

Subordinate Legislation Committee

Report (SLC(3) 05-08)

Meeting Date: 04 March 2008

Meeting Time: 8.15am

Meeting Venue: Committee Room 2, 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
Irene James 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.comm@wales.gsi.gov.uk

Or you can speak to the Clerk, Anna Daniel; telephone 029 20898144

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The Committee met on 04 March 2008. At the meeting the following Committee Members were present: Dr Dai Lloyd AM, Eleanor Burnham AM, Andrew RT Davies AM, Alun Davies AM. Apologies were received from Irene James AM. Sandy Mewies AM substituted for Irene James 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)

SLC113 – The Agricultural Holdings (Units of Production) (Wales) Order 2008 Negative Procedure. Date made 6 February 2008. Date laid 7 February 2008. Coming into force date 3 March 2008.

SLC114 – The Rent Repayment Orders (Supplementary Provisions) (Wales) Regulations 2008 Negative Procedure. Date made 6 February 2008. Date laid 7 February 2008. Coming into force date 4 March 2008.
Note – this Instrument is also reported under Standing Order 15.3(i)

SLC115 - The Fire and Rescue Authorities (Best Value Performance Indicators) (Wales) Order 2008 Negative Procedure. Date made 19 February 2008. Date laid 22 February 2008. Coming into force date 18 March 2008.

SLC116 - The Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2008 Negative Procedure. Date made 22 February 2008. Date laid 25 February 2008. Coming into force date 27 February 2008.

SLC117 - The Street Works (Fixed Penalty) (Wales) (Amendment) Regulations 2008 Negative Procedure. Date made 22 February 2008. Date laid 25 February 2008. Coming into force date 12 May 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)

SLC114 – The Rent Repayment Orders (Supplementary Provisions) (Wales) Regulations 2008 Negative Procedure. Date made 6 February 2008. Date laid 7 February 2008. Coming into force date 4 March 2008.

The Committee invites the Assembly to pay special attention to this Instrument under Standing Order 15.3(i) as it contains provisions which may require payment to be to the Welsh Consolidated Fund.

Scrutiny of “Proposal for a Learning and Skills (Wales) Measure 2008”

Having considered the Legal Adviser’s report on “Proposal for a Learning and Skills (Wales) Measure 2008”, the Committee agreed to invite John Griffiths AM, Deputy Minister for Skills or the Deputy Minister’s representative to provide further information on the subordinate legislation provisions of the Measure and the rationale behind the choice of procedure applying to these provisions.

Timing of meetings

The Committee membership has been reduced and consequently the Members resumed discussing the timings of the future meeting. Although it might not be possible to introduce any flexibility in the immediate meetings timetable, it was decided to ask the secretariat to look into the future options for “routine business” meetings.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

04 March 2008