

Subordinate Legislation Committee

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Date: 6 October 2008

Time: 2.30pm

Venue: Committee Room 3, Senedd



Olga Lewis

Deputy Committee Clerk

Subordinate Legislation Committee

National Assembly for Wales

Cardiff Bay

CF99 1NA

2nd September 2008

Dear Ms Lewis

Consultation by the Subordinate Legislation Committee

Public Affairs Cymru (PAC) was established in October 2006 to enable networking, organise events and to promote good practice among the many organisations that are involved in public affairs or political lobbying in Wales.

We are akin to the Government Affairs Group in London and the Northern Ireland Government Affairs Group in Belfast. PAC members are communication professionals who have regular dealings with government in its widest sense. Our dealings with government are not restricted to lobbying, but embrace all aspects of public affairs. PAC is run by public affairs professionals, and serves the growing number of public affairs professionals in Wales. We currently have over 140 members.

Many of our members have watched the way in the National Assembly scrutinises secondary legislation over a number of years.

Some of us watch many Subordinate Legislation Committee meetings, others maybe just take an interest in specific items. A cross-section of us have come together to inform this response. This submission was compiled with the support of several PAC Members including Helen Miller (Arthritis Care Cymru), Meilyr Ceredig (Grayling), Aled Elwyn Jones (Strata Matrix), Llinos Price, and Daran Hill.

Public Affairs Cymru is pleased to be able to contribute written evidence to the Subordinate Legislation Committee's Inquiry into the scrutiny of subordinate legislation and delegated powers.

We are happy for our response to published. Public Affairs Cymru would also be prepared to give oral evidence to the Committee.

We feel strongly that this is not an academic enquiry. There are many ways in which the scrutiny of Subordinate Legislation can be enhanced.

There is real merit in making the process of engaging with Subordinate Legislation - the main form of legislation made by the Welsh Assembly Government - far more accessible. It is our collective opinion that urgent steps should be taken. The Citizen in Wales has a fundamental constitutional right to be informed of the processes used to this end.

Specific Issues Under Consideration

1. Scrutiny of Statutory instruments on the grounds set out in Standing Order 15.3:

the effectiveness of the Welsh Assembly Government's consultation with stakeholders in respect of statutory instruments;

how the Welsh Assembly Government works with the UK government when drafting statutory instruments;

how the Committee can undertake effective and timely scrutiny of regulations in respect of their political or legal importance or policy objectives;

what the Committee can learn from the House of Lords Merits Committee, whose reporting remit is similar to that of SO15.3.

Secondary legislation passed by the Welsh Assembly Government (or through the National Assembly) should be available in a high quality and accessible format as early as possible in its evolution and should be free to the citizen in Wales. This information could be provided online by the Welsh Assembly Government in a more direct and accessible manner. Her Majesty's Stationary Office (HMSO) and the Statutory Publications Office (SPO), which produces the Statute Law Database are working together to create a free access online legislation. The role played by Welsh Legislation Online is also hugely significant. But it often seems to fall to others rather than the Government itself to make access to Subordinate Legislation easy.

From a PAC point of view, we feel that there is much that can be done to improve consultation on subordinate legislation. In general, consultation on policy is pretty developed but consultation on subordinate legislation is far less so. Even during the first and second Assemblies, when the scrutiny of Subordinate Legislation was more centre stage in the Assembly, consultation with stakeholders has been limited.

A central problem is the often "hidden" nature of Subordinate Legislation. Even though many PAC members are information professionals, it is often difficult to identify appropriate Subordinate Legislation in time for stakeholders to be informed properly and engaged with. Although improvements have been made, there remains anecdotal evidence where key interest groups have been approached very late or not at all with regard to highly relevant Subordinate Legislation.

In terms of suggesting how the Committee can undertake effective and timely scrutiny of regulations in respect of their political or legal importance or policy objectives, more effort needs to be made by both politicians and public affairs professionals to interact on items of Subordinate Legislation so that expert external opinion can be brought to bear. PAC has recently established an "Use Group" which has been working with the Assembly Commission as a panel of interested representatives of civic society. We input into issues such as how the Assembly website communicates externally, or how Assembly Committees ensure they engage with perhaps their most regular visitors to the public galleries. PAC would welcome the opportunity to offer the use of an "User Group" of experts to discuss in more detail how the work of the Subordinate Legislation Committee might profit from fuller engagement in identifying possible political or legal merit.

Further, the Committee will need to consider in detail how individual Assembly Members and their researchers deal with possible merit situations.

In 2003, the Hansard Society began a review of the Rippon Commission Report, "Making the Law". The review resulted in a series of published papers. The sixth paper was published in May 2005 and considered post-legislative scrutiny. It concluded that, rather than leaving the monitoring of subordinate legislation to chance, "it should become a core function of Parliament". Although there have been natural and welcome changes in the way that Subordinate Legislation is now dealt with, perhaps under the Third Assembly the balance has tilted too far from "centre stage" scrutiny.

A start to this process would be to reschedule the meetings of the Committee so that they become more of a focal point of Assembly business. In order to engage other politicians, let alone the public, the time that the Subordinate Legislation Committee meets, is not appropriate. 8:15 a.m on a Tuesday morning does not accord the Committee the opportunity to engage meaningfully and urgent consideration should be given to changing its time.

Additionally, The Law Commission has previously stated 'We suggest that in the light of experience of post - legislative scrutiny of primary legislation by a new committee serving this purpose, there is scope for the development of Parliamentary post - legislative scrutiny of secondary legislation.' Possibly this is a process that the Committee should consider in the future to see whether the secondary legislation in Wales is working as intended; and to ensure the evolving process of better regulation.

In conclusion, we feel that the clear presentation of matters for 'technical' and 'merits' scrutiny is important as without clarity and transparency it affects the ability of stakeholders such as PAC members to engage at the stage when the committee considers the regulations. It is important that everyone knows the purpose of the particular task of scrutiny and the extent of their powers to respond. Being clear in such respects would also elicit, we feel, more appropriate and better structured responses from PAC members when we engage with Committee members over issues related to merits scrutiny in particular.

2. Additional considerations relating to statutory instruments implementing European Union directives:

the effectiveness and transparency of the Welsh Assembly Government's transposition procedures;

the extent to which the Welsh Assembly Government can and does tailor the implementing regulations to the needs of Wales in view of the parameters set by European directives.

In our opinion the use of transposition notes as provided in the Scottish Parliament offers an useful exercise in increasing transparency with regard to the implementation of European Union directives.

Of most interest to PAC members in respect of these questions is, once again, the need for clear focus. It is imperative that the National Assembly has a procedure for flagging up legislation at both a UK and European level and that this is accessible to interested parties

then we can use it as a resource for our public affairs engagement work.

3. Scrutiny of Bills of the UK Parliament which have an impact on Wales:

the procedures in place to make transparent the implications of UK Bills on areas of devolved competency and the powers of Welsh Ministers;

how decisions are taken with respect to conferring delegated powers on Welsh Ministers, agreeing the applicable procedures or conferring framework powers (powers to make Assembly Measures) within Bills;

liaison between the Welsh Assembly Government and the UK government in relation to UK Bills;

how to ensure effective and timely consideration of UK Bills by the Committee.

The mystery of the process by which Measure-making powers are included in UK Bills is a challenge indeed. The annual statement by the then Secretary of State for Wales made to plenary on 28th November was an useful spotlight on this particular aspect, but it left many patches of gloom about the focus of the spotlight. As an example, look at the course of the Planning Bill currently before Westminster. Last November, Mr Hain pledged to Plenary that: "The Planning Bill will modernise and improve the planning system, cutting down bureaucratic and lengthy delays in the system. Framework powers will give the Assembly increased control over local development plans and the Wales spatial plan." However, despite many enquiries from Assembly Members, the content of the relevant clauses of the Bill were not laid until Committee stage in the House of Commons. This curtailed significantly the amount of time available for the Assembly in any form - including the Subordinate Legislation Committee - to scrutinise these aspects.

Similarly, Welsh provisions within the Climate Change and Marine and Coastal Access Bills were not subject to public consultation. Once details are agreed between the Welsh Assembly Government and Whitehall, information is provided in Ministerial statements and briefings from the Members Research Service on an ad hoc basis, and is also provided for subject committee discussions upon request. Committee scrutiny also tends to be limited to sessions with WAG officials and Ministers, with no oral or written evidence from external stakeholders. Regulatory Impact Assessments of draft bills, stakeholder consultation responses and evidence provided to Westminster committees on UK Bills are publicly available, and could also inform Assembly scrutiny of Welsh provisions in UK bills.

Now that your Committee is aiming to undertake UK Bill scrutiny with a new vigour and priority, it is clear that the processes of engagement must be radically improved. It is especially important that the Committee evolves robust mechanisms for scrutinising new powers in UK Bills as this could be the only point where the National Assembly is able to scrutinise new executive powers.

The process may be new, but there is much to be done to increase transparency. Perhaps the Legislative Statement made annually by the Secretary of State for Wales to Plenary Session should also be accompanied by a more detailed Legislative Statement to the Subordinate Legislation Committee. This need not necessarily be made by the Secretary of State themselves, but a clear "Westminster end" view would be required in order to assist the scrutiny of such clauses.

There should also, perhaps, be an obligation on clerks at Westminster to communicate to your Committee when any Bills with "Measure-making powers" for the Assembly are laid in Westminster.

Again, without much more clarity in terms of identifying the content of such clauses in UK Bills, it will be very difficult for your Committee to fulfil its functions and also for interested parties to use the process as a resource for our public affairs engagement work.

Once again, thank you for the opportunity to respond to this enquiry on behalf of Public Affairs Cymru.



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