Act 2006 (Transitional Provisions) (Assembly General Subordinate Legislation) Order 2007 applies

Instruments not reported under Standing Order 11.7 of the National Assembly for Wales (as constituted under the Government of Wales Act 1998):

LC1514: The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2007

Executive Procedure. Date made 21 March 2007

LC1515: National Health Service (General Ophthalmic Services) (Amendment) (Wales) (No. 2) Regulations 2007

Executive Procedure. Date made 27 March 2007

LC1516: The Fire and Rescue National Framework (Wales) 2005 (Revisions) Order 2007

Executive Procedure. Date made 28 March 2007

LC1517: The Animals and Animal Products (Import and Export) (Wales) (Imports of Captive Birds) Regulations 2007

Executive Procedure. Date made 28 March 2007

**Subordinate Legislation for Consideration: Statutory Instruments and draft Statutory Instruments
Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)**

SLC1: The Animals and Animal Products (Import and Export) (Wales) (Laboratories, Circuses and Avian Quarantine) Regulations 2007

Negative Procedure. Date made 7 June 2007. Date laid 8 June 2007. Coming into force date 1 July 2007.

SLC2: The Products of Animal Origin (Third Country Imports) (Wales) (Amendment) Regulations 2007

Negative Procedure. Date made 12 June 2007. Date laid 13 June 2007. Coming into force date 14 June 2007.

SLC3: The Street Works (Inspection Fees) (Wales) (Amendment) Regulations 2007

Negative Procedure. Date made 13 June 2007. Date laid 14 June 2007. Coming into force date 10 July 2007.

SLC5: The Plant Health (Import Inspection Fees) (Wales) (Amendment) Regulations 2007

Negative Procedure. Date made 19 June 2007. Date laid 20 June 2007. "Coming into force date 13 July 2007.

SLC6: The Plant Health (Plant Passport Fees) (Wales) Regulations 2007

Date made 19 June 2007. Date laid 20 June 2007. Coming into force date 13 July 2007.

Instruments not reported under S.O.15.2:

Instrument reported under Standing Order 15.2:

SLC4: The Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007 Negative Procedure. Date made 13 June 2007. Date laid 14 June 2007. Coming into force date 10 July 2007. The Committee's Report is attached as Annex 1 to this Report Dr.

Dai Lloyd AM

Chair

Subordinate Legislation Committee

Annex 1

Subordinate Legislation Committee

(SLC(3) 01-07)

SLC4

Subordinate Legislation Committee Report

Title: The Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007

As part of the process of enforcing the network management duties imposed by sections 16 and 17 of the Traffic Management Act 2004 ("the Act"), the Welsh Ministers may give an intervention notice if they consider that a local traffic authority in Wales may be failing properly to perform any of those duties. If they are satisfied that such a local traffic authority is failing properly to perform any of those duties they may make an intervention order making provision for, or in connection with, the appointment of a traffic director.

In accordance with section 27 of the Act, this Order sets out, in relation to Wales, guidance about the criteria which the Welsh Ministers propose to apply for the purpose of deciding whether to give an intervention notice or make an intervention order.

Standing Order 15.2

The following points have been identified for reporting under Standing Order 15.2

1. The two texts of paragraph 7 of the Guidance are contradictory. The English text states that "Further action may not be necessary" whilst the Welsh states "Gall y bydd angen camau pellach" [Further action may be necessary]. Nevertheless, this is part of the explanatory introduction rather than an operative part of the guidance. In those unusual circumstances, this is drawn to the attention of the Committee, with the recommendation that the Welsh text be corrected on publication to declare "Gall na fydd angen camau pellach". [Standing Order 15.2 (vii)]
2. The expression "insignificant effect (or potential effect)" first appears in paragraph 18(6). This would normally be read as meaning that the effect or potential effect could be insignificant as the adjective precedes both nouns. The word order in Welsh "effaith ddi-nod (neu effaith bosibl)" suggests that only the actual effect can be insignificant as the adjective appears between the two nouns. If "insignificant" applies to both, the words in brackets would be better before "ddi-nod". The same issue arises in paragraph 49(c). [Standing Order 15.2(v)]
3. The reference to "two-tier areas" in paragraph 37(2) is unclear. It is understood that the intention was to ensure that all interested authorities liaise with one another in connection with network related projects, particularly when one authority acts as the agent of another. However, on first reading it might look like an inappropriate adaptation of a provision for England where they still have two tiers of local government. [Standing Order 15.2(v)]
4. In paragraph 46, "authorities of a description specified" has been translated as authorities specifically described. It is the description (such as authorities of a certain size), rather than the authorities by name, that is to be specified. The correct expression would be "awdurdodau o ddisgrifiad a bennir". [Standing Order 15.2 (vii)]
5. The words "unrhyw gamau cynllunio" in 51(ch) mean "any planning action" which suggests town and country planning. The English ("any planned action") appears to mean any proposed action, so the Welsh should be "unrhyw gamau a gynllunir" or "unrhyw gamau a gynlluniwyd". [Standing Order 15.2 (vii)]

Nevertheless, as this is guidance relating to the relationship between the Assembly Government and local authorities, these matters are not considered sufficiently serious to require corrective legislation.

Procedure:

Affirmative []
Negative [X] Dr Dai Lloyd AM
Chair, Legislation Committee
26 June 2007