

Constitutional Affairs Committee

Report (CA (3) 06-10)

Date: 25 February 2010
Time: 9.00am
Venue: Committee Room 4, Ty Hywel

CONTENTS

The Committee met on 25 February 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, William Graham AM, Alun Davies AM and Rhodri Morgan AM. There were no apologies.

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 and 15.3

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

CA390 - The Scallop Fishing (Wales) Order 2010

Negative Procedure. Date made 3 February 2010. Date laid 4 February 2010. Coming into force date 1 March 2010

The Committee resolved to request from the Minister for Rural Affairs, Elin Jones AM, information on the procedures used to delineate and check the descriptions of areas, particularly sea areas, using co-ordinates. The Committee also decided to request that such legislation be accompanied by relevant maps/charts/plans in future.

CA391 - The Scallop Fishing (Wales) (No. 2) Order 2010

Negative Procedure. Date made 8 February 2010. Date laid 8 February 2010. Coming into force date 1 March 2010

CA392 - The Non-Domestic Rating (Unoccupied Property) (Wales) (Amendment) Regulations 2010

Negative Procedure. Date made 4 February 2010. Date laid 9 February 2010. Coming into force date 3 March 2010

CA393 - The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2010

Negative Procedure. Date made 6 February 2010. Date laid 9 February 2010. Coming into force date 1 April 2010

CA394 - The Non-Domestic Rating (Demand Notices) (Wales) (Amendment) Regulations 2010

Negative Procedure. Date made 6 February 2010. Date laid 9 February 2010. Coming into force date 3 March 2010

CA396 - The Community Health Councils (Establishment, Transfer of Functions and Abolition) (Wales) Order 2010

Negative Procedure. Date made 9 February 2010. Date laid 10 February 2010. Coming into force date 1 April 2010

Draft instruments subject to approval pursuant to a resolution of the Assembly (Affirmative Procedure)

CA398 - The School Standards and Framework Act 1998 (Repeal) (Wales) Order 2010

Affirmative Procedure Date made not stated. Scheduled for Plenary debate on 16 March 2010.

The Committee noted that this Statutory Instrument was consequential on another piece of legislation - CA397- The School Funding (Wales) Regulations 2010 - which is on the Agenda for the next meeting of the Constitutional Affairs Committee. Therefore, it was agreed to postpone the consideration of this Order until then to allow the two Instruments to be considered together.

Other Business

Committee Inquiries : Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters and Monitoring the outcome of the Committee's Reports on Statutory Instruments

The Committee took oral evidence from David Lambert, Research Fellow, Wales Governance Centre of Cardiff University and Elizabeth Smith, Researcher, Wales Governance Centre of Cardiff University.

The Wales Governance Centre of Cardiff University agreed to provide further evidence on whether the errors in subordinate legislation occur more commonly when Whitehall drafts are adapted rather than when legislation is drafted originally by the Welsh Government. They also agreed to provide electronic copies of the consolidated version of Schedule 5, with exceptions and other issues highlighted.

The Committee Clerk also undertook to provide Members with the following documents:

- those sections of Legislation Committee No.4's report on the Environment Protection and Waste Management Legislative

Competence Order on the areas of the Order that Mr Lambert and Ms Smith had described as a “vacuum”;

- any related advice given to LC4 at the time by the Assembly’s legal advisers;
- the transcript of any proceedings in LC4 where this matter was broached with the Minister for Environment, Sustainability and Housing, Jane Davidson AM.
- the joint letter from the then Chair of LC4 and the Chair of the Welsh Affairs Committee to the Secretary of State for Wales, and his response, about the Order.

In addition, in relation to the monitoring of subordinate legislation, the Committee Clerk also agreed to ask the Members’ Research Service to provide further information for Members on:

- the other devolved administrations’ approach to the drafting of SIs to implement European legislation; and
- how legal terminology is standardised in other European countries that have a multi-lingual legal jurisdiction.

Committee’s Inquiries – additional information

The Members noted additional evidence provided by Jeff Godfrey, Director of Legal Services Department, Welsh Government for the Committee’s Inquiry into Monitoring the outcome of the Committee’s Reports on Statutory Instruments.

Committee Correspondence: Letter from the Chair of the Legislation Committee No.4 Mike German AM re the Report of Legislation Committee No.4 on the proposed The National Assembly for Wales (Legislative Competence) (Education) Order 2010

The Committee considered the letter from the Chair of the Legislation Committee No. 4 Mike German AM, where he drew the Members’ attention to the conclusions and recommendations made in his Committee’s report on the proposed The National Assembly for Wales (Legislative Competence) (Education) Order 2010 (they related to the clarity of the proposed Order’s Explanatory Memorandum).

The Committee agreed to await any response from the Welsh Government before considering what further action to take. However, Members noted that this might be an area that the Committee could look at in future, with a view to issuing its own guidance on good practice in drafting Explanatory Memoranda for Measures and subordinate legislation.

Resolution to Meet in Private

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on Inquiries into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters and Monitoring the outcome of the Committee's Reports on Statutory Instruments.

Janet Ryder AM
Chair, Constitutional Affairs Committee

25 February 2010