

Committee on the Government of Wales Bill

GWB(2)-07-06 (p2)

Date: 6 March 2006

Venue: National Assembly, Cardiff Bay

Title: Government of Wales Bill – Schedule 11, Paragraph 33

Purpose

1. To inform the Committee of the consideration of Schedule 11, Paragraph 33 by Subject Committees.

Background

2. The Committee considered this matter at its meeting on 14 February and agreed to return to it after Subject Committees had considered it in more detail.

Progress

3. The previous paper contained a response from ELL Committee. Since then EPC have considered Schedule 11, Paragraph 33 and were content with the contents in relation to the EPC Minister's portfolio. HSS are the only other subject committee who are considering it and will do so on 8 March.

Action

4. The Committee is invited to note the responses from the relevant Subject Committees.

Committee Service

March 2006

1. Committee on the Government of Wales Bill

Date: 14 February 2006

Time: 15 minutes after the end of Plenary

Venue: National Assembly Building, Cardiff Bay

Title: Government of Wales Bill – Schedule 11, Paragraph 33

Purpose

2. To inform the Committee of the consideration of Schedule 11, Paragraph 33 by Subject Committees.

Background

3. Schedule 11 sets out the position which provides for the transfer of Assembly functions to the Welsh Ministers. The functions transferred include the making of subordinate legislation. Two distinct situations arise in relation to subordinate legislation. Firstly where the Secretary of State has a corresponding function in relation to England and secondly, where there is no corresponding function, the function being unique to Wales.

4. The Bill deals with these distinct situations as follows:-

- Where the Secretary of State has a corresponding function in relation to England and a particular parliamentary procedure applies, Schedule 11 paragraph 32 provides that the equivalent Assembly procedure to that parliamentary procedure will apply (affirmative or negative as the case may be).
- Where the function is unique to Wales Schedule 11 paragraph 33 specifies the procedure which is to apply in respect of a particular function.

5. Para 33 of Schedule 11 sets out two Tables which list those powers which will be subject to the affirmative procedure and those subject to the negative procedure where the function is unique to Wales.

6. Some Subject Committees are considering whether the proposed allocation of procedures are appropriate for their relevant subject areas. A copy of the paper considered by the Education and Lifelong Learning Committee (ELL) is attached as an Annex. Other Subject Committees are to consider a similar paper shortly. Included in the Annex is a letter received from the ELL Committee on the outcome of their consideration of the paper. [N.B. the tables in the attached Annex only include those policy areas relevant to ELL. The full list is in the Bill]

7. The following Committees will be discussing the issue at a future meeting:

- Health and Social Services – date to be confirmed
- Environment Planning and Countryside – 16 February

Action

8. To note the action being taken by Subject Committees and the response received from the Education and Lifelong Learning Committee.

Committee Service

February 2005

Annex Education and Lifelong Learning Committee

Date: 8 February 2006

Time: 09:00

Venue: Committee Room 3 and 4, National Assembly Building, Cardiff Bay

Title: Government of Wales Bill – Schedule 11, Paragraph 33

Purpose

1. To consider paragraph 33, of Schedule 11 of the Government of Wales Bill and advise the Assembly's Government of Wales Bill Committee of any concerns that Committee Members may have.

Background

2. The Government of Wales Bill ("the Bill") makes provision for the separation of the legislative and executive functions currently exercised by the Assembly and provides for the transfer of functions currently exercised by it. The general position is set out in Schedule 11 paragraph 28 which provides for the transfer of Assembly functions to the Welsh Ministers. The functions transferred include the making of subordinate legislation.

3. Prior to the establishment of the National Assembly all subordinate legislation applicable to Wales was made by the Secretary of State who was required (subject to limited exceptions) to follow the parliamentary procedure prescribed by the enabling Act of Parliament. These procedures may either be affirmative, in which case specific parliamentary endorsement of the instrument is required, or negative, in which case the instrument is subject to annulment if a Parliamentary motion so requires.

4. Where the function of making subordinate legislation was transferred to the Assembly, section 44 of the Government of Wales Act 1998 ("GOWA") operated to disapply the prescribed parliamentary procedure and under section 64 of GOWA the Assembly was required, through its Standing Orders, to provide procedures for the preparation, making, confirmation and approval of subordinate legislation. These procedures are contained in Standing Orders 24 to 30. Transferring the function of making subordinate legislation to the Welsh Ministers requires that provision be made in the Bill to impose upon the Welsh Ministers procedures for the making of subordinate legislation.

5. Legislative powers were conferred upon the Assembly in two ways. Many powers were existing Ministerial functions which were transferred to it by means of an Order in Council made under section 22 of GOWA (known as a Transfer of Functions Order or 'TFO') made in 1999

(and subsequently) whilst others have been directly conferred on the Assembly by Acts of Parliament passed since 1999. The Bill provides that the procedures to be applied to the legislative making functions acquired in these different ways and which are to transfer to the Welsh Ministers should be as follows:

Functions transferred by Order in Council under section 22 of GOWA:

6. The general position is to apply the parliamentary procedure which applied immediately before the function was transferred e.g. where the Secretary of State is required to obtain Parliamentary approval to proposed subordinate legislation, the Welsh Ministers will be required to obtain Assembly approval. This is provided for in Sch 11 paragraph 31.

Functions directly conferred on the Assembly:

7. Where functions which will be exercisable by the Welsh Ministers following transfer under paragraph 28 have been conferred directly on the Assembly (usually by Act of Parliament) there is no parliamentary procedure which can be attached to the particular power to make subordinate legislation. Two distinct situations arise: firstly where the Secretary of State has a corresponding function in relation to England and, secondly, where there is no corresponding function, the function being unique to Wales.

8. The Bill deals with these distinct situations as follows:-

iii. Where the Secretary of State has a corresponding function in relation to England and a particular parliamentary procedure applies, Schedule 11 paragraph 32 provides that the equivalent Assembly procedure to that parliamentary procedure will apply (affirmative or negative as the case may be).

iv. Where the function is unique to Wales Schedule 11 paragraph 33 specifies the procedure which is to apply in respect of a particular function.

Action

9. Schedule 11 paragraph 33 sets out two Tables. Table 1 lists those powers which are to be subject to the affirmative procedure and Table 2 lists the powers to which are to be subject to the negative procedure i.e. subject to annulment by resolution of the Assembly.

10. The powers relevant to the Education and Lifelong Learning Committee are listed on the Tables attached as an Annex to this paper. The Committee is requested to confirm that it is content with the proposed allocation of procedures.

Assembly Parliamentary Service - Legal Division

Annex

Table 1 – Positive Resolution (May only be made with the approval of the Assembly)

Function	Description
Section 23(9) of the Anti-social Behaviour Act 2003 (c. 38).	Power to apply to Wales provisions about penalty notices in cases of truancy.
Section 62(1) of the Education Act 2005 (c. 18), if exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 103(3) of that Act.	Power to repeal certain provisions in the Education Act 2002 (c. 32).
Section 124(1) of that Act, if exercised to amend or repeal an enactment.	Power to make consequential etc. provision

Table 2 – Negative Resolution (May be made by Ministers without Assembly approval but are subject to annulment by the Assembly)

Function	Description
Section 79S(2) of the Children Act 1989 (c. 41).	Power to confer functions relating to child minding or day care.
Section 79T(2) of that Act.	Power to make provision about inspection of child minding and day care.
Section 73(5) of the Care Standards Act 2000 (c. 14).	Power to confer power on the Commissioner to require information.
Section 74(1) of that Act.	Power to provide for examination by Commissioner of particular cases.
Section 76(2) of that Act.	Power to prescribe information to be contained in annual monitoring report

Section 76(3) of that Act.	Power to prescribe timing, form and content of report.
Section 77 of that Act.	Power to make provision about functions conferred by Part 6.
Section 22(1) of the Education Act 2005 (c. 18).	Power to establish panel to advise on Chief Inspector's functions.
Section 25(2) of that Act.	Power to prescribe categories of persons who may be registered inspectors.
Section 25(3)(b) of that Act.	Power to prescribe fees for applications for registration.
Section 36(2) of that Act.	Power to make provision as to timing of inspections and reports.
Section 52(5) of that Act.	Power to make provision about provision of inspection services by LEAs.
Section 55(4) of that Act.	Power to prescribe intervals at which careers services are inspected.

Table 2 – Negative Resolution (continued)

Function	Description
Section 56(3) of that Act.	Power to prescribe intervals at which related services are inspected.
Section 57(7)(a), (b) and (c) of that Act.	Power to require a person inspected to prepare written statement in response
Section 57(9) of that Act.	Power to make provision about inspection reports.
Section 62(1) of that Act, unless exercised to amend or repeal an enactment.	Power to change inspection framework for Wales.
Section 85(3)(d) of that Act.	Power to designate institutions eligible for HEFCW funding.
Section 90(1) of that Act.	Power to confer functions on HEFCW
Section 91(1) of that Act.	Power to give directions to HEFCW.

Section 92(4) of that Act.	Power to authorise joint exercise of HEFCW functions.
Section 100(2) of that Act.	Power to make provision as to meaning of "governing body".
Section 124(1) of that Act, unless exercised to amend or repeal an enactment.	Power to make consequential etc. provision.
Paragraph 2 of Schedule 3 to that Act.	Power to make provision about appeals to, and procedure of, tribunals.
Paragraph 3(2)(b) of Schedule 4 to that Act.	Power to prescribe persons who may not be members of inspection team.
Paragraph 4(3) of Schedule 4 to that Act.	Power to waive fees for applications to be on the list of inspection team members.
Paragraph 6(b) of Schedule 4 to that Act.	Power to make provisions about meetings between inspectors and pupils.

Annex

Y Pwyllgor Addysg, Dysgu Gydol Oes a Sgiliau Education, Lifelong Learning and Skills Committee		
Siân Wilkins Clerk Committee on the Government of Wales Bill National Assembly for Wales Cardiff Bay Cardiff CF99 1NA		<p>Bae Caerdydd / Cardiff Bay</p> <p>Caerdydd / Cardiff CF99 1NA</p> <p>9 February 2006</p>

Dear Siân

Government Of Wales Bill – Schedule 11, Paragraph 33

I attach a copy of a paper that was considered by the Education, Lifelong Learning and Skills (ELLS) Committee yesterday about the above provisions, in relation to the responsibilities of the Committee.

The Committee was content with the proposed approval procedures for secondary legislation outlined in the paper and specifically for those Orders made under the powers outlined in the two tables set out in the annex to the paper. I would be grateful if you this could be drawn to the attention of the Committee on the Government of Wales Bill.

Regards

Steve George

Clerk to the Education, Lifelong Learning and Skills Committee