

Subordinate Legislation Committee Y Pwyllgor Is-ddeddfwriaeth

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20th January 2009

Dear

Inquiry into the Scrutiny of Subordinate Legislation and Delegated Powers

The Subordinate Legislation Committee of the National Assembly for Wales is conducting an inquiry into the scrutiny of subordinate legislation and other legislation which falls within its remit. Following public consultation, the Committee has considered the evidence received. Much of it referred to the scrutiny of Welsh provisions in UK Bills. I am writing to invite you to respond with your views on the evidence we have received to help inform our recommendations.

Whilst the remit of our predecessor committee – the Legislation Committee of the Second Assembly – was limited to technical scrutiny of subordinate legislation, the present Committee has a wider remit. It is now able to scrutinise the “merits” of statutory instruments on other grounds, such as, whether any statutory instrument inappropriately implements European Union legislation or imperfectly achieves its policy objectives (Standing Order 15.3), similar to the role undertaken by the Merits of Statutory Instruments Committee of the House of Lords.

The Committee may also scrutinise the delegation of powers to Welsh Ministers in UK Bills as well as in Assembly Measures. The Committee may also consider regulatory reform orders which impact on areas within the Assembly’s competence.

The Committee’s inquiry focuses on these new areas of its work – in particular the scrutiny of the “merits” of statutory instruments, and the delegation of powers in UK Bills - which will inform its future approach to its enhanced scrutiny remit.

I have summarised the issues which have been raised which we would like to bring to your attention and attach them to this letter (Annex 1). I should be grateful if you could consider responding to the questions raised in the attached document as this will help inform the Committee inquiry.

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The letter of consultation for the inquiry is attached at Annex 2 for your information only and sets out the terms of reference for the inquiry (the public consultation closed in September 2008). For your information letters requesting similar information have also been sent to the following:

- Dr Hywel Francis, Chair Welsh Affairs Committee
- Harriet Harman, Leader of the House
- Cheryl Gillian, Shadow Secretary of State for Wales

A reply would be appreciated by 13th February 2009. If you have any further questions, please do not hesitate to contact the Bethan Davies, Second Clerk on 02920 898120 or the Deputy Clerk, Olga Lewis on 02920 898154.

Yours sincerely,

Janet Ryder AM
Chair

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Croesewir gohebiaeth yn y Gymraeg a'r Saesneg
We welcome correspondence in both English and Welsh.

Inquiry into the scrutiny of statutory instruments and delegated powers

UK Legislative Work Programme

In his evidence to the Committee, the Secretary of State noted the steps that he takes to brief Members of Parliament about the implications for Wales of the Government's Legislative Work Programme. He also has a statutory duty under section 33 of the Government of Wales Act 2006, to consult the National Assembly on the UK Government's legislative programme.

Some respondents felt that the legislative programme (and the draft version) is not sufficiently detailed to enable stakeholders to identify the potential implications for Wales, compared to some instances, where the implications for England are fleshed out in more detail, e.g the Marine and Coastal Access Bill as detailed in this year's legislative programme.

- i. Do you have any views on how these concerns about the lack of information on the implications of Bills for Wales might be addressed to enable early representation to the Secretary of State and Welsh Ministers where there are areas of concern or areas of opportunity for devolution of executive powers to Welsh Ministers or legislative powers to the Assembly?

Information on and Scrutiny of individual UK Bills

Several respondents stated that the information provided on the implications of UK Bills for Wales is inadequate. The Secretary of State explains that for framework powers, the Welsh Assembly Government produces an Explanatory Memorandum, agreed with the Wales Office, setting out the existing executive and legislative provisions which is then published on the Wales Office website. However, there is no similar process to identify where Bills confer new functions on Welsh Ministers and how they plan to make use of their new powers.

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It was noted that the Sustainability Committee's Report on the Planning Bill, of 5 February 2008, also expressed disappointment that, "due to the lack of detail on the face of the Bill on a number of provisions, it was unable to consider and input fully to the parliamentary process on the impact on Wales of all aspects of the Bill."

- ii. Do you have any views on how this gap in information might be addressed to ensure effective scrutiny of Welsh provisions of UK Bills, in particular those delegating powers to Welsh Ministers?

While the Secretary of State has suggested that that at least one Welsh MP will be on every Committee scrutinising a Bill with a framework power, there may be other Bills which do not contain framework powers but nonetheless devolve significant functions to Welsh Ministers. Some respondents expressed concern that scrutiny of Bills in Westminster tended to neglect the implications for Wales.

The Report of the Joint Committee on the Draft Marine Bill (16 July 2008) flagged concern that there is a potential for a legislative vacuum between Westminster and the Assembly where changes are made to the UK legislative framework, due to the difference in ways in which Executive powers can be implemented by Welsh Ministers and the Secretary of State.

- iii. Do you have any views on what steps could be taken in Westminster to address these concerns to ensure robust scrutiny of Welsh provisions of UK bills?
- iv. Do you have any views on how Westminster Committees and Assembly Committees who scrutinise UK Bills could co-operate to ensure more effective scrutiny of UK Bills with Welsh provisions?

Liaison between the Welsh Assembly Government and the UK Government in relation to UK Bills

In his evidence to the Committee, the Secretary of State states that Devolution Guidance Note 9 sets out guidance on the handling of Bills which affect the responsibilities of Welsh Ministers or the National Assembly for Wales.

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Some respondents have suggested that it appears the Welsh Assembly Government is not always consulted by UK government departments at an early stage in the development of legislation which may affect Wales and in particular where competence has been devolved.

Again, in relation to the Planning Bill, the Sustainability Committee's Report urged the review of procedures for liaison between the Welsh Assembly Government and UK government departments due to their concern at the position of the WAG within the UK legislative process.

- v. Do you have any view as to whether UK government departments are adhering to Devolution Guidance Note 9 and how the relationship works in practice?

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