

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
15 July 2013

Meeting time:
14:15

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1 Introduction, apologies, substitutions and declarations of interest**
- 2 Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

(Indicative time 2.15 – 2.20pm)

Negative Resolution Instruments

CLA283 – The Specified Products from China (Restriction on First Placing on the Market) (Wales) Amendment Regulations 2013

Negative procedure: Date made: 3 July 2013. Date laid: 4 July 2013. Coming into force date: 4 July 2013.

CLA284 – The African Horse Sickness (Wales) Regulations 2013

Negative procedure. Date made: 3 July 2013. Date laid: 5 July 2013. Coming into force date: 31 July 2013.

CLA285 – The Coleg Sir Gâr Further Education Corporation (Dissolution) and Coleg Sir Gâr (Designated Institutions in Further Education) Order 2013

Negative procedure. Date made: 3 July 2013. Date laid: 5 July 2013. Coming into

force date: 1 August 2013.

CLA286 – The Plant Health (Export Certification) (Wales) (Amendment) Order 2013

Negative procedure: Date made: 3 July 2013. Date laid: 5 July 2013. Coming into force date: 31 July 2013.

CLA287 – The Yale Sixth Form College Further Education Corporation and Deeside College Further Education Corporation (Dissolution) Order 2013

Negative procedure. Date made: 3 July 2013. Date Laid: 5 July 2013. Coming into force date: 1 August 2013.

3 Evidence in relation to the Inquiry into Wales' Role in the EU Decision Making Process (Pages 1 – 2)

(Indicative time 2.30 – 3.15pm)

Professor Michael Keating, University of Aberdeen
CLA(4)20-13 – Paper 1

Evidence sessions may run over

4 Evidence in relation to the Inquiry into Wales' Role in the EU Decision Making Process (Pages 3 – 7)

(Indicative time 3.15 – 4.00pm)

David Hughes, Head of European Commission Office in Wales
CLA(4)20-13 – Paper 2

Evidence sessions may run over

5 Papers to Note (Pages 8 – 10)

CLA(4)20-13 – Paper 3- Written Statement by Alun Davies AM, Minister for Natural Resources and Food, in relation to the Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013.

CLA(4)20-13 – Paper 4 – Letter to Chair from the First Minister in relation to the Committee's Inquiry into Powers Granted to Welsh Ministers in UK Laws.

6 Motion under Standing Order 17.42 to resolve to exclude the

public from the meeting for the following business:

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person.

Draft Report Inquiry into Powers Granted to Welsh Minister in UK Laws (Pages 11 – 32)

CLA(4)20–13 – Paper 5 – Draft Report

Agenda Item 3

Wales in the European Union

Michael Keating, Professor of Politics, University of Aberdeen

My comments are based on experience from Scotland and from other devolved jurisdictions in the European Union.

1. During the 1990s and early 2000s there was a great deal of talk about a Europe of the Regions. This was not clearly defined but the general idea was that devolved governments could emerge as a 'third level' within an emerging federal Europe. The movement's main gains were at the 1992 Maastricht Treaty. The Committee of the Regions was set up; regions were given the right under certain circumstances to represent their state in the Council of Ministers; and the principle of subsidiarity was reaffirmed. Less progress was made in the Lisbon Treaty. In particular, the demand of 'regions with legislative powers' for recognition was not heeded. So devolved authorities have been seeking new ways to pursue their interests, through their member state, and directly in Brussels.
2. There are two directions in which devolved jurisdictions might be involved in EU matters: upwards, through participation in EU policy-making; and downwards through participation in transposition and implementation.
3. All UK devolved authorities have used the provision allowing them to participate in the Council of Ministers (Council of the European Union) when devolved matters are at issue. This has continued even when the two levels are controlled by different parties. This, however, is at the discretion of the UK government. The question has been posed as to whether this should be put on a statutory basis.
4. There is a question of how far devolved governments participate in the preparatory meetings on preparing the state position for Council meetings.
5. In the UK, devolved authorities must toe the overall state line and not dissent in public. This raises the question of how far they can account to their own legislatures and public for positions which may not be their preferred ones, and of transparency, if negotiations are behind closed doors. It might be desirable for disagreements to be aired more publicly.
6. In Belgium and Germany, there are stronger arrangements, whereby the regions can determine the state position where matters are entirely within their competence. This would be more difficult to apply in the UK because of the lack of a federal constitution and the asymmetry of the settlement, with the UK government representing both the United Kingdom and England.
7. Most EU matters are settled by compromise and consensus. Over the issue of the future of the EU itself, the review of powers and the promise to renegotiate the UK's relationship with the EU, however, there are major differences between English Conservatives and the majority in the Scottish Parliament and National Assembly for Wales. A more transparent process for negotiating the UK position would be desirable here.
8. Direct links into Europe are provided by the Committee of the Regions but its impact has been limited. Its procedures do not encourage a focus on key policy issues; member interests differ; and it is divided between local

governments and legislative regions, whose role in the policy process is quite different.

9. More influence comes from networking in Brussels, forging alliances, and knowing when to intervene in the policy process.
10. The most effective interventions are those that propose positive policies of wider benefit rather than mere lobbying.
11. Devolved governments require intelligence of forthcoming issues in order to intervene.
12. They need to be selective, as their resources do not permit intervening on everything. This indicates a need for horizon-scanning to identify upcoming issues.
13. Since the Lisbon treaty, state parliaments have the right to intervene where they consider that an EU measure breaches the principles of subsidiarity and proportionality. This is the 'early-warning' system. Where regions are represented in the second chamber of the state parliament, this gives them a role but where they are not so represented they must act via the central parliament of the Committee of the Regions. This also requires an ability to anticipate issues and to act quickly.
14. The role of devolved authorities in the transposition of EU directives is a neglected area. Sometimes they have left this to the state government while at other times they have taken the lead themselves, which may allow some margin of discretion in the details.

5 July 2013

Agenda Item 4



EUROPEAN COMMISSION
DG COMMUNICATION - Representations in the Member States

Representation in United Kingdom - CARDIFF

Cardiff, 9 July 2013
DG.COMM.B.LO.CA./DGH

Inquiry into Wales' role in the EU decision-making process: submission to the Constitutional and Legislative Affairs Committee of the National Assembly of Wales by the European Commission Office in Wales

Summary

- 1) The European Commission is essentially the civil service and the main executive of the European Union. It has maintained an Office in Cardiff since 1976. The role of this Office, which has developed over time and particularly since devolution, is to represent the EU in Wales. It carries out three main tasks in this respect: i) political/diplomatic representation, including reporting back to Commission HQ on developments in Wales; 2) relations with the media including the spokesperson function in Wales; 3) outreach work to explain the EU to stakeholders. Wales' input to the EU decision making-process could be enhanced by extending cooperation between the Office on the one hand and Welsh Government and the National Assembly for Wales on the other. However, from the point of view of the Office, the biggest challenge would seem to be what may be described as an underlying lack of awareness and understanding of the nature and purposes of the EU. Some practical measures are proposed below to help address this.

Introduction

- 2) The role of the European Commission can be broadly summed up as providing the civil service of the European Union as well as carrying out most of its executive functions. With a handful of exceptions, mainly in the foreign policy area, the Commission has the sole right to table legislative proposals. It also has exclusive competence in certain policy areas such as competition and state aid, meaning that for these matters the Member States are no longer able to take action. It is responsible for monitoring compliance with EU law and negotiates international trade agreements on behalf of the EU.
- 3) The European Commission maintains Representations in the capitals of all 28 Member States. It also maintains 9 Regional Offices, located in Belfast, Cardiff, Edinburgh, Barcelona, Marseilles, Bonn, Munich, Milan and Wroclaw (Poland). The UK has the highest number of Regional Offices and the Commission has maintained

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its Office in Wales since 1976. Originally opened as an information office following UK accession to the EEC, the role of the Commission Office has since changed substantially, particularly after devolution. Devolution has transformed the position of Wales in Europe, as Welsh Government (WG) is now the legally competent authority for certain policy areas falling within the domain of the EU. Welsh Ministers can now be part of the UK delegation to the Council of the EU, both Welsh Government and NAW maintain offices in Brussels and Wales has seats on both the Committee of the Regions and the Economic and Social Committee. It should be noted, however, that Wales is only one voice among many in Brussels: there are, for example, around 250 regional representation offices to the EU in Brussels. In this context, the Commission's Office in Wales is the political voice of the European Commission in Wales as well as its eyes and ears.

- 4) The EC Office in Wales is part of the EC's Directorate-General for Communications, which currently functions under the responsibility of Vice-President Vivian Reding (Luxembourg), who is also responsible for the justice, fundamental rights and citizenship portfolio. The Office has 5 staff altogether: the Head of Office (the sole EU official at the Office), and four contract/local agents as follows: 1 political and press officer, 2 information and communication officers (1 of which part-time) and 1 office manager.

The Role of the Commission Office in Wales

- 5) The central task of the EC Office is the representation of EC and EU interests in Wales. It has no role whatsoever in representing Welsh interests towards the EU institutions, though the Office does invest considerable time and effort in facilitating and mediating contacts between NAW and WG on the one hand and Commission HQ on the other – and is happy to do so. As such, its representation role essentially consists of three main elements:

a) Political/diplomatic representation:

- i) The Office interacts with Assembly Members, WG, NAW and WG officials (including for example WEFO), local government (in particular WLGA) and political parties in Wales in order to explain and further the policies of the European Union. Examples of this would be attending NAW Committees in order to explain Commission priorities; hosting an annual seminar at the EC Office, together with WG, in order to consult stakeholders on Wales' input to the EU economic governance and coordination process and attending Welsh party political conferences. The Office is also responsible for organising visits to Wales by European Commissioners as well as funded group information visits to the Commission in Brussels. For example, the Office recently organised a visit to Brussels for 15 WG officials responsible for implementing EU law in devolved areas of competence.

- ii) A key part of the political/diplomatic representation task, and one that continues to increase in importance since devolution, is reporting to Commission headquarters on political developments in Wales. It is through its Office here that the Commission receives political intelligence on Wales. The current political context in the UK, with a very real possibility of a referendum on membership of the EU, has also increased the importance of this function.

- iii) The Office also maintains close relations with other diplomatic entities in Wales such as consuls and honorary consuls. Ambassadors to the UK from other

EU Member States who are visiting Cardiff usually call into the Office, mainly with a view to getting an informed view on political attitudes towards the EU in Wales.

b) *Relations with the media:*

The Head of Office is the Commission spokesperson in Wales and carries out interviews with the media – in particular on TV and radio - responds on record to journalists' questions and provides statements of position. The media aspects of Commissioner visits are also managed by the Office. An example of the Office's media work would be coverage of the Welsh Government's management and use of the Structural Funds: whilst the EC Office has no role in the management or negotiation of the Structural Funds, it *is* responsible for providing the Commission's public position with regard to the use and management of these funds in Wales. In addition to providing the official public position of the Commission to the media, the Office undertakes a good deal of background briefing of journalists and also provides articles written by Commissioners. It also reports to Brussels on a daily basis on EU related items in the Welsh media.

c) *Outreach work:*

i) the EC Office carries out a wide range of outreach work, informing and interacting with the wider public, civic society, NGOs, academia, schools, business, teachers and others on the European Union. These activities are related to the original objective of the Office, namely to help raise the levels of awareness and understanding of the EU, how it functions and what purpose it serves. The Office attempts to meet these objectives in a number of ways, for example by maintaining an information stand throughout all three Welsh Eisteddfodau, liaising with schools and providing them with literature on the EU, holding lectures at universities, organising seminars for the business community and, of course, attending and speaking at a wide range of conferences and seminars to represent the EU point of view. With its two Information and Communication Officers being fluent Welsh speakers, the Office is able to carry out this work in Welsh and has also translated a good number of EC publications into Welsh. Nevertheless, given the small size of the Office in Wales, the Commission is only able to carry out its outreach work effectively through working with partners, such as WG or Chambers of Commerce for example.

ii) The Office coordinates and supports the work of the four Europe Direct Information Centres (EDICs) in Wales, located in Carmarthen, Cardiff (Central Library), Llangollen and Wrexham. EDICs (17 in the UK in total) receive a small amount of co-funding from the Commission (up to 20,000 euros) and act as an interface between citizens and the European Union at a local level. Their mission is to:

- enable local citizens to obtain information, advice, assistance and answers to questions about the EU's institutions, legislation, policies, programmes and funding opportunities;
- actively promote local and regional debate about the EU and its policies;
- allow the European institutions to improve the dissemination of information tailored to local and regional needs;

- give the public the opportunity to send feedback to the EU institutions in the form of questions, opinions and suggestions.

iii) The Office itself is also a point of contact for the public, responding to enquiries and formally transmitting complaints about the implementation of EU law in Wales to the relevant departments of the Commission. Whilst the Office is not responsible for the legal and procedural aspects of infringement cases, it does provide the point of contact for the media in such cases. It also receives frequent requests from members of the public about their rights under EU law, for example on cross-border health care.

iv) Under the Treaty on the Functioning of the European Union (formally known as the Treaty of Rome, often referred to as the "Lisbon Treaty" since this is where it was last amended) the Commission is the institution responsible for representing the EU as a whole. Whilst the European Parliament has information offices in the Member States, these have the task of representing that institution only, not the EU as a whole. The European Parliament has information offices in every EU capital as well as regional offices in Barcelona, Edinburgh, Marseilles, Milan, Munich and Wroclaw. Whilst the EC Office in Wales cannot represent the EP in Wales – this is done through the offices in London and Edinburgh – it is tasked with raising awareness of and promoting participation in the European Parliament elections in 2014 for example.

Challenges and Recommendations

- 6) Given that formal relations with the European Commission are conducted at Member State level, a great part of how Welsh interests in devolved areas are represented in the EU decision-making process will be decided by relations and arrangements between WG with the UK government, for example through the Joint Ministerial Committee (Europe), and between NAW and the Westminster Parliament. These are of course UK internal matters and not for the Commission to comment on.
- 7) Seen from the vantage point of the EC Office in Wales, perhaps the biggest challenge for Wales in terms of ensuring an effective voice in the EU decision making process is what may perhaps best be described as an underlying lack of awareness and understanding of the nature and purposes of the EU, a lack which is also evinced in official, political and media circles. In contrast with the situation in other Member States, there does not appear to be, in the UK in general but also in Wales, a developed sense of "ownership" or responsibility when it comes to explaining what the EU is and why it matters. This seems to be regarded as an external responsibility, rather than a responsibility which arises out of the fact of EU membership. No doubt for historical reasons, the EU is often regarded as a kind of external force, rather than something to which Wales belongs as a part. Engaging effectively with the EU is not simply a matter of procedural adjustment, but of explaining and clarifying – in particular through the education system – what membership of the EU actually entails and means. With a possible referendum on EU membership on the political agenda in the UK, this is of course a matter of crucial importance.
- 8) This said, it must be stated that cooperation between the EC Office in Wales and NAW and WG Offices in Brussels is excellent. WG also has an External and European Affairs unit in Cardiff, and again cooperation here is very good, but the tasks focus more on information actions rather than policy issues. Both with regard to

WG and NAW, it seems somewhat unclear as to where at the administrative level policy coordination on EU matters takes place. At the political level, it is clear that, within WG, this role is carried out by the FM. In NAW, although scrutiny of EU legislative proposals and policies seems to function very well in the Committees, since the abolition of the European Affairs Committee in the Assembly, there seems to be no forum or process where overall input to the EU decision-making process could be coordinated or at least discussed. The EC Office offers termly breakfast meetings to AMs in order to address EU issues of moment under "Chatham House rules", but this obviously cannot replace any structure or process in the Assembly. Nevertheless, a recommendation here would be for NAW Committee clerks to systematically inform the EC Office when any EU related issue might be addressed and where appropriate, for the Head of Office to be invited, either as participant or observer. Whilst the Office clearly cannot give expert advice on every topic that might be addressed by NAW Committees – this can be done via video-link to relevant Commission experts for example – it can assist in providing an overview of developments in the EU as well as in facilitating contacts with key persons in Brussels..

- 9) Another recommendation would be to further increase levels of understanding and knowledge of the EU amongst officials of WG, NAW and political support staff. Here the EC Office could contribute by helping to arrange information visits to Brussels as mentioned in paragraph 5. a)i), including through providing pre-visit briefings sessions at its premises. The Head of Office also gave a preparatory seminar to WG "Fast Stream" officials prior to a visit to Brussels arranged by WG itself.
- 10) Finally, the EC Office would reiterate its willingness to support WG, AMs and all stakeholders in Wales in their efforts to engage more effectively in the EU decision making process.

David Hughes
Head of Office

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WRITTEN STATEMENT BY THE WELSH GOVERNMENT

TITLE **Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013**

DATE **5th July 2013**

BY **Alun Davies, Minister for Natural Resources and Food**

I have asked for the draft Animal Welfare (Breeding of Dogs) (Wales) Regulations 2013, as laid on 11th June 2013, to be withdrawn with immediate effect.

My objective is to improve the welfare of dogs in licensed breeding establishments to ensure that the welfare of puppies born on the premises is optimised and that those puppies are properly developed and socialised. In order to achieve this I am determined that our statutory framework is underpinned by efficient and enforceable regulations.

It has been brought to my attention that there is a lack of clarity within the current regulations regarding a minimum staff: dog ratio. In order that the proper legal processes are followed and to ensure my policy intentions are clear, I have taken the decision to withdraw the regulations at this time.

I have asked my officials to undertake a further short consultation over the summer months. Meetings will be held with key stakeholders to ensure we have the policy intent firmly clarified and I intend bringing revised draft regulations and a supporting impact assessment back to the National Assembly in the Autumn.

I will ensure that we have a robust and effective statutory framework in place that will improve dog welfare in these establishments. I am confident that there will be minimal disruption and look forward to introducing this forward thinking legislation later this year.



Ein cyf/Our ref: MB/FM/2597/13

Llywodraeth Cymru
Welsh Government

David Melding AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
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10th July 2013

Dear David

The Constitutional and Legislative Affairs Committee's report on its inquiry into powers granted to Welsh Ministers in UK laws

Following my evidence to the Committee on 22 April, I am writing to provide an update on some of the matters we discussed.

Implementation of recommendation 5 of the Committee's report

This recommendation relates to extending the application of the Legislative Consent process to cover modification of Welsh Ministers' functions which are outside Assembly legislative competence.

While I agree with this recommendation, it can only be taken forward if the UK Government will agree to amend Devolution Guidance Note 9 to acknowledge that the Assembly's consent should be sought in these circumstances. The Secretary of State for Wales takes the view that the different application of the LCM process in Wales compared with Scotland and Northern Ireland is justified by the nature of the devolution settlements.

I undertook to continue to press the Secretary of State on this. I have written to him again, and intend to raise the issue with him at one of our regular bilateral meetings.

Guidance for Welsh Government officials on liaison with the UK Government over Assembly Bills, Parliamentary Bills and Section 109 Orders.

Work is underway to update the earlier guidance on this which is significantly out of date. This is, in effect, the Welsh Government counterpart to DGN 9 and DGN 17. Subject to consultation with the Wales Office, I hope to be in a position to share this guidance with the Committee by the end of the year.

Implementation of recommendation 1 of the Committee's report

In response to this recommendation, the Welsh Government agreed to lay a memorandum before the Assembly setting out our understanding of the Sewel convention as it applies to Wales.

Most changes to Standing Orders flowing from the Committee's recommendations, apart from that relating to extending the LCM process to cover Welsh Ministers' functions outside Assembly legislative competence, have been made or are about to be made. We will, therefore, now proceed with drafting a statement, which I will share with the Committee after the Assembly returns from the Summer recess, prior to laying before the Assembly.

Work on a Welsh statute book

Finally, the Committee asked me about our progress in improving access to legislation and I undertook to respond in writing with more detailed information.

It is important to be clear about the elements of the work involved when talking about what has been referred to as a "Welsh statute book".

The statement made by the Counsel General in June 2012, related to one specific aspect of the work currently underway, which is ensuring that the legislation.gov.uk website is available in the Welsh language. We are not talking here about ensuring that the legislation of the National Assembly and the Welsh Ministers is published in Welsh - that is happening and always has. We are talking about translating the website itself. I am pleased to be able to inform the Committee that, after a delay caused by the work being more complex than anticipated, the new site is in its final testing stages, part of which involves Welsh Government officials checking its content. The launch of the newly bilingual site is therefore imminent.

The other elements of the work are longer term projects. A comprehensive Welsh statute book requires a commitment over many years to separate, consolidate and restate legislation that currently applies to England or the rest of the UK as well as Wales. The scale of such a project is vast and there are no quick fixes or easy answers. It will take time. The Counsel General is continuing to consider means in which this work could be accelerated and the resources involved in doing so.

Similarly the Welsh Government's collaboration with Westlaw to create an online encyclopaedia of Welsh laws is also a huge task and remains a work in progress. The Counsel General answered an Oral Question on this issue in plenary on 19 June, and will inform Members of further progress in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Carwyn Jones', written in a cursive style.

CARWYN JONES

By virtue of paragraph(s) vi of Standing Order 17.42

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