

## **Legislation Committee**

**Date:** 28 March 2006  
**Time:** 9.30am  
**Venue:** National Assembly for Wales, Cardiff Bay  
**Title:** Scrutiny of Legislation in the Assembly

### **Presentation by David Lambert**

## **The Legislative and Regulatory Reform Bill**

### **1. Outline of its Provisions**

The report of the Regulatory Reform Committee of the House of Commons on the Bill published on January 31st states at paragraph 38 that:  
"...the main provisions of Part 1 empower any Minister by order to make provision amending, repealing or replacing any legislation, primary or secondary, for any purpose....In summary, therefore, that Part, in providing mechanisms for streamlining legislative procedures strengthened the powers of Ministers - whichever party is in office - in relation to other Members of Parliament. It does so by giving Ministers a concurrent general power to legislate without the constraints that primary legislation normally imposes, in particular, the need to fit Bills in the Parliamentary timetable".

### **2. References to the Assembly in the Bill**

Under clause 9 of the Bill the Assembly has to agree to the making of a Ministerial Order -

- (a) conferring a function on the Assembly,
- (b) modifying or removing a function of the Assembly
- (c) restating any provision which already confers a function on the Assembly.

### **3. The effect of the Bill's provision on the Assembly post-2007**

(a) The Bill has the potential of being at least as equally important to the giving of new powers to the Assembly as the existing and continuing system of giving new powers in Acts of Parliament and the proposed system post-May 2007 of giving powers under Orders in Council under the Government of Wales Bill.

This is because, as the Select Committee emphasises, Ministers will have the same power to make law as Parliament possesses. These powers are subordinate legislative powers but they are as extensive as provisions which can be put into Acts of Parliament.

(b) It is therefore very important to establish the role that the Assembly, as opposed to the Assembly Government, will play in discussions with Central Government leading up to the making of orders under the Legislative Bill. Clause 9 refers to the necessity for the Assembly to agree to orders giving or affecting Assembly powers. Under the provisions of the Government of Wales Bill this reference to the "Assembly" could well become a reference to the Assembly Government.

While the Assembly Government has an important role to play, I consider that the Assembly separately must also ensure that it establishes procedures whereby it can monitor and take part in discussions in relation to proposed orders under the Legislative Bill in the same way as it must establish procedures to monitor and discuss draft Orders in Council under the Government of Wales Bill.

#### **4. Conclusion**

I consider that the Legislative and Regulatory Reform Bill is of the utmost importance in developing the future powers of the Assembly. It has the potential of giving powers which are as wide, if not wider than can be obtained by Order in Council under the Government of Wales Bill or under new Acts of Parliament. This is because of the Ministerial flexibility, which is available in the making of Legislative Bill Orders. The Assembly must therefore consider as quickly as possible the machinery for considering proposals for orders under the Legislative Bill. It is possible that the Bill will be enacted at about the same time as the Government of Wales Bill and may become fully operational before May 2007.

**David Lambert**