

**Dyddiad:** Dydd Gwener 21 Tachwedd 2001  
**Amser:** 2.00pm to 5.00pm  
**Lleoliad:** Ystafell Bwyllgora, Adeilad y Cynulliad Cenedlaethol

Nid yw'r cyfieithiad Cymraeg ar gael ar hyn o bryd.

## **COMMITTEE CONSIDERATION OF FOOT AND MOUTH**

### **Purpose**

1. To clarify the Committee's powers to investigate the handling of the Foot and Mouth outbreak in Wales.

### **Background**

2. Elin Jones wrote to the Chair of the Committee on 5 November asking him to consider the Committee's role in instigating an inquiry into the handling of Foot and Mouth in Wales. At the meeting on the 7 November, the Committee requested a paper clarifying the powers available to them in this regard.

3. Annex A contains the terms of reference and timetables for the three inquiries already announced by the UK Government. Two of these – the Anderson inquiry into the lessons learned from the outbreak and the scientific inquiry led by the Royal Society – are expected to start work in the next few weeks and to seek the views of members of the Committee.

4. The nature of any separate Committee-led investigation will depend on what the Committee wishes to achieve and the scope of the terms of reference agreed. But before considering how to proceed, the Committee will wish to be aware of the various options available.

### **Option 1 – a public inquiry**

5. Section 35 of the Government of Wales Act (the Act) permits the Assembly to 'cause an inquiry to be held into any matter relevant to the exercise of any of its functions'. The Assembly itself does not have the functions on animal health that were exercised in controlling FMD. The Assembly acted as an agent of DEFRA throughout the outbreak. It is doubtful, therefore, whether the Assembly has the power to establish a public inquiry into the handling of the FMD crisis. If it did, legal consideration would then

have to be given to whether it would be a reasonable use of the power in the circumstances of the particular case. Should the Committee wish to pursue this option, further legal advice would need to be sought from the Presiding Officer's Legal Advisor and the Office of the Counsel General.

6. The most significant feature differentiating a public inquiry from the other options described here would be the power to summon witnesses and to produce evidence. An inquiry would also be able to bring established procedures and a quasi-legal formality which combine to make it also by far the most costly and time-consuming of the options available (see paragraph 30).

7. The Committee should also be aware that *it* does not have an inherent power to instigate an inquiry. Only plenary can do this although responsibility for the inquiry could be delegated from plenary to the Committee under Section 62 of the Act.

**8. Should the Committee wish to investigate further the Assembly's powers to instigate a public inquiry on this matter, more detailed legal advice will be secured.**

## **Option 2 – a Committee investigation**

9. The Environment, Planning and Transport Committee is currently conducting an investigation into the Nantygwyddon landfill site. This is not a public inquiry but an investigation conducted under the power granted by Section 40 of the Act to 'do anything ... which is calculated to facilitate, or is, conducive or incidental to, the exercise of any of its functions'. The link to the Assembly's functions means that the same legal uncertainties apply as for Option 1. Again, should the Committee wish to follow this model in relation to Foot and Mouth, it would need to seek a delegation from plenary to do so under Section 62.

10. In the case of Nantygwyddon, the Committee has been assisted by an independent investigator – this was specified in the remitting motion. The requirement from plenary to use an independent investigator distinguishes this option from a normal Committee review (option 3). Appointing an investigator to act on its behalf would not otherwise be within the power of a Committee. Assuming a suitably expert and independent candidate could be identified, it would bring associated costs well in excess of the Committee's budget. For the Nantygwyddon investigation, these have been met by the Assembly.

11. Such an investigation would not carry the powers available to a public inquiry. In particular, it would not give the Committee or an investigator the power to summon witnesses or evidence (other than those described in paragraph 24).

**12. Should this be the Committee's preferred action, it would need further legal advice, and for plenary to pass a motion remitting the power to instigate an investigation under Section 40 to the Committee.**

### **Option 3 – a Committee review**

13. The Committee has the power to instigate a more limited review under Standing Order 9.7, which sets out the responsibilities of subject committees. In particular each subject committee shall:

- i. contribute to the development of the Assembly's policies within the fields for which the relevant Assembly Secretary is accountable to the Assembly;
- ii. keep under review the expenditure and administration connected with their implementation; and
- iii. keep under review the discharge of public functions in those fields by public, voluntary and private bodies.

14. Under this Standing Order the Committee could elect to conduct a review of its own – conducted by the Committee within the normal course of its work. As with other reviews, it could choose to appoint an advisor (although the available budget is limited), invite evidence and produce a report to plenary.

15. The Committee would be free to invite written or oral evidence from DEFRA or others, but would not have the power to force them to comply (see paragraphs 23 & 24).

**16. Should this be the Committee's preferred action, it would be free to do so under Standing Order 9.7.**

### **Option 4 – detailed scrutiny of the Minister for Rural Affairs**

17. If the aim of the Committee is to scrutinise the actions and decisions taken by the Minister for Rural Affairs this could also be achieved within the Committee's normal work programme.

18. One or more future meetings of the Committee could be set aside as discrete scrutiny sessions. A paper could be commissioned detailing the chronology of the outbreak and the Minister's and officials' assessment of the lessons to be learned. Submissions could also be invited from groups outside the Assembly to inform the Committee's scrutiny.

19. As with the fuller committee review outlined in option 3, a report with recommendations could be produced and submitted to plenary. It could also form the basis of a contribution to Anderson inquiry into the lessons learned from the outbreak.

20. Although it could not force them to do so, the Committee might also wish to invite other relevant Ministers to attend, such as the Minister for the Environment or the Minister for Economic

Development. Alternatively, the Committee could invite the relevant subject committees to engage in a joint scrutiny exercise thereby guaranteeing the attendance of Ministers.

**21. Should this be the Committee's preferred action, scrutiny sessions could be built into its work programme in the early part of the New Year.**

## **Option 5**

### **Formalising the Committee's input into the UK-led inquiries**

22. Rather than initiating a separate investigation of its own, the Committee could seek to play a more prominent role in the UK-led inquiries. It is understood that the Anderson inquiry already intends to seek the views of individual members of the Committee in the course of its work. A further option would be to strengthen its evidence by submitting a corporate view on behalf of the Committee either in private or by inviting the inquiry team to one of the Committee's meetings. Attendance by the inquiry team at a Committee meeting would allow particular concerns arising from the handling of the outbreak in Wales to be passed on in a public and formal forum.

**Should this be the Committee's preferred action, the Secretariat will invite the Anderson inquiry team to attend a Committee meeting in the New Year.**

## **Other factors to take into consideration**

### **Participation by other Government Departments and agencies**

23. Depending on the breadth of any terms of reference, the Committee may wish to invite written and/or oral evidence from other parts of Government such as DEFRA, the State Veterinary Service and the Intervention Board. It is unclear whether other Government Departments would co-operate with a Wales-only investigation, especially at a time when their focus will be on their contribution to the UK-based inquiries. Given the uncertain extent of the powers to summon Crown witnesses and documents under Section 35 of the Act, there is no guarantee that, even with the support of plenary for a public inquiry, their co-operation could be assured.

24. The Committee nevertheless has the power to require the attendance for the provision of evidence any member or member of staff of the bodies specified in Schedules 4 and 5 of the Act. Some of the bodies the Committee might wish to hear from, such as the Welsh Development Agency, Wales Tourist Board and the Environment Agency, are listed in the Schedules. Others, most notably, Government Departments, the SVS and the Intervention Board, are not and so the Committee would have no

authority to require them to co-operate.

### **Impact on the rest of the Committee's work**

25. Option 3 would clearly affect the Committee's work programme significantly. The Committee has only one further meeting before Christmas and another five until Easter. Depending on the terms of reference agreed, past experience shows that a review would be likely to take up all of this time even if the remainder of the work programme were postponed (*i.e. including the regular, hour-long Minister's reports and the ongoing reviews of ICT in rural areas and hunting.*). In practice, Committee reviews can often take longer than initially intended – the Committee's own review of diversification, for example, took over a year to complete whilst the Nantygwyddon investigation is likely to take a similar time having originally been planned to report within six months.

### **Input to and overlap with the other inquiries**

26. The Committee will no doubt wish to ensure that their work complements and does not duplicate that of the three inquiries previously announced by the UK Government.

27. The terms of reference of the first of these (the Anderson inquiry) would appear to cover many of the issues the Committee is likely to wish to consider. The other two are also relevant, for example, in their coverage of the arguments around vaccination and the impact of the crisis on the rural economy.

28. It is understood that the Anderson inquiry report will contain a separate chapter on Wales. As described in paragraph 22, the inquiry team is already minded to see and talk to a range of groups and individuals in Wales, including members of the Committee and other AMs. As suggested in paragraphs 19 and 22, a formal report arising from the Committee's scrutiny of the Minister, or direct oral evidence, could be submitted to the inquiry. Submission of evidence to the Anderson inquiry team early in the New Year would fit with their likely timetable.

### **Impact on the Assembly's Agriculture Department**

29. Any of the options outlined above will have a considerable impact on the workload of Assembly officials. The same officials will also need to respond to the UK inquiries into the handling of the outbreak. Options 1 and 2 would place a particularly heavy workload for the staff of the Agriculture Department. The impact of options 3 and 4 would be less so for those officials but greater for the staff of the Committee's own secretariat.

### **Cost**

30. The cost of option 1 could be very considerable. As a broad guide, the cost benefit analysis of a public inquiry into Nantygwyddon estimated the cost to be between £3 million and £5 million. Option 2 would be less so but still well beyond the budget available to the Committee. Again, as an indication of

order of magnitude, the budget for the Nantygwyddon investigation is £300,000. The other options could be accommodated within the Committee's own budget.

## **Action for the Committee**

31. The Committee is invited to instruct the Secretariat on how it wishes to proceed.

**Committee Secretariat**

**November 2001**

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## **Annex A**

### **Inquiries into the Foot and Mouth Disease outbreak**

Three independent inquiries into the lessons to be learned from the foot and mouth disease outbreak of 2001 and the future of farming and the countryside were announced by the Government on 9 August 2001.

The independent inquiries which will report to the Prime Minister and the Secretary of State for Environment, Food and Rural Affairs, Margaret Beckett are:

- Inquiry into the lessons to be learned from the Foot and Mouth disease outbreak of 2001 and the way the Government should handle any future major animal disease outbreak, to be chaired by Dr Iain Anderson;
- Scientific review by the Royal Society of questions relating to the transmission, prevention and control of epidemic outbreaks of infectious disease in livestock, committee to be chaired by Sir Brian Follett FRS;
- Policy Commission on the Future of Farming and Food, as pledged by the Government, to be chaired by Sir Don Curry.

### **Inquiry into the lessons to be learned from Foot and Mouth**

The Inquiry into the lessons to be learned from the Foot and Mouth disease outbreak of 2001 will be headed by Dr Iain Anderson working with the Cabinet Office Civil Contingencies Secretariat.

Dr Anderson will offer recommendations to the Prime Minister, the Secretary of State for the Environment, Food and Rural Affairs and the devolved administrations within six months of his starting

a full programme of work.

While Foot and Mouth Disease is still present, the number one priority for farming and rural communities and the country as a whole, must be to eradicate it. While Dr Anderson may undertake preliminary work as soon as he wishes, the Inquiry will not formally begin until it is clear that it will not distract from the eradication of Foot and Mouth Disease.

**Terms of reference:** "To make recommendations for the way in which the Government should handle any future major animal disease outbreak, in the light of the lessons identified from the handling of the 2001 foot and mouth disease outbreak in Great Britain."

The recommendations should be addressed to the Prime Minister and the Secretary of State for Environment, Food and Rural Affairs, and to the devolved administrations in Scotland and Wales.

**Timetable:** The Inquiry would not begin until the outbreak is over and should aim for completion of the work within 6 months. If there are important emerging recommendations which should be passed to the Government sooner, the Inquiry could publish interim findings.

## **Scientific review by the Royal Society**

The Royal Society will lead a scientific review of the complex issues arising from serious animal disease outbreaks. It has agreed to provide its recommendations by summer 2002. The review will be carried out by a committee chaired by Sir Brian Follett FRS and include veterinary scientists, virologists and epidemiologists, together with representatives of farming and consumer groups.

**Terms of reference:** To review scientific questions relating to the transmission, prevention and control of epidemic outbreaks of infectious disease\* in livestock in Great Britain, and to make recommendations by Summer 2002.

The inquiry should take close account of related inquiries, notably the administrative inquiry into the handling of the 2001 foot and mouth outbreak and the policy commission on the future of agriculture. It should cover:

### *a) Transmission/Prevention*

The research base for identifying present and future risks of disease – what we know about risks to Great Britain posed by animal disease world wide; whether we know enough; and whether early warning/horizon scanning arrangements are scientifically and logistically adequate;

The availability, scientific efficacy and adequacy of preventative measures (including vaccination) in the light of assessment of the risks, including the risks associated with current and future livestock practices.

### *b) Controls*

The availability, scientific efficacy and safety of current technology (including vaccines) and methods for the surveillance, control and eradication of infectious livestock diseases\* in Great Britain;

The potential for enhanced use of quantitative epidemiological models in understanding and predicting the spread of disease and the impact of policy options.

The review should:

- Pay particular regard to any hazards to human health;
- Identify any actual or potential constraints such as ethics, costs and benefits, economic incentives and social concerns.

\*ie transmissible disease that have the potential for very serious and rapid spread, irrespective of national borders, that are of serious socio-economic or public health consequence and that are of major importance in the international trade of animals or animal products.

## **Policy Commission on Farming and Food**

The Policy Commission will advise on how to create a sustainable, competitive and diverse farming and food sector within a thriving rural economy which advances environmental, health, and animal welfare goals. It will have a key role in informing the Government's approach to policies affecting rural areas in future. It has been asked to report by the end of this year. The Commission will cover England only.

The Commission will decide its own working methods, working in an open and inclusive manner involving a wide range of stakeholders, supported by a Secretariat in the Cabinet Office. Full details on the membership of the Commission will be announced soon.

**Terms of Reference:** To advise the Government on how we can create a sustainable, competitive and diverse farming and food sector which contributes to a thriving and sustainable rural economy, advances environmental, economic, health and animal welfare goals, and is consistent with the Government's aims for Common Agricultural Policy (CAP) reform, enlargement of the EU and increased trade liberalisation.

**Coverage:** The Policy Commission will cover England. In carrying out its tasks the Commission should take account of the following institutional factors:



- domestic agriculture and food policy is governed to a significant extent by EU law and the sectors operate within the framework of the EU single market.

- while responsibility for UK negotiations on EU matters such as the Common Agricultural Policy rests with the Government, agricultural policy within Scotland, Wales and Northern Ireland is the responsibility of the devolved administrations. UK policy towards the CAP is decided by the Government in consultation with the devolved administrations in accordance with concordats drawn up as part of the devolution settlement.

**Working Methods:** The Commission should set its own working methods. But we envisage an open process, drawing in advice from a wide range of stakeholders, supported by a Secretariat in the Cabinet Office. The Commission will have access to Civil Service technical advice and support as required.

The Commission will be able to draw upon high quality economics expertise and expertise on the EU legislative and policy framework, as well as knowledge of successful international models for agricultural reform.

**Timetable:** The Commission is asked to report to the Prime Minister and the Secretary of State for Environment, Food and Rural Affairs by 31 December 2001.