

## **LEGISLATION COMMITTEE**

### **SUMMARY OF ACTIVITY DURING 1999 - 2003**

The Committee held its first meeting on 29 June 1999. This paper summarises our activities from June 1999 to the present. In all, during this period the Committee has met 110 times so far. The figures quoted in this paper cover 108 meetings of the Committee (up to and including the meeting on 11 March 2003). Within this period, the Committee issued three Annual Reports. Following a change in Standing Order, the last Annual Report was laid before the Assembly. Copies of reports, agendas, papers and minutes of the meetings can be found on the committee pages of the National Assembly website – [www.wales.gov.uk](http://www.wales.gov.uk)

#### **Membership**

Current members are Mr Mick Bates AM (Chair), Dr Dai Lloyd AM, Mrs Pauline Jarman AM, Mr Owen John Thomas AM, Mr Huw Lewis AM, Mrs Rosemary Butler AM, Mr Tom Middlehurst AM, Mr Ron Davies AM and Mr Jonathan Morgan AM.

#### **Role and Responsibilities**

The responsibilities of the Legislation Committee are set out in sections 58 and 59 of the Government of Wales Act 1998 and Standing Order 11.

The role of the Legislation Committee is to check that the legislation coming before the full Assembly is not defective and that any relevant requirements have been complied with. The Committee scrutinises draft subordinate legislation that the Assembly proposes to make and also legislation made under the executive procedure. It reports to the Assembly on the drafts, drawing attention to any special features of them on grounds specified on the Assembly's Standing Orders.

The Government of Wales Act restricts the responsibilities of the Committee to the scrutiny of Assembly legislation. Section 58(5) allows the Assembly to give to the Legislation Committee additional responsibilities relating to the scrutiny of relevant Welsh subordinate legislation. However, the Assembly (by virtue of section 58(7)) is not able to give to the Legislation Committee responsibilities not relating to the scrutiny of relevant Welsh subordinate legislation.

Publication of subordinate legislation is not a responsibility in relation to which the Committee has any function. However, the Legislation Committee has a specific interest in the effective presentation of subordinate legislation (by virtue of its reporting role under Standing Order 11.5(iv)), and, more generally, in its comprehensibility to the user.

The Legal Adviser to the Legislation Committee Mr J.H. Turnbull and the Deputy Legal Adviser Mr Huw Rowlands assist the Committee in the

discharge of its functions. They provide advice exclusively to the Legislation Committee in order to ensure their independence as advisers to a scrutiny committee.

### **Standing Order 11.5**

Standing Order 11.5 sets out grounds on which the Committee are to invite the National Assembly to pay special attention to legislation. The grounds are as follows:

- doubt as to whether the legislation is within the Assembly's powers
- the legislation appears to make unusual or unexpected use of the powers
- it is excluded from challenge in the courts
- it appears to have unauthorised retrospective effect
- its form or meaning needs further explanation
- its drafting appears to be defective
- it fails to fulfil statutory or other legal requirements
- there appear to be inconsistencies between the English and the Welsh texts.

Before reporting to the Assembly, the Committee is, under Standing Order 11.4, required to notify the relevant Assembly Minister of this intention and invite him or her to give evidence to the Committee.

During the period covered by this report the Committee considered 659 pieces of legislation.

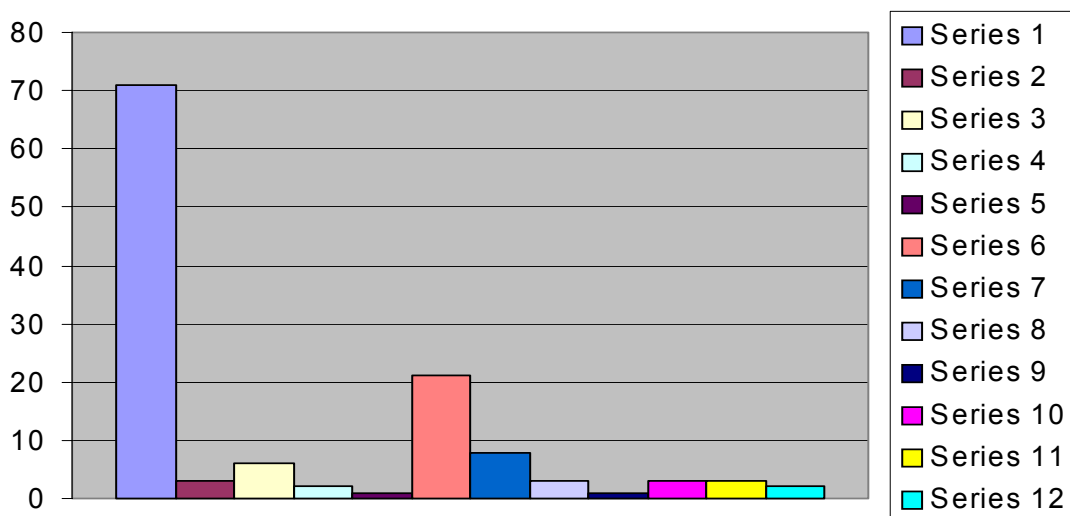
In some instances where a defect has been capable of correction by Memorandum of Correction, the Committee has not formally reported the matter under SO11.5, but submitted a "clear" report expressed to be conditional upon the Minister laying an appropriate Memorandum of Corrections. During the reporting period this happened on 71 occasions (10.8%) of legislation considered.

The Committee invited the Assembly to pay special attention to legislation on 53 separate occasions (8.0% of the items considered) for the following reasons:

- doubt as to whether the legislation is within the Assembly's powers - 3 cases (5.7%)
- form or meaning needs further explanation - 6 cases (11.3%)
- form or meaning needs further explanation and there are some typographical errors - 2 cases (3.8%)
- form or meaning needs further explanation and there are inconsistencies between the English and the Welsh texts - 1 case (1.9%)
- drafting appears to be defective - 21 cases (39.6%)
- drafting appears to be defective and form or meaning needs further explanation - 8 cases (15.0%)
- drafting appears to be defective and there are inconsistencies between the English and the Welsh texts – 3 cases (5.7%)

- doubt as to whether the legislation is within the Assembly's powers and drafting appears to be defective - 1 case (1.9%)
- legislation appears to have retrospective effect – 3 cases (5.7%)
- failure to meet statutory and other legal requirements and there are inconsistencies between the English and the Welsh texts – 3 cases (5.7%)
- there are inconsistencies between the English and the Welsh texts – 2 cases (3.8%)

## Distribution of Problems Established by the Committee under Standing Order 11.5 (Bar Chart)



- Series 1** - Memorandum of Corrections – no formal adverse report  
**Series 2** - Doubt whether the legislation is within the Assembly's powers  
**Series 3** - Form or meaning needs further explanation  
**Series 4** - Form or meaning needs further explanation and there are some typographical errors  
**Series 5** - Form or meaning needs further explanation and there are inconsistencies between the English and Welsh texts  
**Series 6** - Drafting appears to be defective  
**Series 7** - Drafting appears to be defective and form or meaning needs further explanation  
**Series 8** - Drafting appears to be defective and there are inconsistencies between the English and Welsh texts  
**Series 9** - Doubt as to whether the legislation is within the Assembly's powers and drafting appears to be defective.  
**Series 10** - Legislation appears to have retrospective effect.  
**Series 11** - Failure to meet statutory and other legal requirements and there are inconsistencies between the English and the Welsh texts.  
**Series 12** - There are inconsistencies between the English and the Welsh texts.

## **Observations**

Besides reporting formally under Standing Order 11.5, the Committee's reports to the Assembly have included observations on minor matters of style.

The Committee is conscious of the need to ensure that Assembly legislation is drafted in a modern style using clear, plain language. Short sentences are encouraged. The Committee made suggestions on the need for greater clarity or where drafting could have been simplified to assist the reader on 245 occasions (37.8%). Typographical and grammatical errors were found in 221 cases (33.5%).

The vast majority of submitted Orders have followed the Committee's suggestion that the use of gender specific language be avoided. Only 22 Orders (3.3%) were found to contain instances of gender specific language.

The National Assembly is required to produce bilingual legislation except where this is inappropriate or not reasonably practicable. 594 of the Orders submitted to the Committee (90.1%) were drafted bilingually, of which only 37(6.2%) contained inconsistencies between the English and Welsh texts.

The three published Annual Reports of the Committee cover the period between 29 June 1999 and September 2002. During this period, a total of 529 Orders were considered by the Committee. In September 2002, 505 Statutory Instruments were available as final printed versions. Of these, 170 final versions (33.7%) fully took into account Committee suggestions; 75 final versions (14.9%) incorporated some of the suggestions; 101 final versions (20%) did not incorporate the suggestions; the Committee's points were taken into consideration and amendments are intended by way of an amending Order in 6 cases (1.2%). The Committee did not need to make any comments in respect of 153 Orders (30.3%).

In many instances the legal advisers to the Committee had been able to comment on early drafts of legislation. This has resulted in a considerable number of drafting and similar points being rectified prior to formal submission of the legislation to the Committee.

## **Procedures By Which Legislation Is Made**

Out of total 659 Orders considered by the Committee during the period from 29 June 1999 to 11 February 2003, 261 cases (39.6%) followed an Executive Procedure and 398 cases (60.4%) – Standard, Accelerated and Extended Procedures.

## **SUMMARY OF OTHER ACTIVITIES**

The Committee has been involved in a number of activities associated with its role:

### **Visits made by / on behalf of Committee**

- In September 2000 the delegation from the Legislation Committee visited the Scottish Parliament in order to observe the Subordinate Legislation Committee of the Scottish Parliament in operation and further exchange views on practices and procedures;
- In July 2001 the Chair of the Committee, accompanied by a representative of the Office of Counsel General, attended the International Conference on Regulation Reform, Management and Scrutiny of Legislation, which took place in Sydney (Australia). The Chair made a presentation entitled "Regulatory Reform - A Welsh Perspective";
- In December 2001 the Members and officials of the Committee visited the Office of the Counsel General to discuss legislation drafting techniques;
- In November 2002 the Members and officials of the Committee visited to the Office of the Counsel General in order to gain a better understanding of the legislative drafting process.

#### **Visits made to Committee / Delegations met by Committee members and officials**

- In March 2000 the Legislation Committee received a very informative and useful visit from a delegation from the Scottish Parliament's Subordinate Legislation Committee;
- In July 2000 the Legislation Committee hosted jointly with the Law Society a visit by representatives from the New South Wales Regulation Review Committee;
- In June 2001 the Counsel General Mr W. Roddick QC made a presentation to the Committee on bilingual lawmaking, sharing with the Committee the information which he obtained on his visit concerning the "co-drafting" technique used by legislative drafting lawyers in the Canadian Federal Government A further question and answer session on this topic was held with him in July 2001;
- In October 2001 the Committee held a discussion with the Senior Assembly Counsel Mr. Gwyn Griffiths on drafting of foot-and-mouth urgent statutory instruments;
- In December 2001 the Counsel General attended the Committee meeting to present his second report entitled: "The Operation Of A System Of Lawmaking And Justice That In Practice Treats English And Welsh On A Basis Of Equality. A Further Report On The Lessons From The Canadian Experience" and its recommendations to the members for their endorsement;

- In October the Chair of the Legislation Committee Mr. Mick Bates, Committee Member Dr. Dai Lloyd and the Committee officials met with the representatives of the Flemish Parliament;
- In November 2001 the Committee members and officials met with the four Constitutional Commissioners from Uganda;
- In March 2002 the delegation from the Standing Committee of the Ontario Legislative Assembly attended the meeting of the Legislation Committee to exchange information on functions and procedures of both Committees;
- In March 2002 the officials of the Committee participated in discussion with officials from the Greater London Authority during their visit to the National Assembly for Wales;
- In April 2002 the Legislation Committee was visited by a delegation from the Parliamentary Joint Committee on Statutory Instruments and the House of Lords Deregulation and Regulatory Reform Committee. The visit was a continuation of the Legislation Committee's co-operation with Parliamentary bodies having similar responsibilities, which proved to be useful for all participating parties. The delegation attended a formal meeting of the Legislation Committee. A brief description of the work of DRRC, JCSI and the National Assembly for Wales Legislation Committee was followed by a discussion;
- In May 2002 the representatives of the Theatr Fforwm Cymru attended the meeting of the Legislation Committee to explain the background of Theatr Fforwm Cymru and their current project " the AGORA";
- In March 2003 the Clerk to the Select Committee on Delegated Powers and Regulatory Reform Christine Salmon attended a meeting of the Committee during her study visit to the National Assembly for Wales.

### **Lunchtime Seminars on Drafting of Legislation**

- In February 2002 the Legislation Committee in co-operation with the Office of the Counsel General held a joint lunchtime seminar on drafting and co-drafting of legislation, for Assembly Members, their support staff and Assembly civil servants;
- In May 2002 the Legislation Committee and Office of the Counsel General held a second joint legislative drafting seminar for outside bodies and the press;
- In July 2002 a shorter version of the seminar on subordinate legislation drafting was held for Panel of Chairs Members and subject committee clerks;
- In January 2002 seminar on primary legislation took place. It was intended

for the Assembly Members, their research staff and civil servants.

## **Submissions by the Committee**

### **Submission to the Assembly Review of Procedure**

At the start of 2001 the Legislation Committee made a submission to the Assembly Review of Procedure Group suggesting the following changes:

- Information on forthcoming subordinate legislation be made available to all Assembly Members at regular intervals, with a copy to the Legislation Committee (implemented – information available on Internet);
- Subject Committee Chairs be issued with separate and regular information on forthcoming subordinate legislation specific to their area of responsibility (implemented);
- More time be devoted to debating subordinate legislation proposals in subject committees and in plenary (implemented partially);
- Grounds for report under 11.5(v) be amended to make it clear that it includes failure to fulfil standing order requirements (to be implemented);
- The Minister be required to provide an explanation of why the executive procedure was necessary (implemented);
- The Legislation Committee should be able to specify whether it would prefer a written response to its queries or require the Minister to attend in person to give required explanations (not implemented);
- The Legislation Committee be required to produce an Annual Report (implemented);
- There should be made available for all Assembly Members a flow chart illustrating all the stages that subordinate legislation made under the standard procedure may be required to go through and information on where each piece of legislation is in that process - to be available on the Intranet and Internet (implemented partially – information is available on Internet).

### **Submission to the Lord Richard Commission**

In December 2002 the Legislation Committee made a submission to the Lord Richard Commission, and the Chair appeared before the Commission. The following issues were among those raised in the submission:

- Sufficiency of powers as provided by the Government of Wales Act to the Assembly to operate effectively and meet the expectations of the people of Wales: it was stressed that at the moment there is an inconsistency in an Assembly in Wales with responsibility for implementing policy without influencing it and a Parliament in London with responsibility for legislating for policy without implementing it;
- Failure of the present system to involve AMs' or wider interests in formation of bids for Westminster legislation, or in policy which lies behind bids;

- Disappointment that the UK government has not responded more positively to bids for legislation, noting that since devolution there has been only one Wales-only Act and one Bill scheduled for the coming Parliamentary session;
- Importance of conferring on the Assembly powers of primary legislation within Wales to allow the development of the political and legal capacity to give full expression to the policy requirements of Wales: examples of the use of primary legislative powers in a Wales Legislature would be such areas as Health (Free Personal Care); Education (in order to adjust tuition fees) and Animal Health.

Regarding the possible impact of increased powers, the Committee noted the following:

- If the Assembly were to receive primary legislative powers and the present structure were split into a separate Legislature and Executive, the function of making subordinate legislation would, if the Westminster and Scotland pattern were adopted, be vested in the Executive. The Committee would be reporting to the Legislature in relation to action taken by the Executive;
- The possibility of the Legislation Committee having the additional function of reporting on subordinate legislation powers in proposed primary legislation;
- The possibility of the Legislation Committee having a role in advising the Legislature on the drafting of primary legislation as introduced in the Legislature.