

Subordinate Legislation Committee

Report (SLC(3) 05-09)

Date: 24 February 2009
Time: 8.15am
Venue: Committee Room 3, Senedd

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The Committee met on 24 February 2009. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, Joyce Watson AM and Alun Davies AM. Apologies were received from Mark Isherwood AM – there were no substitutions. The meeting was attended by the former Chair of the Committee Dr Dai Lloyd AM and former Clerk of the Committee Anna Daniel, for item 5 on the agenda: Enhancing the Scrutiny of Subordinate Legislation: Inquiry into the scrutiny of subordinate legislation and delegated powers – consideration of key issues.

The Committee reports to the Assembly as follows:

Instruments and Draft Instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2

Draft instruments subject to approval pursuant to a resolution of the Assembly (Affirmative Procedure)

SLC247 - Mental Capacity (Deprivation of Liberty: Assessments, Standard Authorisations and Disputes about Residence) (Wales) Regulations 2009

Affirmative Procedure. Date made ...2009. Date laid ...2009. Coming into force date 1 April 2009

Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)

SLC245 - The Non-Domestic Rating (Unoccupied Property) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 9 February 2009. Date laid 11 February 2009. Coming into force date 7 March 2009

SLC246 - The Street Works (Inspection Fees) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 10 February 2009. Date laid 11 February 2009. Coming into force date 1 April 2009

SLC248 - The Mental Capacity (Deprivation of Liberty: Appointment of Relevant Person's Representative) (Wales) Regulations 2009

Negative Procedure. Date made 11 February 2009. Date laid 13 February 2009. Coming into force date 1 April 2009

SLC250 - The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2009

Negative Procedure. Date made 17 February 2009. Date laid 18 February 2009. Coming into force date 11 March 2009

Other Business

Consideration of the Business Rate Supplements Bill

The Committee considered the appropriateness of provisions that grant powers to make subordinate legislation to the Welsh Ministers in the Business Rate Supplements Bill, paying particular attention to the issues connected with the transfer of powers to the Welsh Ministers. Members were particularly concerned about the processes by which decisions are taken.

The Members discussed the response of the Minister for Social Justice and Local Government to the Chair's letter and decided to invite the Minister to further clarify several issues, including the choice of negative or affirmative procedure for powers to make subordinate legislation delegated to Ministers. It was noted that they would be specified in the Delegated Powers Memorandum to be produced prior to, or upon, the Bill's introduction into the House of Lords. This Bill was first introduced in the House of Commons of the Westminster Parliament. The Members noted that while the House of Commons did not need to see such Memoranda, they would be very useful for the Subordinate Legislation Committee to allow it to perform its scrutiny under Standing Order 15.6 (ii).

Members considered that it would be helpful to have the memoranda for all the Bills they consider. The Members also asked the Legal Advisers to produce a further explanatory note about the correspondence of powers granted to Welsh Ministers in relation to Wales with those given to the Secretary of State in relation to England. The Members noted the concurrent power in clause 28 of the Business Rate Supplements Bill, which would enable the Secretary of State to make consequential amendments to other legislation for Wales as well as England. Members asked for clarification of circumstances in which UK Ministers are able to amend legislation within the Assembly's legislative competence or when legislative powers have been delegated to Welsh Ministers.

Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure

The Committee had considered the Proposed Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure at its meeting on 3 February 2009. The Members had decided that as the proposed Measure contained only one substantive provision which conferred delegated powers on Welsh Ministers (section 4(2) of the proposed Measure), they did not

require Dr Dai Lloyd, the Member in charge of the proposed Measure, to attend to give evidence before the Committee, provided he clarified his position in respect of the choice of procedure for Orders made under section 4(2). Dr Lloyd had written to the Chair informing Members that he did not object to the Assembly Government's view that the power in section 4(2) for Welsh Ministers to amend the Schedule to the Measure should more appropriately be subject to negative resolution procedure.

Enhancing the Scrutiny of Subordinate Legislation: Inquiry into the scrutiny of subordinate legislation and delegated powers – consideration of key issues

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to deliberate on the conclusions and recommendations of the Inquiry report.

Janet Ryder AM
Chair, Subordinate Legislation Committee

24 February 2009