



Eich cyf/Your ref
Ein cyf/Our ref CJ/00026/08

Dr Dai Lloyd AM
Chair of the Subordinate
Legislation Committee
National Assembly For Wales
Cardiff Bay
Cardiff
CF99 1NA

16th September 2008

Dear Dai

Thank you for your letter of 30 July about the Subordinate Legislation Committee's inquiry into the scrutiny of subordinate legislation and delegated powers. I welcome the important contribution that the Subordinate Legislation Committee makes to the legislative process within the National Assembly, and believe that this review is both well timed and important with regard to the bedding in of procedures post GOWA 2006. The subordinate legislation that we, as Welsh Ministers, make implements policies that are designed to make a real difference to the people of Wales, and to all sectors of society. We believe it is important therefore that the government makes every effort to assist in the appropriate democratic scrutiny and to publish legislation in a timely and efficient manner, and I welcome the opportunity of giving evidence to your inquiry. I would be happy to attend the Subordinate Legislation Committee meeting on the morning of the 11th November. Therefore, could your office please contact my Private Secretary Rob Holmes on (029) 2089 8693 to arrange timings.

The new environment created by the Government of Wales Act 2006 (GOWA 2006), and the legal separation between the executive and legislature has necessitated a new approach and new procedures. I think the new procedures have settled in well, and the quality of legislative output, and of scrutiny, has been, at the very least, maintained (between June 2007 and May 2008, 28% of Statutory Instruments considered by the Subordinate Legislation Committee were reported to the National Assembly, as against 35% between July 2006 and March 2007). I believe that the Government has continued to produce a high standard of subordinate legislation and Assembly Members have been able to focus their attention on those items which they regard as being of particular significance.

It is important to remember that the procedures envisaged by GOWA 2006 are intended to achieve exactly that balance. That is, to enable the Government to manage and proceed with its legislative output in the face of changing circumstances and priorities, and to enable the National Assembly to utilise its own resources to scrutinise that output effectively.

I will now turn to the points raised in your call for evidence:

Scrutiny of Statutory Instruments on the grounds set out in Standing Order 15.3

The effectiveness of the Welsh Assembly Government's consultation with stakeholders in respect of statutory instruments:

The Government of Wales Act 2006 requires Welsh Ministers to prepare a local government scheme to sustain and promote local government in Wales. (s72 & 73 of GOWA 2006)

The Voluntary Sector Scheme specifies how Welsh Ministers intend to consult relevant organisations in the exercise of their functions. (s74 of GOWA 2006)

The Business Sector Scheme specifies how Welsh Ministers propose to carry out consultation with the Business Sector and the impact the exercise of their functions might have on the interests of the business sector. (s75 of GOWA 2006).

Welsh Ministers comply with all specific duties to consult set out in legislation which enables them to make statutory instruments. We endeavour to ensure that proposals for legislation are subject to 12 weeks of consultation during their development and a variety of techniques are utilised to ensure that all groups are encouraged to participate. In exceptional circumstances consultation periods may be restricted on grounds of urgency.

How the Welsh Assembly Government works with the UK Government when drafting statutory instruments

Where legislation requires, or where it is in the interests of efficiency and good governance, we co-operate with UK Departments in the production of Statutory Instruments. In such instances, our officials work together throughout the process to ensure that Welsh interests are properly represented.

How the Committee can undertake effective and timely scrutiny of regulations in respect of their legal importance or policy objectives

This is a matter for the Committee. All consultations conducted are published on the Welsh Assembly Government Internet pages.

What the Committee can learn from the House of Lords Merits Committee, whose reporting remit is similar to that of SO 15.3

This is a matter for the Committee.

Additional considerations relating to statutory instruments implementing European Union Directives

The effectiveness and transparency of the Welsh Assembly Government's transposition procedures

The Welsh Assembly Government has contributed to and works within the guidance set out in 'Transposition guide: how to implement European directives effectively', a publicly accessible guide published by the Minister of State for Business and Regulatory Reform in 2007.

The procedures for the transposition and implementation of EU legislation in the UK are currently set out in the Memorandum of Understanding (MoU) and the Concordat on Co-ordination of European Union Policy. The MoU provides that it is the responsibility of the lead Whitehall Department formally to notify the devolved administrations at official level of any new EU obligation which concerns devolved matters and which it will be the responsibility of the devolved administrations to implement. It is then for the devolved administrations to consider, in consultation with the lead Whitehall Department, how the obligation should be implemented, including whether the devolved administrations should implement separately, or opt for UK legislation.

The Assembly Government works within the framework of these documents. Early engagement is essential and there are mechanisms in place to ensure that Assembly Government departments and Legal Services are aware of proposed and confirmed directives to ensure effective and timely implementation.

The transposition of directives cannot be entirely prescriptive as it very much depends on the nature of the directive.

The extent to which the Welsh Assembly Government can and does tailor the implementing regulations to the needs of Wales in view of the parameters set by European Directives

For matters which fall within the responsibilities of the Welsh Assembly Government it is for the lead policy department in consultation with Legal Services and the lead Whitehall Department to consider how each directive should be implemented within the required timescale, including whether it is appropriate to implement separately, or opt for GB or UK legislation. If the decision is to be implemented separately, it remains important to consult with the lead Whitehall department on the implementation proposals, to ensure that any differences of approach produce full and effective implementation. Each obligation to be implemented and enforced is considered on its merits.

Scrutiny of Bills of the UK Parliament which have an impact in Wales

The procedures in place to make transparent the implications of UK Bills on areas of devolved competency and the powers of Welsh Ministers

The UK Government now publishes, and consults upon, its draft legislative programme. This is a new departure and makes the process of producing and refining the legislative programme more open and transparent than it has ever been. In addition, section 33 of GOWA 2006 places a duty upon the Secretary of State to consult the Assembly on the UK Government's legislative programme.

How decisions are taken with respect to conferring delegated powers on Welsh Ministers, agreeing the applicable procedures or conferring framework powers (powers to make Assembly Measures) within Bills

We seek to ensure that the appropriate procedure is applied in each individual instance. In respect of UK Bills, while we aim to ensure that any proposal concerning new powers for Welsh Ministers is, or has been, subject to consultation, the timescale for the production of Bills means that this is not always possible for every provision. Decisions on including Measure powers in Bills are taken collectively both in the Welsh Assembly Government and UK Government. Ultimately, of course, any decision to confer powers in a UK Act is one for Parliament.


Liaison between the Welsh Assembly Government and the UK Government in relation to UK Bills

These arrangements are fully described in guidance published by both the UK Government and the Welsh Assembly Government.

How to ensure effective and timely consideration of UK Bills by the Committee

That is a matter for the Committee, but as mentioned above, the UK Government now publishes, and consults upon, its draft legislative programme. In addition, section 33 of GOWA 2006 places a duty upon the Secretary of State to consult the Assembly on the UK Government's legislative programme.

Yours sincerely,



Carwyn Jones AC/AM

Y Cwnsler Cyffredinol ac Arweinydd y Tŷ
Counsel General and Leader of the House