

Subordinate Legislation Committee

Report (SLC(3) 02-08)

Meeting Date: 29 January 2008

Meeting Time: 8.15am

Meeting Venue: Committee Room 3, Senedd

Remit:

The remit of the Committee is:-

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

Legal Advisers:

Gwyn Griffiths
Joanest Jackson

Clerking Team:

Clerk to the Committee:

Anna Daniel

Deputy Clerk to the Committee:

Olga Lewis

Administrative Support Officers:

Hasera Khan
Runa Haque

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 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, Anna Daniel; telephone 029 20898144

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The Committee met on 29 January 2008. At the meeting the following Committee Members were present: Dr Dai Lloyd AM, Eleanor Burnham AM, Andrew RT Davies AM, Alun Davies AM, Paul Davies AM, Irene James AM, Sandy Mewies AM, Janet Ryder AM.

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

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

SLC93 - The Environmental Noise (Identification of Noise Sources) (Wales) Regulations 2007

Negative Procedure. Date made 13 December 2007. Date laid 17 December 2007. Coming into force date 9 January 2008.

SLC99 - The Assembly Learning Grants (European Institutions) (Wales) Regulations 2008

Negative Procedure. Date made 8 January 2008. Date laid 10 January 2008. Coming into force date 1 February 2008.

SLC100 - The Plastic Materials and Articles in Contact with Food (Lid Gaskets) (Wales) Regulations 2008

Negative Procedure. Date made 14 January 2008. Date laid 16 January 2008. Coming into force date 8 February 2008.

Instruments in respect of which the Assembly is invited to pay special attention under Standing Order 15.3

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

SLC93 - The Environmental Noise (Identification of Noise Sources) (Wales) Regulations 2007 – consideration under Standing Order 15.3(v).

The Committee considered the draft report of the Legal Advisers. In light of the response submitted on behalf of the Welsh Ministers which indicated that the identification process may not have been fully compliant with domestic policy, requirements relating to reporting to the European Commission had been complied with.

The Committee noted the report but determined, in light of the content of the response, not to invite the Assembly to pay special attention to these Regulations under Standing Order 15.3(v).

Committee Correspondence

Response of the Counsel General Carwyn Jones AM to the letter of the Chair of the Legislation Committee re the timescale implied in terminology.

The Committee considered the response of the Counsel General Carwyn Jones AM to the letter of the Chair of the Legislation Committee re the timescale implied in terminology. The Members were satisfied with the Counsel General's reply.

NHS Redress (Wales) Measure 2007 - Update

The Committee discussed the current position in respect of the NHS Redress (Wales) Measure 2007 in view of forthcoming Plenary debate and the Report of the Proposed NHS Redress Measure Committee. The Members decided that the Committee might revisit the Measure at the end of Stage 2, depending on the outcome of the scrutiny performed by the Proposed NHS Redress (Wales) Measure Committee during this period.

Any other business

The Members agreed in principle the timing and the draft Itinerary of the Committee visit to the Scottish Subordinate Legislation Committee to compare practices, exchange experiences and discuss the work of the Scottish Subordinate Legislation Committee.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

29 January 2008