

Committee on the Inquiry into the E.coli outbreak in Wales

E.coli (2) 02-05(p3)

Meeting Date: 17 November 2005

Meeting Time: 9.00am

Meeting Venue: Committee Room 1, National Assembly for Wales

PAPER FROM DIRECTOR OF LEGAL SERVICES, WELSH ASSEMBLY GOVERNMENT

Purpose

1. This paper invites the Committee to consider delegation arrangements:

1.1 to support the establishment and operation of the Inquiry into the E-Coli outbreak in Wales; and

1.2 to enable the preparation of procedural Rules which would be made under Standing Order 24 and would apply to all public Inquiries established by the Assembly under the Inquiries Act 2005.

Background

2. At its meeting on 19 October 2005 the Committee considered a paper from the Permanent Secretary which addressed, amongst other things, the need to put in place delegation arrangements for the establishment and operation of the inquiry. The Permanent Secretary's paper suggested that the most appropriate course would be for the Assembly to give the responsibility to the First Minister who in turn could make the necessary delegation to staff (through the Permanent Secretary).

3. In the course of the discussion of that paper, it was suggested that a framework might be established under which operational matters would be delegated to the First Minister whilst reserving to the Assembly those more strategic powers relating to the overall structure and outcomes of the inquiry. This paper suggests a possible delegation arrangement for consideration by the Committee.

Delegation under the Government of Wales Act 1998

4. The powers contained in the Inquiries Act 2005 which are conferred on the Assembly are summarised in the annex to this paper. The exercise of those powers may be delegated by the Assembly in accordance with section 62 of the Government of Wales Act 1998.

5. The following delegation framework is suggested for consideration by the Committee with a view to formulating its recommendation to the Assembly.

(i) Decisions by the Assembly

6. A number of powers will be discharged by the Assembly in resolving to establish the Inquiry into the E-Coli outbreak in Wales, following consideration of the Committee's report. These include:

- The decision to cause an independent inquiry to be held pursuant to section 1 of the Act.
- The identification of the Chairman who will be appointed to undertake the inquiry pursuant to section 4 of the Act.
- The terms of reference of the inquiry pursuant to section 5 of the Act.

(ii) Further powers reserved to the Assembly

7. It is proposed that the powers conferred on the Assembly by the Inquiries Act 2005 will be delegated to the First Minister solely for the purpose of the Inquiry into the E-Coli outbreak in Wales. Adopting the Committee's preference that the Assembly should retain responsibility for further strategic decisions which may be necessary which might affect the overall purpose and structure of the inquiry, the powers set out at paragraph 9 below might be limited in the extent to which they are delegated to the First Minister.

8. The powers listed at paragraph 9 would be delegated to the First Minister only to the extent that delegation was necessary to give effect to any decision taken by the Assembly pursuant to those powers.

9. Having regard to the Assembly resolution which established this Committee, and the scope of its work, those powers which the Committee might recommend should be reserved to the Assembly are:

- The power to amend the terms of reference under section 5(3).
- The power to terminate the appointment of the chairman under section 12 (and the power to appoint replacement chairman pursuant to section 7(1) of the Act).
- The power to suspend the inquiry under section 13(1) of the Act.
- The power to end the Inquiry under section 14(1)(b) of the Act.
- The power to restrict public access to the Inquiry under section 19(2)(a) of the Act.

10. The Committee should be aware that the reservation of the powers set out at paragraph 9

above has the potential to create practical difficulties if decisions need to be considered or taken whilst the Assembly is in recess. If, to take one example, it became necessary to change the chairman on grounds of illness, the absence of a delegated power to appoint a replacement could be disruptive to the inquiry process. In all of the areas identified at paragraph 9 above the Committee thus needs to balance practical risks of this nature against the broader objectives which the delegation arrangement is designed to achieve.

11. During the Committee discussion on 19 October 2005 reference was made to powers contained in the 2005 Act relating to the publication of the report of the Inquiry panel. Consideration might be given to whether relevant powers contained at sections 24 and 25 of the 2005 Act should also be reserved. Section 24 of the Act requires the Chairman of an Inquiry to deliver a report to the Assembly (whether this is an interim report or a final Report). Section 26 of the Act places an obligation on the Minister to lay the Report before the Assembly either at the time of the publication or as soon afterwards as is reasonably practicable. There is an obligation to publish the report of the Inquiry in full unless parts of the Report may be withheld from publication on the limited grounds set out at section 25(4) and (5) of the Act. These grounds involve either legal constraints, or public interest considerations involving potential damage or breach of confidentiality. In the event of any of these grounds arising in the context of this Inquiry, there would be difficulties in considering such issues in plenary session. It is felt, therefore, that such powers should be delegated in full.

(iii) Delegation to First Minister

12. It is suggested that subject to the above limitations the powers under the Inquiries Act 2005 could be delegated to the First Minister solely for the purpose of the Inquiry into the E-Coli outbreak in Wales. These powers are summarised in the annex to this report. They would for example include powers to determine the composition of the inquiry panel (with the exception of the Chairman); to establish the setting up date; to determine whether to appoint assessors; and to establish the practical arrangements for the inquiry including administrative and legal support to the inquiry panel, accommodation, and the technical support necessary for the inquiry to function effectively.

13. The delegation to the First Minister would also include all administrative steps necessary to give effect to those decisions being made by the Assembly, such as preparing the instrument of appointment of the Chairman selected by the Assembly in accordance with section 5 of the Act.

(iv) Delegation to the First Minister Generally

14. At the meeting on 19 October 2005 the Committee discussed the operation of the public inquiry in the absence of statutory rules of procedure prepared under section 41 of the Inquiries Act 2005. The powers of the Chairman under section 17 of the Inquiries Act 2005 to give directions concerning the procedure and the conduct of the inquiry were noted; in particular the possibility that this power may be used to adopt any draft Rules (suitably adapted) which may be in preparation under section 41 of the 2005 Act. In order for statutory rules to be brought into effect by the Assembly (in Spring 2006 or shortly thereafter) it will be necessary for a Minister to

bring forward the relevant Assembly general subordinate legislation in accordance with Standing Order 24. The delegation of the section 41 power will need to be made generally, rather than being confined to the Inquiry into the E-Coli outbreak in Wales.

Summary

15. On the basis that the Assembly resolves to cause the public Inquiry into the E-Coli outbreak in Wales to be held in accordance with the Inquiries Act 2005, within the terms of reference specified and with the intention that a specified individual will be appointed as Chairman, the Committee could invite the Assembly to:

- (i) delegate to the First Minister responsibility for giving effect to this resolution;
- (ii) delegate to the First Minister all powers under the Inquiries Act 2005 for the purpose of this Inquiry; and
- (iii) limit the extent to which those powers identified at paragraph 9 above are delegated so as to reserve to the Assembly decisions about whether and in what manner those powers should be exercised;
- (iv) delegate the power under section 41 of the 2005 Act to the First Minister to enable the preparation of subordinate legislation for consideration by the Assembly in accordance with Standing Order 24.