

## **Purpose**

1. To consider the submission to the Richard Commission by the Chair of the Agriculture & Rural Development Committee. The submission is attached at Annex 1. At its 13 November meeting, the Committee indicated its wish to discuss the submission prior to the 5 December meeting.

## **Background**

2. The Chair has been invited to give evidence to the Richard Commission at its 5 December meeting to inform the Commission's inquiry into the powers and electoral arrangements of the National Assembly for Wales.

3. The submission describes the Committee's mode of operation and gives specific examples of Committee business that have been affected by the clarity, breadth and depth of the Assembly's powers. In addition, it describes the Committee's role in scrutinising the Minister, his policies and Assembly subordinate legislation.

## **Action for the Committee**

4. The Committee is invited to comment on the submission.

## **Committee Secretariat November 2002**

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### **Richard Commission**

#### **Submission by Glyn Davies AM**

**Chair of the Agriculture & Rural Development Committee, National Assembly for Wales**

## **Introduction**

1. The following submission is made in my capacity as the Chair of the Agriculture and Rural Development Committee but has been considered by the Committee itself. The submission describes the Committee's mode of operation and gives specific examples of Committee business that have been affected by the clarity, breadth and depth of the Assembly's powers. In addition, it describes the Committee's role in scrutinising the Minister, his policies and Assembly subordinate legislation.

## **Background**

2. The portfolio of the Agriculture & Rural Development Committee covers the matters related to agriculture, fisheries, food, forestry and rural development for which the Deputy First Minister and Minister for Rural Development and Wales Abroad is accountable.

3. The responsibilities of subject committees are set out in the Assembly's Standing Orders (see Annex 1). In the main these envisage a committee role in scrutiny, policy development and the production of subordinate legislation. During a typical meeting the Committee is likely to address more than one of these functions in some way. To do so, the Committee's mode of operation has developed over time and business under the following four broad headings would now be recognisable in most meetings:

- *Minister's Report* – at each fortnightly meeting of the Committee, Members question the Minister on the basis of a written report covering the main topical issues within his portfolio.
- *Subordinate legislation* – at most meetings, the Committee considers an item of draft subordinate legislation.
- *Input into the development of Welsh Assembly Government policy* – at the request of the Minister or Committee members, papers are submitted to the Committee seeking views and input into emerging Welsh Assembly Government policy.
- *Committee-led inquiries* – meetings often include time for the questioning of organisations and individuals submitting evidence to specific Committee inquiries. The process leads to the production of Committee reports containing policy recommendations to the Minister and others.

4. The balance between the Committee's different functions has altered since it began its work in 1999. Explicit Ministerial and legislative scrutiny now takes up a greater proportion of the Committee's time.

## **Committee work and the Assembly's powers**

5. The following section gives examples where the clarity, depth or breadth of the Assembly's powers have affected the work of the Committee.

### *Foot and mouth disease*

6. In the spring and summer of 2001, the work of the Committee was dominated by the foot and mouth outbreak. Additional meetings were held and the development of the outbreak became the principal focus of Committee agendas.

7. The relevant animal disease control powers did not lie with the Assembly, which acted throughout as an agent for DEFRA. The Committee, therefore, was only able to influence policy by making its views known to the Assembly Minister and officials and asking that these be passed on to DEFRA. This constraint on its ability to influence policy directly was frustrating for Committee members. Nonetheless, the Assembly Minister was frequently seen by the public as being accountable for many of the decisions being made and the Committee's meetings acted as a useful and timely focus for public discussion of the handling of the outbreak.

8. When the disease had been brought under control the Committee resolved to conduct a detailed scrutiny of the actions taken by Assembly Ministers and officials during the outbreak. Two meetings of the Committee were devoted to this exercise and, as well as scrutinising the actions of the Minister for Rural Affairs, the Committee also invited other Cabinet Ministers with relevant functions to give evidence. As a result, the Committee was able to report on the disease control, environmental and economic aspects of the outbreak in Wales far more quickly than any equivalent body or inquiry in England.

9. The Committee published a report of its investigation in April 2002. It recommended the devolution of animal health powers and addressed other issues outside the remit of the National Assembly, such as vaccination and import controls. The report also made recommendations on matters within the Assembly's control, such as its communication strategy and the economic assistance provided to help the rural economy recover.

#### *Information and Communications Technology (ICT) in rural Wales*

10. In 2001/02, the Committee instigated an inquiry into the development of ICT in rural Wales. In the main, the Committee recognised that its contribution would be maximised by focusing on areas over which the Assembly had direct control. For this reason, the bulk of its recommendations addressed the steps that the National Assembly and partners in Wales could take to stimulate demand for ICT services in rural areas. This approach complemented a related inquiry being undertaken by the House of Commons Welsh Affairs Select Committee into the development of the supply of ICT services. Nonetheless, the Committee's report still included some recommendations that were outside the control of the Assembly. For example, it recommended Welsh representation on OFCOM, the new industry regulatory body, and called on OFCOM to address the particular needs of rural areas in Wales.

#### *Hunting with dogs*

11. The power to place a ban on hunting with dogs is not devolved to the Assembly. In June 2000, a

plenary session of the National Assembly called upon the Welsh Assembly Government 'to request Her Majesty's Government at Westminster to allow the National Assembly for Wales to decide on the question of hunting with dogs in Wales by framing any Bill to provide for secondary legislative purposes to this end'.

12. The Committee was required to involve itself in the matter when, following plenary consideration of the 2000-01 Queen's speech, the Hunting Bill was referred to the Committee for consideration of its bearing on Wales. Following a public consultation exercise, the Committee produced a factual report describing the nature of hunting in Wales and highlighting features of particular significance to Wales. The report was drawn to the attention of Alun Michael, the DEFRA Minister now responsible for introducing primary legislation on the matter.

### **The Committee's approach to scrutiny**

13. It seems reasonable to expect that a change in the legislative powers of the Assembly would alter the nature of the work of subject committees: in particular, their approach to Ministerial scrutiny and the consideration of legislation. It may be useful, therefore, to give some examples of how the Committee has fulfilled these requirements to date.

#### *Regular Ministerial scrutiny*

14. At each fortnightly meeting, the Minister submits a written report covering the main topical issues within his portfolio. The Minister is free to decide which matters he includes in his Report but Committee members can, and do, require that particular topics are covered. Members are then free to question the Minister on any item included in the Report. Typically, around an hour of each meeting is devoted to broad and topical Ministerial scrutiny in this way.

15. A related issue of relevance to the Committee relates to the match between its portfolio and that of the Minister. At present the remit of Committees reflects the distinction in the Government of Wales Act between 'accountability' and 'responsibility'. In principle, the ability of a Committee to scrutinise the actions of its Minister is therefore limited to those functions for which the Minister is accountable. To date, though, the Minister has been happy to take questions from the Agriculture & Rural Development Committee on the full range of his rural responsibilities.

#### *Detailed scrutiny of specific issues*

16. More detailed scrutiny than is possible during the Minister's Report was conducted following the foot and mouth outbreak (described in paragraphs 8 and 9). In preparation for that exercise, the Committee invited those affected by the outbreak to submit written evidence on the particular problems they had faced and to identify the questions they wished to see posed to Assembly Ministers. The material submitted and the briefing prepared by the Committee's secretariat was shared with all Committee members, including the Minister, in preparation for the scrutiny sessions.

17. An additional point flowing from this exercise relates to the Committee's power of summons. Unlike Westminster Select Committees, Assembly Committees have very limited powers of summons. The fact that the co-operation and attendance of Ministers and officials from other Government Departments could not be guaranteed was a factor taken into account in the Committee's decision to restrict its scrutiny to the actions of the Assembly's own Ministers and officials.

#### *Follow-up scrutiny of the implementation of Committee recommendations*

18. In June 2001, the Committee published a report on the diversification of the rural economy. A year later, the Committee considered the Welsh Assembly Government's response to each of the report's recommendations. Although a member of the Committee throughout the inquiry, the Minister was hence scrutinised on the implementation of the Committee's recommendations.

#### *Subordinate legislation*

19. Around a third of the subordinate legislation made by the Assembly falls within the Agriculture and Rural Development portfolio. Since the spring of this year, the Committee has attempted to take a more structured approach to the scrutiny of this legislation by including a regular item on most Committee agendas for the consideration of individual draft statutory instruments (SIs).

20. The process by which these are identified and considered is as follows:

- every 4-6 weeks the Minister provides a report to the Committee listing all of the forthcoming SIs within his portfolio. The Committee has asked that this includes a brief description of each SI and an indication of the degree to which there is scope to make distinctive Welsh policy;
- the Committee selects from this list those SIs it wishes to consider in detail;
- the draft text of the chosen SI is circulated to Members as far in advance of the Committee's meeting as possible;
- if Members wish to suggest any amendments, they are asked to submit these in advance of the Committee's meeting.

21. The Committee has sought to apply this protocol to the consideration of around a dozen SIs in recent months. In the case of one, suggested amendments were passed in Committee but were not adopted when the SI was put for final approval to plenary.

22. The Committee's experience of scrutinising SIs in this way is still limited but a number of points of interest have already become clear:

- the Committee relies on the written description of the purpose of each SI, provided by Welsh Assembly Government officials, to help identify the SIs of most interest or significance;
- the formal procedures for the scrutiny of SIs set out in the Assembly's Standing Orders are rarely

used. In the main this reflects the time pressure under which most SIs are produced and the fact that the potential 8 week delay envisaged for Committee scrutiny by the Standing Orders is rarely feasible if legislation is to be implemented in line with other parts of the UK or EU requirements;

- to circumvent this problem, the Committee has adopted the process described here so as to permit some legislative scrutiny whilst still allowing the timely production of each SI;
- the resources available to assist Members in this process are limited. A single lawyer is available to provide legal advice to all Committees. In addition, Members have access to Committee research and secretariat services.

## **Conclusion**

23. I hope that this submission is helpful to the Commission and I look forward to discussing it with you more fully on 5 December.

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## **Annex 1**

### **Subject Committee responsibilities.**

Standing Order 9.7 and 9.8

Each subject committee shall

- (i) contribute to the development of the Assembly's policies within the fields for which the relevant Minister is accountable to the Assembly;
- (ii) keep under review the expenditure and administration connected with their implementation; and
- (iii) keep under review the discharge of public functions in those fields by public, voluntary and private bodies.

Each subject committee shall also, within the relevant fields,

- (i) advise on proposed primary, secondary and European legislation affecting Wales, including performing its functions under standing order 22;
- (ii) provide advice to the Assembly Cabinet on matters relating to the allocation of the Assembly's budget in accordance with standing order 19;

- (iii) perform its functions under standing order 21 (complaints);
- (iv) perform any functions assigned to it under the Code of Practice on Public Appointments Procedure made by the Assembly under standing order 20; and
- (v) consider matters referred to it by the Assembly within its fields.