

Legislation Committee

Date: 4 April 2006
Time: 9.30am
Venue: National Assembly for Wales, Cardiff Bay
Title: Scrutiny of Legislation in the Assembly

Post-Legislative Scrutiny

1. The Law Commission is currently undertaking a public consultation on post-legislative scrutiny. It is doing so primarily from the perspective of Acts of Parliament because of the lengthy wait that may arise before a subject is again dealt with in primary legislation due to pressures on Parliamentary time. Statutory instruments are capable of being amended far more quickly and do not therefore give rise to the same concerns.

2. The following extract from the consultation paper summarises what might be involved -

“WHAT FORM SHOULD THE SCRUTINY TAKE?”

7.49 The exact form of the scrutiny will vary depending on the specific measure that is being reviewed. As discussed earlier, different Acts vary enormously and therefore the design of the scrutiny will have to be tailor-made according to the measure. The reviewing body should have autonomy to decide the form the scrutiny will take but it may be helpful to consider some of the core components required for a comprehensive review.

7.50 A narrow form of review might be limited to considering:

- Have all the provisions been brought into force?
- Has the legislation given rise to difficulties of interpretation?
- Has the legislation had unintended legal consequences?

7.51 A broader form of review would address the question whether the Act has delivered what was intended in practical as well as legal terms. This would involve questions such as:

- Have the policy objectives been achieved?
- Has the legislation had unintended economic or other consequences?
- Has it been over-cumbersome?
- Do any steps need to be taken to improve its effectiveness/operation?
- Have things changed so that it is no longer needed?
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Most Parliamentarians who have spoken to us mean a review of the broader kind when referring to post-legislative scrutiny.”

The full text of the consultation document is available at -
http://www.lawcom.gov.uk/current_consultations.htm

3. The Committee may therefore wish to consider whether or not to recommend that the post 2007 Assembly should carry out any form of post legislative scrutiny in relation to any of the following –

- European legislation;

- Acts of Parliament;
- Assembly Measures;
- Regulatory Reform Orders;
- Statutory Instruments.

4. In this, as in many other areas of Assembly responsibility and scrutiny, the major limiting factor would appear to be the workload of the 46 Members who will be available to carry out such work. The following would appear to be a realistic target –

(a) In relation to European legislation and related subordinate legislation, it would seem appropriate to concentrate on the scrutiny of those items identified by the subject committees at an earlier stage as likely to give rise to problems of implementation. An obvious recent example is the case of horse passports. In such cases, the subject committee should be able to carry out as full a review as possible, including the points in paragraph 7.51 above.

(b) In relation to Acts of Parliament, the post-legislative scrutiny could largely be left to Parliament. However, Members might consider that the Assembly should undertake a periodic scrutiny of legislation applying specifically to Wales that has not yet been commenced, whether such powers rest with Whitehall Ministers or with Assembly Ministers.

(c) In relation to Assembly Measures, any post legislative scrutiny will be solely a matter for the Assembly. A review could range from a simple review of legislation not brought into force, which could be dealt with by a Legislation Committee, to a full review of effectiveness along the lines set out in paragraph 7.51, which would be a matter for a subject committee.

(d) In relation to orders made under the current Legislative and Regulatory Reform Bill it may be desirable to scrutinise whether any effect on devolution in Wales anticipated when the draft order was scrutinised has indeed occurred.

(e) In relation to statutory instruments, there is unlikely to be either the time or the need to carry out a full scrutiny. One type of scrutiny will be necessary as the Memorandum of Corrections procedure is largely superseded by SIs made by Ministers under the negative procedure. In those cases, there will be a need to keep under review the making of further instruments to correct defects identified. Subject committees may also wish to carry out some degree of post legislative scrutiny of instruments that may have caused them concern at an earlier stage such as pre-legislative consultation.

5. Members are invited to consider the issues raised in this paper with a view to including appropriate recommendations or options in the Committee's report.

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27 March 2006.