

Constitutional Affairs Committee

Report: CA(3)-28-10 : 24 November 2010

This meeting can be viewed on Senedd TV at:

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Time: 9.30 am

Venue: Committee Room 4, Ty Hywel

Assembly Members in attendance

Janet Ryder, North Wales (Chair)

Alun Davies, Mid and West Wales

William Graham, South Wales East

Rhodri Morgan, Cardiff West

Kirsty Williams, Brecon and Radnorshire

Apologies.

There were no apologies.

The Committee reports to the Assembly as follows:

Instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2 or 15.3

Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)

CA503 - The Education (Specified Work and Registration) (Wales) Regulations 2010

Procedure: Negative

Date made: 9 November 2010

Date laid: 10 November 2010

Coming into force date: 1 December 2010

CA505 - The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2010

Procedure: Negative

Date made: 15 November 2010

Date laid: 17 November 2010

Coming into force date: 20 December 2010

Draft Instruments in respect of which the Assembly is invited to pay special attention under Standing Orders 15.2 and/or 15.3

Draft Instruments subject to approval pursuant to a resolution of the Assembly (Affirmative Procedure)

The National Assembly for Wales (Disqualification) Order 2010

Procedure: Affirmative

Date made: 2010

Date laid: 2010

Coming into force date: 11 January 2011

Previous disqualification Orders had been made under a joint process with the UK Parliament. The Committee noted that, as Standing Orders prevented the Committee from considering joint SIs, this was the first occasion that the Committee had been able to scrutinise a draft of an Order in Council.

The Committee agreed a Report under S.O.15.2 and S.O.15.3 on the Order, which is attached as Annex 1.

In addition to the formal reporting points, the Committee also noted that the Order had been prepared in English because it related to the whole of the UK. The Committee was not convinced by this explanation and agreed that its concerns on the matter should be conveyed to the First Minister.

Other Business

Committee Inquiries: Drafting Welsh Government Measures: Lessons from the first three years

The Committee took oral evidence from David Lambert, Research Fellow and Manon George, Research Assistant, representing the Wales Governance Centre. The witnesses undertook to provide a range of additional information arising from their evidence.

Monitoring the Outcome of the Constitutional Committee's Reports on Subordinate Legislation (September 2009-July 2010)

The Committee considered the response of the Counsel General and Leader of the Legislative Programme on the Committee's draft annual monitoring report. The Committee agreed to publish the report, including the Counsel General's letter, subject to asking for further clarification of the steps being taken to further reduce the incidence of technical reports.

Resolution to Meet in Private

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into Drafting Welsh

Government Measures: Lessons from the first three years and additional evidence from the Minister for Social Justice and Local Government Carl Sargeant AM on the Proposed Local Government (Wales) Measure.

Janet Ryder AM

Chair, Constitutional Affairs Committee

24 November 2010

Annex 1

Constitutional Affairs Committee

(CA(3)-28-10)

CA504

Constitutional Affairs Committee Report

Title: The National Assembly for Wales (Disqualification) Order 2010

Procedure: Affirmative

This Order designates the persons who are disqualified from being a member of the National Assembly for Wales. The bodies and offices are described in the Schedule to this Order.

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument:-

The Order has been prepared in English only. The following is however noted by the Committee:-The Wales Office has confirmed that “as the Wales Office lawyers were in agreement with the Privy Council Office and the Statutory Instruments Registrar, that as the Order relates to the whole of the UK (as a UKSI), it must only be provided in English.” The Committee also notes that the Welsh Assembly Government has provided a courtesy translation of the Order.

Standing Order 15.2 (ix), that it is not made in both English and Welsh.

The Government responded as follows:

The National Assembly for Wales (Disqualification) Order 2010

The draft report is noted

Merits Scrutiny

Explanatory Memorandum

There is a lack of clear information in the Explanatory Memorandum about the effect of the Order. In particular, there is no explanation of what changes the Order actually makes to the offices that are disqualified from membership of the National Assembly.

The Government was asked to supply information on the offices that are newly disqualified by the Order and the offices that are no longer disqualified. The Government was unable to provide this information although it is understood that it will now be provided for the plenary debate.

Offices Disqualified

i. National Park Authorities

The Explanatory Memorandum says that *“Posts filled by popular election rather than appointment (ie membership of local authorities) should not attract disqualification...”*.

However, most members of National Park Authorities (NPAs) are elected local Councillors. They are appointed to NPAs because of their role as Councillors. The disqualification of this group would, therefore, have the effect of disqualifying people who owe their membership of an NPA mainly to their election to a post filled by popular election.

In addition, Members of other bodies that might be considered analogous to NPAs, such as Police and Fire Authorities (except, the British Transport Police Authority) are not disqualified by the Order. There is no explanation for this apparent inconsistency.

ii. Staff of Office Holders

In part 2 of the Schedule to the Order the staff of a number of office holders are disqualified. The offices concerned are:

- Auditor General for Wales
- Children’s Commissioner and Deputy Commissioner for Wales
- Commissioner and Deputy Commissioner for Older People in Wales
- Forestry Commissioners

In contrast, there are a number of other office holders whose staff are not disqualified by the Order. These include:

- Commissioner and assistant Commissioner of the Boundary Commission for Wales; and
- Her Majesty’s Chief Inspector of Education and Training in Wales.

The Explanatory Memorandum lists criteria for selecting offices for inclusion in the Order as follows:

- *“Offices wholly or partly funded by the Welsh Assembly Government. This includes salaried, pensionable and certain fee-paid posts, but excludes posts attracting expenses only. Offices*

with remuneration of less than £10,000 per year should not normally attract disqualification.

- *Appointments which are made, approved or confirmed by the First Minister, Welsh Ministers or the Counsel General, or appointments on which they have a statutory right to be consulted.*
- *Office holders whose functions would give rise to an unsustainable conflict of interest were they to be elected as Assembly Members*
- *Offices whose holders are required to be, or to be seen to be, politically impartial.”*

However, there is no explanation or criteria listed for the disqualification of the staff of office holders or why there is an apparent inconsistency between different Offices.

Committee Consideration

The Committee noted the above matters and was concerned:

- at the lack of information in the Explanatory Memorandum setting out the changes the Order makes;
- at the inability of the Government to provide this information to the Committee upon request;
- at the disqualification of those National Park Authority members appointed because they are elected local councillors;
- at the apparent inconsistency of treatment between National Park Authority Members and other bodies such as Police and Fire Authorities; and
- at the apparent inconsistency in the treatment of staff of Office holders.

The Committee agreed that it would be helpful for the Minister to address all of these points directly during the plenary debate on the Order.

In the light of these factors the Committee agreed that the Order raised issues of public policy likely to be of interest to the Assembly and that it may imperfectly achieve its policy objectives.

The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 15.3(ii) and (v).

Janet Ryder AM
Chair, Constitutional Affairs Committee

24 November 2010