

**Subordinate Legislation  
Committee  
Y Pwyllgor Is-ddeddfwriaeth**

Bae Caerdydd / Cardiff Bay  
Caerdydd / Cardiff  
CF99 1NA

6<sup>th</sup> January 2009

Dear Colleague,

**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. During the course of the evidence gathering, the issue of how the Committee can work effectively with the Scrutiny Committees has been raised, and the role of other Committees in scrutinising subordinate legislation and UK Bills. I am therefore writing to all the Committee Chairs to invite their views on the matter.

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). The Committee may also scrutinise delegated powers in UK Bills and Assembly Measures.

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

As there is a degree of potential overlap between the remit of the Subordinate Legislation Committee in this respect and the Scrutiny Committees, the Committee is interested to hear your views on how our work could potentially help inform your work and vice versa, to ensure the most effective use of resources for our Committees.

The Committee may also consider any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers (Standing Order 15.6

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(v)), therefore the Committee would be interested to hear your views on some of the broader issues which the inquiry has raised.

I would be grateful therefore if you could consider the questions listed in Annex 1. I also enclose a copy of the Committee's call for evidence for your information (see Annex 2, consultation closed in September 2008). The consultation responses can be found on the Committee's website:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committes-third-sleg-cons-response.htm>

Please send your responses to Olga Lewis, Deputy Clerk by 22<sup>nd</sup> January 2009.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dai Lloyd', with a long, sweeping underline.

**Dr Dai Lloyd AM**  
Chair, Subordinate Legislation Committee

## Scrutiny of Statutory Instruments

During the course of the inquiry, the Committee visited the House of Lords Merits Committee which has the same remit as the Committee now has under Standing Order 15.3. It is evident that scrutiny of the “merits” of statutory instruments would require the Committee to consider how regulations are drafted to implement policy objectives. There is therefore potential overlap of scrutiny activities between our respective Committees.

The Committee has also visited the Scottish Parliament where all statutory instruments are remitted to the Subject Committees for scrutiny from a policy perspective, while the Subordinate Legislation Committee’s remit is limited to that of technical scrutiny.

It may be helpful for you to note Standing Order 24.7 which states that if any Committee, other than the Subordinate Legislation Committee, intends to report on a statutory instrument which is subject to the affirmative procedure, they must give notice to the government no later than 7 days after the instrument or draft has been laid. No such restriction applies in relation to instruments subject to the negative procedure, although Members only have 40 days after they are laid to table a motion to annul the instrument.

Also, you should be aware that during the Second Assembly, the Welsh Assembly Government used to provide a rolling forward programme of regulations which were due to be laid over the forthcoming 6 months / year. The Government no longer submits such information on their forward programme, therefore the Committee will have very limited notice (mainly informal information exchanged at officials’ level) of what regulation is in the pipeline at any point during the year. In practice, the Committee would only be able to inform you of new (draft) statutory instruments once they are laid.

We appreciate that Scrutiny Committees may not consider the scrutiny of regulations a priority, given the competing demands on the workload of Committees. However it would help us consider how best we can approach our enhanced remit, given our limited resources, if we understand better your approach and views on the following:

- To what extent do you currently scrutinise statutory instruments?
- What role do you think your scrutiny Committee should play, if any at all, in scrutinising statutory instruments?

If it is your view that there is a role for scrutiny Committees:

- At what stage do you / would you be interested in scrutinising statutory instruments – in parallel with the Subordinate Legislation Committee i.e. once they are laid or earlier in the consultation when the Government is consulting on the draft?

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- The Subordinate Legislation Committee is largely a technical committee, and does not have any specific policy expertise. Would you be willing to inform the Subordinate Legislation Committee of any recommendations or concerns that you may have regarding forthcoming regulations (policy implementation) which you may be aware of through scrutiny of the Minister on specific policy issues or when scrutinising a Bill or as part of a Committee inquiry?
- Would you wish the Subordinate Legislation Committee to bring to your attention any particular regulations made by Welsh Ministers once they are laid? If so, would you be able to identify those which will be of particular interest to you, for example, if you are aware that some are forthcoming either as a result of powers delegated to Ministers either in Measures or in UK Bills where Ministers can be given significant discretion to implement new policy proposals in Wales via regulations? Alternatively, would you be interested in being informed of all those within your policy remit which are subject to the affirmative procedure?
- Would you find it helpful to receive a forward programme of regulations which were due to be laid over the forthcoming 6 months / year from the Welsh Assembly Government which relate to your policy remit?
- During the course of our evidence gathering, one issue which has been raised is the matter of post legislative scrutiny. Do you have any views on whether or to what extent your Committee undertakes / should undertake post-legislative scrutiny?

**Scrutiny of Statutory Instruments implementing EU directives  
(for European and External Affairs Committee only)**

- Would you be willing to inform the Subordinate Legislation Committee of any directives of particular interest or concern to your Committee which will subsequently be implemented via regulations by Welsh Ministers to help us identify where there should be linkage between the work of our respective Committees?

*Transposition Notes*

During its visit to Edinburgh to compare practices, the Committee met with the Scottish Parliament's European and External Relations Committee to discuss the results of its inquiry into the transposition of EU directives.

Their Committee recommended that the Scottish Government, on being notified of each obligation to implement EU legislation, should formally notify the Scottish Parliament through the submission of a transposition plan which should include:

- any specific Scottish interests to be addressed during the transposition process;
- plans for consultation with stakeholders and engagement with the parliament during the transposition process;

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- whether it will be implemented separately by the Devolved Administrations or via UK legislation;
  - whether primary or secondary legislation will be used for transposition;
  - the likely timetable for transposition.
- Do you have any views on whether (OR would you support the proposal for a similar) this Scottish model of transposition notes would help make the process of implementing EU legislation more transparent to stakeholders and aid scrutiny of regulations implementing EU legislation?
  - If so, do you have any views on what could usefully be included in transposition notes?

### **Scrutiny of provisions delegating powers to UK Bills**

The Committee may also consider and report on the appropriateness of delegated powers conferred on Welsh Ministers in UK Bills and Assembly Measures. This is narrower than the scrutiny undertaken by Scrutiny Committees which can consider the broader implications for Wales of UK Bills.

The Committee has heard evidence regarding the difficulty of accessing information about provisions in Bills which are of relevance to Wales, and the lack of information about how Welsh Ministers intend to make use of their delegated powers which can hinder effective scrutiny by Assembly Committees (and stakeholders' responses) during the passage of the Bill. The Committee has looked in particular at the passage and scrutiny of the Planning Bill and the draft Marine Bill which were raised by some of the respondents to the consultation as examples of the above.

The Committee has also received evidence from the Wales Office regarding the briefing arrangements which are in place for MPs when framework powers are being proposed in Bills.

- The evidence submitted by the Wales Office states that it is "for Parliament to scrutinise Welsh provisions, including framework powers in Bills". What role do you think your scrutiny Committee should play in scrutinising Bills?
- Do you consider draft Bills as well as Bills?
- Do you consider the UK legislative work programme or the draft programme? Do you have any suggestions as to how the Secretary of State for Wales could improve the discharge of his duty to consult the Assembly on the work programme under section 33 of the Government of Wales Act?
- How do you approach the scrutiny of Bills and what information do Welsh Ministers submit to you regarding Welsh provisions in UK Bills?

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- Do you have any views on how this or the information accompanying Bills (Explanatory Notes) could be improved?
- Would you be willing to inform the Subordinate Legislation Committee on a regular basis of any Bills you are intending to scrutinise?
- Would you wish to be informed of any reports on Bills which are relevant to your policy remit which the Subordinate Legislation Committee may consider?
- Do you have any other views which would be useful for the Committee to take into account, on the effectiveness of liaison between the Welsh Assembly Government and the Wales Office on UK legislation?

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