Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 - Senedd

Meeting date:
30 June 2014

Meeting time:
14.30

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 (Pages 1 - 2)

CLA(4)-18-14 - **Paper 1** - Statutory instruments with clear reports

Negative Resolution Instruments

CLA414 - The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014
Negative procedure; Date made:18 June 2014; Date Laid: 20 June 2014 ; Coming into force date: 16 July 2014 .

CLA415 - The National Health Service (Charges to Overseas Visitors) (Amendment)

(Wales) Regulations 2014
Negative procedure; Date made: 20 June 2014; Date laid: 24 June 2014; Coming into force date 19 July 2014.

3 Other Legislation

Code of Recommended Practice on Local Authority Publicity in Wales (Pages 3 – 20)
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4 Supplementary Legislative Consent Memorandum (No.3): Deregulation Bill (Pages 21 – 29)

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5 Proposal from the European Commission on the prohibition of driftnets COM(2014)265 (Pages 30 – 42)

CLA(4)-18-14 – **Paper 6 –** Proposal from the European Commission on the prohibition driftnets
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6 Papers to note

Letter from Minister for Local Government and Government Business: Wales Bill (Page 43)
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Dr Hywel Francis MP Speech to Human Rights Commission March 2014 (Pages 44 –

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7 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 reccommendations of a report it proposes to publish; or is preparing itself to publish.

8 Draft Report on the Inquiry into Disqualification of membership from the National Assembly for Wales (Pages 52 - 109)

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Constitutional and Legislative Affairs Committee
Statutory Instruments with Clear Reports
30 June 2014

CLA414 - The Staffing of Maintained Schools (Wales) (Amendment) Regulations 2014

The Staffing of Maintained Schools (Wales) Regulations 2006 ("the 2006 Regulations") make provision for the staffing of maintained schools. These Regulations amend the provisions of the 2006 Regulations that provide for allegations of a child protection nature against members of a school staff to be independently investigated.

The 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in community, voluntary controlled, community special and maintained nursery schools. Similarly the 2006 Regulations makes provision in connection with the appointment of head teachers and deputy head teachers in foundation, voluntary aided and foundation special schools. These Regulations amend those provisions to reflect the coming into force of the Federation of Maintained Schools (Wales) Regulations 2014 ("the Federation Regulations").

The Government of Maintained Schools (Wales) Regulations 2005 ("the 2005 Regulations") that make provision in relation to the constitution and procedures of governing bodies. The present Regulations amend Regulation 55 of the 2005 Regulations that relates to certain disciplinary functions of governing bodies.

CLA415- The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2014

Procedure: Negative

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989. The amendment provides an exemption from charges in respect of treatment the need for which arose whilst a person is in Wales as :-

- a member of the Commonwealth Games Family during the Commonwealth Games in Glasgow between 19 July and 7 August 2014;
- part of the IPC Athletics European Championships Family during the International Paralympic Committee European Athletics Championships in Swansea between 14 and 27 August 2014; and
- a NATO delegate or accredited person attending the North Atlantic Treaty Organization summit between 2 and 6 September 2014.

The expressions “Commonwealth Games Family”, “IPC Athletics European Championships Family” and “NATO delegate or accredited person” are defined in regulations 1, 2 and 3 respectively.

[NOTE: Revisions to the 2001 Code are shown in tracked changes. The revisions are laid before the National Assembly for Wales in accordance with section 4(6) of the Local Government Act 1986. The functions of the Secretary of State under section 4 of the Local Government Act 1986, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, SI 1999/672, article 2 and Schedule 1. The functions were subsequently transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).]

CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY IN WALES

INTRODUCTION

Status and application of the code

1. This Code is issued by the National Assembly for Wales ("the Assembly") and revised by the Welsh Ministers in pursuance of their powers under section 4(1) of the Local Government Act 1986. The Code was drawn up and revised following the consultations with interested parties in local government required by section 4(4) of the Act. Local authorities are required by section 4(1) of the Act as amended by section 27 of the Local Government Act 1988 to have regard to the Code in coming to any decision on publicity.

2. This Code applies to County and County Borough Councils, National Park Authorities, Fire and Rescue Authorities and Town and Community Councils.

Why have a Code?

3. Local authorities are democratically accountable to their electorate. This will be promoted by local authorities explaining their objectives and policies to their electors and ratepayers. In recent years authorities have increasingly used publicity to keep the public informed, and to encourage greater participation about the future of service delivery. Local authorities also need to tell the public about the services which they provide. Increasingly, local authorities see the task of making the public aware of the services available as an essential part of providing all kinds of services. Good, effective publicity, aimed at improving public awareness of a council's activities, is to be welcomed. This Code is not intended to discourage such publicity. ~~The Code is being issued now, as an Assembly publication, to replace the combined Code for England, Scotland and Wales of 1988. It has been designed to cope with the changes introduced by the Local Government Act 2000 including local authorities' duties of consultation, publicity, community planning and in their exercising of the new statutory power to do anything which will promote the economic, social or environmental well-being of their area.~~

4. Publicity is, however, a sensitive matter in any political environment, because of the impact which it can have. Expenditure on publicity by some local authorities has been and will be significant in the exercise of the new statutory duty to prepare community strategies and to promote the economic, social and environmental well-being of the area. It is essential, therefore, to ensure local authority decisions on publicity are properly made, in accordance with clear principles of good practice. The purpose of the Code is to set out such principles. It reflects the conventions which should apply to all publicity at public expense, and which traditionally have applied in both central and local government.

5. The principles set out below recognise the political nature of local government. They take account of the fact some local authority publicity will deal with issues which are controversial because of particular local circumstances, or because of a difference of view between political parties locally or nationally. The principles do not prohibit the publication of information on politically sensitive or controversial issues, not stifle public debate. They set out the matters a local authority should consider, to safeguard both the proper use of public funds and those members of the public at whom publicity is directed. They apply to all publicity, but some aspects will be especially relevant to publicity which deals with controversial or sensitive issues. The underlying objective of the Code is to ensure the proper use of public funds for publicity.

6. As well as addressing the provisions of the Local Government Act 2000, including local authorities' duties of consultation, publicity, community planning and exercising their new statutory powers, the Code also contains guidance relating to the provisions of the Local Government (Wales) Measure 2011.

Scope of the Code

7. The Code is not concerned with the interpretation of section 2 of the Local Government Act 1986. (This section provides a local authority shall not publish (or assist others to publish) material which, in whole or in part, appears to be designed to affect public support for a political party.) The Code is concerned with all the other publicity which a local authority may publish. In particular, it highlights factors which should be borne in mind in decisions on publicity which deals with matters or issues which are, politically or otherwise, controversial, but which are not prohibited by section 2.

8. Section 6 of the 1986 Act defines publicity as "any communication, in whatever form, addressed to the public at large or to a section of the public". The Code will therefore be relevant across the whole range of local authorities' work. It covers all decisions by a local authority on publicity and most public relations activities, such as paid advertising and leaflet campaigns, and local authority sponsorship of exhibitions and conferences, as well as assistance to others to issue publicity.

9. The Code has no relevance to the methods which a local authority may use to make its views known where these do not involve publicity in the sense of the 1986 Act.

10. The Code does not affect the ability of local authorities to assist charities and voluntary organisations which need to issue publicity as part of their work, but it requires local authorities, in giving such assistance, to consider the principles on which the Code is based, and to apply them accordingly.

11. By virtue of section 6(6) of the 1986 Act, nothing in the Code is to be construed as applying to any decision by a local authority in the discharge of their duties under the Local Government (Access to Information) Act 1985.

12. This Code and its contents does not affect the prohibition in section 2 of the 1986 Act on local authorities publishing material which appears to be designed to influence public support for a political party.

13. Nothing in this Code should be construed as applying to any decision of a local authority in accord with Part VA of the Local Government Act 1972 (concerning the rights of the public to have access to meetings and documents) or anything related to duties imposed through regulations made under section 22 of the Local Government Act 2000 (concerning access to information).

CODE OF RECOMMENDED PRACTICE

Subject matter

14. Local authorities have a variety of statutory powers which enable them to produce publicity and circulate it widely, or to assist others to do so. Those commonly used include the powers in sections 111, 142, 144 and 145 of the Local Government Act 1972; but there are several others.

15. Some of these powers relate directly to the publishing authority's functions. Others give a more general discretion to publicise matters which go beyond an authority's primary responsibilities. For example, section 2 of the Local Government Act 2000 gives local authorities a power to do anything which will promote the economic, social or environmental well-being of their area, sections 142(A) of the 1972 Act authorises local authorities to arrange for the publication within their area of information as to the services available in the area provided by them *or* by other local authorities.~~; and Section 54 of the Public Health (Control of Disease) Act 1984 empowers local authorities to arrange for the publication within their area of information on questions relating to health or disease..~~

~~12. This discretion provides an important degree of flexibility, but also heightens the need for a responsible approach to expenditure decisions.~~

~~12~~16. The Local Government (Wales) Measure 2009 requires local authorities to publish their Improvement Plans and Community Strategies and the Local

Government (Wales) Measure 2011 requires local authorities to make arrangements for each elected member to publish an annual report on their activity.

17. In considering the subject areas in which publicity is to be issued, the publicity should be relevant to the functions of the authority.

18. In considering the production and circulation of publicity, local authorities should ensure they comply with the Communications Act 2003 and any other relevant statutory duties or guidance.

Costs

19. Local authorities are accountable to the public for the efficiency and effectiveness of their expenditure, in the first instance through ~~the~~their audit arrangements.

~~16. For publicity, as for all other expenditure, the aim should therefore be to achieve Best Value.~~

~~17 Local authorities should therefore always have in mind the extent to which expert advice is needed for publicity.~~

20. In these times of financial stringency, it is particularly important local authorities have regard to the cost-effectiveness of anything they are intent on publishing.

21. In some cases publicity may justify its cost by virtue of savings which it achieves. More commonly it will be necessary to take a view of the importance of the unquantifiable benefits as compared with other uses to which the resources could be put.

22. In the case of council newspapers, for instance, the cost of their production and circulation needs to be balanced with the savings which local authorities can make by using their own newspapers rather than the local press to advertise vacancies and publish official notices. Council newspapers are a useful resource for providing information on council services, and they reach the majority of the population which includes those who do not read the local press and those who do not have access to the internet, in particular older people and disadvantaged young people.

23. In deciding whether the nature and scale of proposed publicity, and consequently its cost, are justified, the following matters will be relevant:

a. whether the publicity is statutorily required or is discretionary;

b. where it is statutorily required, the purpose to be served by the publicity;

c whether the expenditure envisaged is in keeping with the purpose and expected effect of the publicity.

Content and style

24. Local authorities produce a variety of publicity and promotional material. It ranges from factual information about the services provided by the authority, designed to inform ~~clients~~service users or attract new ones, to material necessary to the administration of the authority, such as staff recruitment advertising. There will also be publicity to explain or justify the council's policies either in general, for example material produced under the Wales Programme of Improvement ~~as in the annual report, Best Value Performance Plan~~ or on specific topics, for example as background to consultation on the ~~line~~route chosen for a new road.

25. Any publicity describing the council's policies and aims should be as objective as possible, concentrating on facts or explanation or both.

26. Where publicity is used to comment on, or respond to, the policies and proposals of ~~central government~~the Welsh or UK Governments, other local authorities or other public authorities, the comment or response should be objective, balanced, informative, timely and accurate. It should aim to set out the reasons for the council's views, and should not be a prejudiced, unreasoning or political attack on the policies or proposals in question or on those putting them forward.

27. Publicity touching on issues which are controversial, or on which there are arguments for and against the views or policies of the council, is unavoidable at times, particularly given the importance of wide consultation whenever material issues arise. Such publicity should be handled with particular care. Issues should be presented clearly, fairly and as simply as possible, although councils should not over-simplify facts, issues or arguments.

28. Local authorities should endeavour to ensure publicity material does not cause undue offence.~~Publicity should endeavor not to cause undue offence.~~

29. Publicity campaigns by local authorities are appropriate in some circumstances: for example as part of consultation processes where local views are being sought, or to promote the effective and efficient use of local services and facilities, or to attract tourists or investment. Publicity campaigns may also be an appropriate means of influencing public behaviour or attitudes on such matters as health, safety, crime prevention or equal opportunities.

30. Legitimate concern is, however, caused by the use of public resources for some forms of campaigns which are designed to have a persuasive effect. Publicity campaigns can provide an appropriate means of ensuring the local community is properly informed about a matter relating to a function of the local authority and about the authority's policies in relation to this function and the reasons for them. But local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose it is to persuade the public to hold a particular view on a question of policy. The Housing Transfer Guidelines 2009, (para 2.2.31) state: "In carrying out the consultation exercise, local authorities should adhere to the National Assembly for Wales's Code of Recommended Practice on Local Authority Publicity. This encourages the local authority to explain

and justify its proposals and ensures local authority publicity concentrates on facts or explanation or both." Therefore, when consulting the public on policy or proposals which affect the community there is a need to provide a balanced view with the supporting evidence for the policy or proposal to be clear to the public.

31. Where material is produced, particular care should be taken to ensure it is unambiguous, readily intelligible, and unlikely to cause needless concern or discomfort to those reading, seeing or listening to it. ~~Material should be produced in accordance with the local authority's equal opportunities policy and Welsh Language Scheme.~~ Any material produced should have regard to the Equality Act 2010 and should be produced in accordance with the Welsh Language Act 1993, and when the relevant provisions come into affect, the Welsh Language (Wales) Measure 2011 and any standards specified by the Welsh Ministers under Part 4 of the Measure.

Dissemination

32. The main purposes of local authority publicity are to increase public awareness of the services provided by the authority and the functions it performs to allow local people to have a real informed say about issues which affect them; to explain to electors and ratepayers the reasons for particular policies and priorities; and in general to improve local accountability.

33. Information and publicity produced by the council should be made available to all those who want or need it. Local authorities should not discriminate in favour of, or against, persons or groups in the compilation and distribution of material for reasons not connected with the efficiency and effectiveness of issuing the publicity.

34. Local authority newspapers, leaflets, other publicity distributed unsolicited from house to house and information on websites, are able to reach wider audiences than publicity available on application to the council. Councils should give particular consideration to the use of ~~electronic and other new media~~ Internet-based communication systems. They are ~~often~~ a cost-effective means of disseminating information or facilitating consultation and can provide a means for local people to participate in debate on decisions the council is to take. However, councils should ensure they do not rely solely on such mechanisms and they do not exclude those without access or easy access to such systems.

35. Where it is important for information to reach a particular target audience, consideration should be given to using the communications networks of other bodies, for example those of voluntary organisations, and ~~making use of electronic communications systems~~ through links on others' Internet sites.

Advertising

36. Advertising (paid for media), can also be a ~~very~~ cost-effective means of publicising a local authority's activities on promoting the social, economic and environmental well-being of the area.

37. Advertisements are not normally likely to be appropriate as a means of explaining policy or commenting on proposals, since an advertisement by its nature summarises information, compresses issues and arguments, and markets views and opinions.

38. Advertising in media which covers an area significantly wider than of the authority is sometimes an appropriate means of attracting people to the area to use its facilities.

39. Social media as a communications and advertising tool can also be of value in respect of the wide reach it has, particularly with younger people and this could be good for raising awareness. There can also be a cost benefit in its use compared to traditional advertising.

40. Any advertising material produced by a local authority or contained within one of its publications which reach the public unsolicited, should clearly refer to its provenance.~~The attribution of advertising material leaflets and other forms of publicity that reach the public unsolicited should be clearly set out~~

41. Any decision to take advertising space in a publication produced by a voluntary, industrial or commercial organisation should be made only on the grounds it provides an effective and efficient means of securing the desired publicity.

42. Local authorities should never use advertising as a means of giving financial support to any publication associated with a political party.

Recruitment advertising

43. Local authorities have respected in their staff employment policies the tradition of a politically impartial public service. Their recruitment publicity should reflect this tradition, and the fact local authority staff are expected to serve the authority as a whole, whatever its composition, from time to time.

44. The content of recruitment publicity and the media chosen for advertising job vacancies should be in keeping with the objective of maintaining the politically independent status of local authority staff.

45. Advertisements for staff should not be placed in party political publications.

Council newspapers

46. A great deal of local authority advertising, including notification of employment vacancies, publication of official notices, and forthcoming public events, is contained in newspapers or newsletters produced by many local authorities. These are also useful vehicles for informing the public about the activities and services of the council.

47. There has been some criticism of these publications for taking business away from local commercial newspapers and for lacking objectivity. It is important that

regard is had to this Code in relation to articles written in these documents even when the article is written as a piece of journalism.

48. The Welsh Government does not share the view local authority newspapers are responsible for the demise of local newspapers. With the growth of Internet-based sources and 24-hour news broadcasts, it is probably inevitable circulation of newspapers, including small, regional, newspapers, would suffer[1]. Recent data on regional newspapers indicates circulation is falling significantly. However, local authorities need to ensure there are sufficient savings and other advantages to justify the ongoing publication of their own material and should examine the advantages of enabling members of the public to receive these electronically rather than in hard copy where it is their wish.

Individual councillors and annual reports

49. Publicity about individual councillors may include their contact details, their role in the Council and their responsibilities. ~~Publicity~~It may also include information about individual councillors' proposals, decisions and recommendations ~~only where~~ if this is relevant to their position and responsibilities within the Council. All such publicity should be objective and explanatory, and whilst it may acknowledge the part played by individual councillors as holders of particular positions in the Council, personalisation of issues or personal image making should be avoided.

50. Publicity should not be~~, or liable to misrepresentation as being,~~ party political~~.~~ or of a nature which could easily be misrepresented as so being. Whilst it may be appropriate to describe policies put forward by an individual councillor which are relevant to his/her position and responsibilities within the ~~Councillor,~~Council and to put forward her/his justification in defence of them, this should not be done in party political terms, using political slogans, expressly advocating policies of those of a particular party or directly attacking policies and opinions of other parties, groups or individuals.

51. Section 5 of the Local Government (Wales) Measure 2011 provides that local authorities must make arrangements for each member of the authority to make an annual report about their activities during the year. The authority has a duty to publish these reports, though they may impose conditions as to the content, having regard to any guidance from Welsh Ministers.

52. Annual reports are the subject of separate guidance, to which local authorities must have regard; they are to be regarded as outside the scope of this Code.

Filming and broadcasting of council meetings

53. Society now expects to have far greater access to information than in the past, in particular in relation to the decision-making procedures of its elected bodies. This should be embraced by political representatives as providing an opportunity to communicate directly with their electorate. Local authorities are encouraged to

[1] http://www.levesoninquiry.org.uk/evidence/?witness=spencer-feeney

make arrangements for their proceedings to be made more accessible to the public by allowing them to be broadcast. This might be achieved through the authority itself carrying a live stream or recordings on the council's website or through some other internet-based medium. The Welsh Government encourages local authorities to use social media to communicate with the public.

54. There have been well-publicised cases of members of the public recording and broadcasting the proceedings of council meetings and the Welsh Government would urge local authorities to look favourably on this, provided those attending the meeting are aware this is taking place and other members of the public are not distracted or disturbed unduly by the process.

55. Clearly, these facilities should not be available at such time as an authority or one of its committees is discussing confidential or exempt business as defined by Schedule 12A to the Local Government Act 1972.

Elections, referendums and petitions

56. The period between the notice of an election and the election itself should preclude proactive publicity in all its forms ~~of~~by candidates and other politicians involved directly in the election. Publicity in this period should not deal with controversial issues or report views, proposals or recommendations in such a way which identifies them with individual members or groups of members. However, it is acceptable for the authority to respond in appropriate circumstances to events and legitimate service enquires provided their answers are factual and not favourable to a political party~~and not party political~~. Members holding key political or civic positions should be able to comment in an emergency or where there is a genuine need for a level response to an important event outside the authority's control. Proactive events arranged in this period should not involve members likely to be standing for election.

57. Local authorities need to take care also when a campaign is underway to influence local people in relation to a referendum to decide whether to have a directly elected mayor. ~~The Local Government Act 2000 (Part II) sets out a specific consultation activity for local authorities regarding the new political management arrangements. Guidelines have been issued by the National Assembly for Wales. These guidelines should be read in conjunction with statutory guidance on political management structures. The following points aim to draw out the salient elements regarding publicity that must be adhered to during this period of activity.~~ The Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001 (as amended) prohibit an authority from incurring any expenditure to:

- Publish material which appears designed to influence local people in deciding whether or not to sign a petition requesting a referendum on proposals for an elected mayor;
- Assist anyone else in publishing such material; or
- Influence or assist others to influence local people in deciding whether or not to sign a petition.

58. Publicity in these circumstances should~~, therefore,~~ be restricted to the publication of factual details which are presented fairly about the petition proposition and to explaining the council's existing arrangements. Local authorities should not mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view in relation to petitions generally or on a specific proposal.

59. Local Authorities should ensure any publicity about a referendum under Part II of the Local Government Act 2000 ("the 2000 Act") either prior to or during the referendum period is factually accurate and objective. The referendum period means the period beginning with the date on which proposals under Part II of the 2000 Act are sent to the Assembly and ending with the date of the referendum. The publicity from the local authority should not be capable of being ~~perceives~~perceived as seeking to influence public support for, or ~~opposition to~~ against, the referendum proposal and should not associate support for, or ~~opposition to,~~ against the proposals with any individual or group. Local authorities must conform with any specific restrictions on publicity activities which are required by regulations under section 45 of the 2000 Act.

60. Similar considerations apply when a community poll is taking place. The local authority should ensure any material it publishes is restricted to factual information and does not enter the debate on the issue which is the subject of the poll.

Assistance to others for publicity

61.The principles set out above apply to decisions on publicity issued by local authorities. They should also be taken into account by local authorities in decisions on assistance to others to issue publicity. In all such decisions local authorities should, to the extent appropriate:

a. incorporate the relevant principles of the Code in published guidance for applicants for grants;

b. make the observance of guidance a condition of the grant or other assistance;

c. undertake monitoring to ensure the guidance is observed.

62. It ~~is~~ may be appropriate for local authorities to assist other public bodies, charities or voluntary organisations' by arranging for pamphlets or other material produced and paid for by the organisation to be available for public collection ~~by the public~~ in ~~public libraries and other~~ suitable locations, such as libraries. Such material should not offend against any legal provision (authorities may be able to draw on their powers of well-being in section 2 of the Local Government Act 2000, in some cases) but ~~(subject to this),~~ any such facility should be made available on a fair and equal basis.

Explanatory Memorandum to the Code of Recommended Practice on Local Authority Publicity 2014

This Explanatory Memorandum has been prepared by the Local Government Department of the Welsh Government and is laid before the National Assembly for Wales in accordance with Standing Order 27.1 and 27.14.

Minister's Declaration
In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Code of Recommended Practice on Local Authority Publicity 2014. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM,
Minister for Local Government and Government Business

5 June 2014

1. Description

1.1 The Code of Recommended Practice on Local Authority Publicity in Wales ("the Code") provides guidance on the content, style, distribution and cost of local authority publicity. Local authorities are required by legislation to have regard to the Code in coming to any decision on publicity. There are a number of issues which have arisen in the last year or so which suggest that it is timely to review the existing Code which was published in 2001.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

None

3. Legislative background

3.1 The Code is issued under powers conferred on the Secretary of State under section 4(1) of the Local Government Act 1986 ('the 1986 Act'). Those powers were transferred to the National Assembly for Wales by article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The powers of the National Assembly for Wales were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

3.2 Local authorities, defined in section 6(2) of the 1986 Act, are required by section 4(1) to have regard to the Code in coming to any decision on publicity. 'Publicity' is defined in section 6(4) of the 1986 Act as 'any communication, in whatever form, addressed to the public at large or a section of the public'.

3.3 The existing Code was issued in 2001 by the then Minister for Local Government, Finance and Communities. Section 4(4) of the 1986 Act requires that before issuing, revising or withdrawing the Code the Welsh Ministers must consult such associations of local authorities as appear to be concerned and any local authority with whom consultation appears to be desirable. The consultation ran for 12 weeks from 22 March 2013 to 14 June 2013. A summary of the consultation responses and the Government responses explaining the proposed changes to the code is attached at Doc 1.

3.4 The revised Code will apply to all local authorities that fall within the definition in section 6(2) or that have Part 2 of the 1986 Act applied to them.

3.5 Under section 4(6) of the 1986 Act, where the Welsh Ministers propose to revise the Code they must lay the proposed alterations before the National Assembly for Wales. The proposed alterations may not be made until after the expiration of 40 days from the date upon which the

alterations were made. The alterations are subject to annulment by the National Assembly for Wales during that 40 day period. The proposed alterations to the 2001 Code are shown in tracked changes. It is intended that the revisions to the Code will be made and will come into force on 25 July 2014.

4. Purpose & intended effect of the code

4.1 The proposed alterations contain guidance on the following issues:

- the production of council newspapers (para 22);
- the benefits of social media as a communication tool (para 39);
- the use of council newspapers as a useful channel for distributing information on council services (paras 46-48);
- the filming and broadcasting of council meetings (paras 53-55);
- the need, when undertaking a community poll, to restrict published information to factual information (para 60).

4.2 There has been considerable discussion surrounding the production of council newspapers and the broadcasting of council meetings. The revised Code therefore contains specific guidance on these issues.

4.3 The proposed alterations also include specific reference to the following:

- the Local Government (Wales) Measure 2009;
- the Communications Act 2003;
- the Housing Transfer Guidelines 2009;
- section 5 of the Local Government (Wales) Measure 2011;
- the Welsh Language (Wales) Measure 2011 and the Welsh Language Act 1993.

4.4 The Local Government (Wales) Measure 2011 introduced a requirement for local authorities to make arrangements for the publication of annual reports by elected members, a provision due to come into effect from next May onwards, when members elected in 2012 will have served their first year. Information about the publication of annual reports by elected members is given in this guidance. Although outside the scope of the Code, this information is relevant to the publication of information and has therefore been included (para 51). Specific guidance will be issued separately in relation to the publication of annual reports.

4.4 The Code applies to County and County Borough Councils, National Park Authorities, Fire and Rescue Authorities and Town and Community Councils in Wales. By virtue of section 70 and paragraph 9 of Schedule 8 of the Environment Act 1995, Part 2 of the 1986 Act has

effect as if a National Park authority were a local authority for the purposes of that Part.

Regulatory Impact Assessment (RIA)

5.1 Options for achieving the policy objectives in relation to the amendments to the Code, as discussed in Section 4, are:

Option 1 – Do nothing and do not make any amendments to the Code; or
Option 2 – Make amendments to update the Code.

Option 1 – Costs and benefits

5.2 There would be no financial costs to the Welsh Government or Local Authorities as a result of failing to make the revisions to the Code.

5.3 Doing nothing, however, would result in Local Authorities having regard to a Code of best practice for local authority publicity which is out of date and does not reflect current legislation in this area.

Option 2 - Costs and Benefits

5.4 The production of council newspapers is one that is already met within Local Authority budgets. No additional cost is imposed by this Code.

5.5 The broadcasting of council meetings is a discretionary matter for Local Authorities. The Welsh Government issued a grant in 2012/13 of £1.25 million to contribute towards the costs of broadcasting meetings (amongst other things) but there is no ongoing commitment. No additional cost is implied as a result of making this Code

5.6 Community councils will be required to produce material electronically once the relevant provisions in the Local Government (Democracy) (Wales) Act 2013 are commenced (intended for May 2015). Costs related to this were included in the Explanatory Notes to the Act and are not associated with this Code.

5.7 The benefits to local authorities will be a Code of Recommended Practice on Local Authority Publicity, which Local Authorities are required by legislation to have regard to, which will provide guidance on best practice and up to date information on the content, style, distribution and cost of local authority publicity. As some of the amendments are from current legislation, not updating the Code could have a detrimental affect on Local Authorities who might otherwise neglect to comply with new provisions as they were not in the Code.

6. Consultation

6.1 The Welsh Government issued an electronic public consultation on the draft amended Code. The consultation ran for 12 weeks from 22 March 2013 to 14 June 2013, and requested views on the amended

provisions within the Code. A copy of the summary of responses and the Welsh Government response is attached and will be published on the Welsh Government website.

6.2 The consultation was available on the Welsh Government website, and was sent directly to:

- Chief Executives of Principal Councils;
- Leaders of Principal Councils
- Monitoring Officers;
- Chair & Chief Executive of Welsh National Park Authorities;
- Chairs & Clerks of Welsh Fire and Rescue Authorities;
- Democratic Services of County Borough Councils, National Park Authorities, and Fire and Rescue Authorities; and
- Leader and CEO of the WLGA.

6.3 A total of 18 responses were received, the majority of which supported the amendments as posed by the consultation to the current Code.

Competition Assessment

7.1 There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.

Constitutional and Legislative Affairs Committee Draft Report

CLA(4)-18-14

CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY IN WALES

The Code is made under powers in section 4 of the Local Government Act 1986 to publish a code on local authority publicity. The powers were originally given to the Secretary of State, they were transferred to the National Assembly in 1999 and then to the Welsh Ministers by the Government of Wales Act 2006.

The original Code was published by the Assembly in 2001, and the Welsh Ministers intend to revise it as shown by tracking on the laid version. In accordance with section 4(6) of the 1986 Act, those changes may not be made until 40 days have passed since the drafft was laid, and then only if the Assembly has not in the meantime voted that the changes should not be made. It is therefore an adaptation of the negative procedure that applies to the making of amendments to the Code.

This Code applies to County and County Borough Councils, National Park Authorities, Fire and Rescue Authorities and Town and Community Councils.

Procedure: Negative, but before the revised Code is issued

Technical Scrutiny

No technical points relating to the powers used to make the revisions to the Code are identified for reporting under Standing Order 21.7.

Legal Advisers

Constitutional and Legislative Affairs Committee

June 2014

SUPPLEMENTARY LEGISLATIVE CONSENT MEMORANDUM (MEMORANDUM NO. 3)

DEREGULATION BILL: AMENDMENTS IN RELATION TO FARRIERS AND HOME-SCHOOL AGREEMENTS

1. This Legislative Consent Memorandum is laid under Standing Order ("SO") 29.2. SO29 prescribes that a Legislative Consent Memorandum must be laid, and a Legislative Consent Motion may be tabled, before the National Assembly for Wales if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within, or modifies the legislative competence of the National Assembly.

2. The Deregulation Bill (the "Bill") was introduced in the House of Commons on 23 January 2014. The Bill can be found at:

   http://services.parliament.uk/bills/2013-14/deregulation.html

Summary of the Bill and its Policy Objectives

3. The Bill is sponsored by the Cabinet Office. The UK Government's policy objectives for the Bill are to remove or reduce unnecessary regulatory burdens that hinder or cost money to businesses, individuals, public services or the taxpayer.

4. The Bill includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice. The bill also provides for a duty on those exercising specified regulatory functions to have regard to the desirability of promoting economic growth. In addition, the Bill will repeal legislation that is no longer of practical use.

Provisions in the Bill for which consent is sought

Farriers

5. The consent of the Assembly is sought to the amendment to the Deregulation Bill, tabled on 7 May 2014 which makes amendments to Part 1 of Schedule 1 to the Farriers (Registration) Act 1975 ("the 1975 Act"). The 1975 Act provides for the constitution and operation of the Farriers Registration Council ("FRC").

6. Part 1 of Schedule 1 to the 1975 Act provides for the constitution of the FRC and specifies the number of members that will make up that body. Paragraph 1(f) of Schedule 1 to the 1975 Act enables a number of bodies to appoint a member to the FRC and those bodies currently include the Council for Small Industries in Rural Areas (CoSIRA). CoSIRA is a body which no longer exists.

7. A consultation exercise about the reform and governance, structure and operation of the FRC issued by Defra between November and December 2013 (that consultation related to England, Scotland and Wales) included a question about replacing CoSIRA as one of the bodies to appoint members to the FRC with Lantra (the UK's Sector Skills Council for Land Based and Environmental Industries) or LANDEX (Land Based Colleges Aspiring to Excellence).

8. The consultation summary published identified Lantra as the most appropriate successor to replace CoSIRA as a body to appoint members to the FRC.

9. When the Deregulation Bill was first introduced, it included provision which enabled the Secretary of State for the Environment, Food and Rural Affairs to appoint a member to the FRC in place of CoSIRA. An amendment to that provision of the Deregulation Bill has now been introduced which will substitute Lantra for the Secretary of State. Once the proposed amendments to the 1975 Act are in force, therefore, Lantra will be able to appoint a member to the FRC.

10. Another of the bodies currently named in paragraph 1(f) of Schedule 1 to the 1975 Act (as a body which can appoint a member to the FRC) is the Jockey Club (which also no longer exists). The further amendment introduced to the 1975 Act by the Deregulation Bill updates that reference to "The Jockey Club" with a reference to "The British Horseracing Authority".

11. The Bill extends to Wales. The UK Government intends to make the necessary amendments via the Deregulation Bill in relation to England and, with the Assembly's consent, extend those amendments to Wales

12. There are no proposals at this time to amend the 1975 Act in a way which provides the Welsh Ministers with functions under that Act in relation to Wales.

13. It is the view of the Welsh Government that (in so far as these provisions relate to Wales) these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to :

- Agriculture and Animal Health and Welfare under paragraph 1 of Part 1 of Schedule 7 to the Government of Wales Act 2006; and

- Education, vocational, social and physical training, Promotion of advancement and application of knowledge under paragraph 5 of Part 1 of Schedule 7 to the Government of Wales Act 2006.

School Standards and Framework Act 1998 - Home School Agreements

14. The consent of the Assembly is sought to the amendment to the Deregulation Bill, tabled on 7 May 2014 which repeals sections 110 and 111 of the Schools Standards and Framework Act 1998 for Wales. Those amendments to the 1998 Act require schools to have a Home School Agreement with parents and pupils.

15. Currently, all maintained schools have a duty to adopt a home-school agreement ("HSA") and associated parental declaration. The governing body must also take reasonable steps to secure that the parental declaration is signed by parents and must from time to time review the HSA. Before adopting the HSA and the parental declaration, or revising that agreement, the governing body must consult parents. Home-school agreements have been difficult to enforce in practice, particularly in ensuring that the parental declaration is signed by all parents. The current process of consulting parents, drawing up and monitoring HSAs and obtaining parental signatures is burdensome for schools. Schools are required to take reasonable steps to ensure that parents of registered pupils sign the declaration. That places an administrative burden on schools, because duplicate copies of the HSA are often sent to parents in order to obtain a signature. Furthermore, HSAs are not enforceable. Parents are not legally required to sign them, and there are no sanctions for failing to comply with them.

16. The Deregulation Bill will remove these legislative requirements. Instead, schools would work with parents in a way that suits the circumstances of the school, its pupils and their parents rather than through a prescribed mechanism. The effect of the amendment will be to reduce the burden on schools and increase their flexibility to engage with parents in a way that best suits circumstances rather than through a prescriptive approach.

17. On that basis it is considered that the home school agreement provisions being revoked by the amendment in the Deregulation Bill are no longer needed and, consequently, the proposed revocations should apply in relation to Wales.

18. The Bill clause on 'Schools: reduction of burdens' introduces the schedule of the same name. 'The amendment to The Home-school agreements' part of the Schedule amends sections 110 and 111 of the School Standards and Framework Act 1998 which require the governing bodies of certain schools to adopt home school agreements and associated parental declarations. The Bill currently provides for the requirement under sections 110 and 111 to cease to apply in England. The new amendment tabled to the Deregulation Bill will now provide a requirement for the amendment to cease to apply in both England and *Wales*, and provides for consequential changes to other legislation.

19. The proposed repeal of sections 110 and 111 of the School Standards and Framework Act 1998 (together with the necessary consequential amendments) set out in the Deregulation Bill extend to Wales as well as England; subject to the consent of the National Assembly for Wales.

20. The Deregulation Bill provision described above simply repeals sub-section 110 and 111 of the School Standards and Framework Act 1998 (and makes the necessary consequential amendments). This Bill provision does not, consequently, provide any powers for the Welsh Ministers to make subordinate legislation.

21. It is the view of the Welsh Government that (in so far as these provisions relate to Wales) these provisions fall within the legislative competence of the National Assembly for Wales in so far as they relate to the education and training subject under paragraph 5 of Part 1, Schedule 7 to the Government of Wales Act 2006.

Advantages of utilising this Bill rather than Assembly legislation

22. It is the view of the Welsh Government that it is appropriate to deal with these provisions in this UK Bill as it represents the most practicable and proportionate legislative vehicle to enable these provisions to apply in relation to Wales. The proposed amendments are technical and non-contentious. In addition, the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for the Bill provisions for both to be taken forward at the same time in the same legislative instrument.

Financial implications

23. There are no financial implications for the Welsh Government.

Alun Davies AM
Minister for Natural Resources and Food
June 2014

Document is Restricted

Agenda Item 5

EUROPEAN
COMMISSION

Brussels, 14.5.2014
COM(2014) 265 final

2014/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004,(EC) No 2187/2005 and (EC) No 1967/2006 and repealing Council Regulation (EC) No 894/97

{SWD(2014) 153 final}
{SWD(2014) 154 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

Driftnet fishing has traditionally been carried out with nets of limited lengths and relatively small mesh size to catch different small/medium size pelagic species mostly living in or migrating through coastal areas. More substantial problems began in the late 1970s and 1980s, when driftnets with large mesh sizes and net lengths of tens of kilometres began to be used. These large-scale driftnets resulted in significantly increased amounts of incidental mortality of protected species including, in particular, cetaceans, sea turtles and sharks and lead to international concerns about their environmental impacts.

In the early 90s, following specific United Nations General Assembly (UNGA) Resolutions[1], which called for a moratorium on large-scale pelagic driftnet[2] fishing on the High Seas, the EU developed legislation on driftnets fisheries.

Consequently the keeping on board or use of driftnets longer than 2,5 Km is prohibited in the EU since June 1992 (except in the Baltic Sea, the Belts and the Sound). Since 2002 all driftnets, no matter their size, are prohibited when intended for the capture of species listed in Annex VIII of Council Regulation (EC) No 894/97 (unauthorized species).It is also prohibited to land species listed in Annex VIII which have been caught in driftnets. Additionally, since 1 January 2008 it is prohibited to keep on board or use any kind of driftnets in the Baltic Sea, the Belts and the Sound.

The current EU legislative framework on driftnets has however shown weaknesses since existing rules are easy to circumvent. The absence of EU rules on gear characteristics (e.g. maximum mesh size, maximum twine thickness, hanging ratio, etc.) and gear use (e.g. maximum distance from the coast, soaking time, fishing season etc) combined with the possibility to keep on board other fishing gears, made it possible for fishermen to illegally use driftnets to catch species prohibited to be caught with this fishing gear, while declaring that they have been caught for example with another gear (e.g. longlines, etc).

Furthermore despite these provisions on driftnets, the illegal use of driftnets continues to be reported in EU waters. Serious non-compliance by some Member States has also been addressed by two rulings of the European Court of Justice against France (C-556/07; C-479/07) and Italy (C-249/08).

Control and enforcement efforts are not producing the necessary results since the small scale nature of the activity makes it easy to adapt and find strategies to escape controls. Small scale driftnets are still allowed and the loopholes in the EU legislation facilitate their illegal use. This makes it extremely difficult for control authorities to have robust evidences of illegal activities and to finally enforce the rules.

Against this background, it is clear that serious environmental and conservation concerns linked to the use of these fishing gears still persist.

In order to address this situation and to comply with EU international obligations to properly regulate driftnet fisheries, the proposed Regulation, on the basis of a precautionary approach, stipulates a full prohibition to take on board or use any kind of driftnets as off 1 January 2015

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1 United Nations General Assembly Resolutions: 44/225 of 22 December 1989; 45/197 of 21 December 1990; 46/215 of 20 December 1991

2 Large-scale driftnets were defined as nets over 2.5 Km in length under the Convention for the prohibition of fishing with long driftnets in the South Pacific (Wellington Convention); Wellington, 24 November 1989) which entered into force on the 17th May 1991. http://www.mfe.govt.nz/laws/meas/wellington.html; http://www.jus.uio.no/english/ services/library/treaties/08/8-02/large-driftnets.xml.

in all EU waters. It also introduces a revised and more comprehensive definition of this fishing gear, to close any possible existing loophole.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

An Impact Assessment (IA) has been conducted, taking into account information from different sources: a web-based public consultation, two coordinated studies[3], information provided by Member States and comments from the IA Steering Group (IASG).

The IA has explored the following policy options: 1) status quo; 2) actions on technical and/or control measures to enhance controllability and environmental compatibility; 3) selected ban of driftnet fisheries identified as being still most harmful to the strictly protected species and/or not able to avoid by-catches of unauthorised species; 4) total ban of driftnet fisheries.

However, the lack or poor monitoring of these fisheries by Member States, both for control and scientific purposes, together with the limited sampling effort by the two studies made it extremely difficult to have a comprehensive view on current fishing activities and their actual environmental impact and it was therefore not possible to assess impacts of the different policy options through an indicator led analysis.

Options 4 has been preferred over the options 1, 2 and 3, as it satisfies to the largest extent the relevance, effectiveness, efficiency and coherence criteria while providing the best result in terms of environmental impact and less administrative burden. It is supported by more than 52% of the respondents to the public consultation including fishermen associations and NGOs. Thus option 4 has been retained as the most adequate, based on the application of the precautionary principle towards fisheries which might have a high risk of incidental takings of strictly protected species while being poorly or not at all monitored by Member States.

The majority of the driftnet fisheries identified are seasonal and the participating active fleets are comprised of polyvalent vessels, totalling at least 840 vessels (excluding the Baltic Sea), dispersed over a wide area. For most of the fishers driftnetting represent only a few months of fishing activity in any year with some fishers using driftnets for less than half a month per year. Thus the total prohibition to use driftnets is not expected to result in a corresponding reduction of fishers which will continue to operate with other gears as already authorised in their fishing licence. On the basis of the information collected for the impact assessment the economic performance and importance of the gear for the vessels and fleets is highly variable though limited at national level. For the fleets where the data are available such as the UK vessels the total value of small scale driftnets, for around 250 vessels, represent 0.14% of the total value of UK landings in 2011. For Italy, where a smaller number of around 100 active vessels has been detected, the economic importance of driftnets is low at national level (0.8% in value and 1.3 % in weight of landing) though the value landed ranges from around 20% to 55% (up to 90% in one fishery) of the turnover generated by these vessels; however the profit generated by the use of driftnets is highly variable ranging from 1 % to 54% of the turnover generated by the vessels, with an average of 22% across all Italian driftnet fisheries. While it cannot be excluded that the ban may affect some of the vessels carrying out these fisheries, the overall socio-economic impact of the total ban is therefore considered irrelevant at national and sub-regional level.

[3] - MAREA-Specific contract 8 (SI2.646130). "Identification and characterization of the small scale driftnet fisheries in the Mediterranean (DriftMed)
- Specific contract 5 (SI2.650655). "Study in support of the review of the EU regime on the small-scale driftnet fisheries".

3. LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

Introduce a full prohibition to take on board or use any kind of driftnets as off 1 January 2015, in all EU waters and by all EU vessels. Introduce a revised and more comprehensive definition of driftnets, to close any possible loophole in existing legislation.

- **Legal basis**

Article 43(2) of the Treaty on the Functioning of the European Union.

- **Subsidiarity principle**

The proposal falls under exclusive competence of the European Union.

- **Proportionality principle**

The proposal is necessary and appropriate for the implementation of the ecosystem-based approach to fisheries management. The proposal does not go beyond what is necessary in order to achieve the objectives pursued, in accordance with Article 5(4) of the Treaty on European Union.

- **Choice of instrument**

Proposed instrument: Regulation of the European Parliament and of the Council.

Other means would not be adequate for the following reason: the act is repealing and amending existing Regulations, which must be amended by another Regulation.

4. BUDGETARY IMPLICATION

This measure does not involve any additional Union expenditure.

2014/0138 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

laying down a prohibition on driftnet fisheries, amending Council Regulations (EC) No 850/98, (EC) No 812/2004,(EC) No 2187/2005 and (EC) No 1967/2006 and repealing Council Regulation (EC) No 894/97

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 43(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[4],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Regulation (EU) No 1380/2013 of the European Parliament and of the Council[5] establishes a management framework for the conservation of marine biological resources and the management of fisheries targeting them.

(2) Sustainable exploitation of marine biological resources should be based on the precautionary approach, which derives not only from the precautionary principle referred to in the first subparagraph of Article 191(2) of the Treaty on the Functioning of the European Union but also from the Union's international undertakings as reflected in the United Nations Fish Stocks Agreement[6], and in particular its Article 6, and on the best scientific evidence available.

(3) The Common Fisheries Policy should contribute to the protection of the marine environment**,** to the sustainable management of all commercially exploited species, and in particular to the achievement of good environmental status by 2020, as set out in Article 1(1) of Directive 2008/56/EC of the European Parliament and of the Council[7].

(4) Following concerns about the environmental impact of large-scale driftnets bigger than 2,5 km, that resulted in significant amounts of incidental mortality of protected species, several United Nations General Assembly (UNGA) Resolutions 44/225 of 22

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4 OJ C , , p. .

5 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision (EC) No 2004/585 (OJ L 354, 28.12.2013), p. 22.

6 OJ L 189, 03.07.1998, p. 16

7 Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive) (OJ L 164, 25.6.2008, p. 19).

December 1989, 45/197 of 21 December 1990 and 46/215 of 20 December 1991[8] called for a moratorium for these fishing gears.

(5) Accordingly, Council Regulation (EC) No 894/97[9] establishes a management framework for the conservation of fishery resources through technical measures in the form of a general overall length limitation of driftnets to maximum 2,5 km, as well as a prohibition to use or keep on board driftnets intended for the capture of certain species.

(6) Moreover, Council Regulation (EC) No 2187/2005 [10] prohibits using or keeping on board driftnets from 1 January 2008 in the Baltic Sea, the Belts and the Sound.

(7) The conservation objectives, regarding incidental mortality of protected species, pursued by the abovementioned Union rules on driftnets are still valid and should be strengthened.

(8) The definition of driftnets should be refined for reasons of clarity and in order to ensure uniformity in the understanding and implementation by Member States of rules on driftnets.

(9) Moreover it is necessary to extend the scope of this definition so as to cover any newly identified types of drifting fishing nets other than drifting gillnets developed in certain fisheries. It is particularly important to cover by this definition gears that unlike drifting gillnets are made up of two or more walls of netting hung jointly in parallel on the headline(s) yet they operate close to the water surface in the same manner as drifting gillnets do and have similar impact on marine resources, hence should be coherently regulated.

(10) The current Union legislative framework on driftnets has shown weaknesses and loopholes in that rules proved easy to circumvent and ineffective in terms of addressing the conservation concerns linked to this fishing gear.

(11) The driftnet fishing is carried out by an undefinable number of small-scale multipurpose fishing vessels, the vast majority of which operating without any regular scientific and control monitoring. Due to the small scale nature of these fishing activities, which makes it easy to escape monitoring, the control and enforcement efforts have not produced the necessary results in terms of conservation of marine resources, in particular with regard to certain protected species.

(12) Illegal driftnet activities carried out by Union fishing vessels, in particular for the purpose of targeting species listed in Annex VIII of Regulation (EC) No 847/97, continue to be reported and have been cause of criticism regarding the Union compliance with applicable international obligations in this respect.

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[8] United Nations General Assembly Resolutions A/RES/44/225 of 22 December 1989 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p. 147. United Nations General Assembly Resolution A/RES/45/197 of 21 December 1990 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p.123. United Nations General Assembly Resolution A/RES/46/215 of 20 December 1991 on Large-scale pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas, p. 147.

[9] Council Regulation (EC) No 894/97 of 29 April 1997 laying down certain technical measures for the conservation of fishery resources (OJ L 132, 23.5.1997, p. 1) as amended by Regulation (EC) No 1239/98.

[10] Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound (OJ L 349, 31.12.2005, p. 1).

(13) Moreover, the driftnet fishing by operating close to or at the water surface continues to be cause of high concern for incidental takings of air-breathing animals such as marine mammals, sea turtles and sea birds, which are mostly classified as species to be strictly protected under Union legislation.

(14) Additionally, monitoring and reporting systems established under Council Directive 92/43/EEC (Habitats Directive)[11] have proven to be not effective for the identification and recording of the anthropogenic causes of death of strictly protected species due to fishing activities.

(15) The ecosystem-based approach to fisheries management makes it a requirement that negative impacts of fishing activities on the marine ecosystems be minimised and unwanted catches be avoided and reduced to the extent possible.

(16) In view of the reasons stated above and in order to properly address the conservation concerns that this fishing gear continues to cause, as well as to achieve the environmental and enforcement objectives in an effective and efficient manner, while taking into account the minimal socio-economic impacts, it is necessary to introduce a full prohibition to take on board or use any kind of driftnets in all Union waters and by all Union vessels whether they operate within Union waters or beyond, as well as by non-Union vessels in Union waters.

(17) For reasons of clarity of Union legislation, it is also necessary to delete all other provisions related to driftnets by amending Council Regulation (EC) No 850/98[12], Regulation (EC) No 812/2004, Regulation (EC) No 2187/2005 and Council Regulation (EC) No 1967/2006[13], and repealing Regulation (EC) No 894/97.

(18) Vessels carrying out fisheries with small-scale driftnets may need some time to adjust to the new situation and necessitate a phasing-out period. This Regulation should therefore enter into force on 1 January 2015.

HAVE ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation shall apply to all fishing activities within the scope of the Common Fisheries Policy as set out in Article 1(2) of Regulation (EU) No 1380/2013.

Article 2

Definition

1. For the purpose of this Regulation the definitions set out in Article 4(1) of Regulation (EU) No 1380/2013 shall apply.

2. In addition, a 'driftnet' means a net made up of one or more walls of netting, hung jointly in parallel on the headline(s), held on the water surface or at a certain distance

[11] COUNCIL DIRECTIVE 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora (OJ L 206, 22.7.1992, p. 7)

[12] Council Regulation (EC) No 850/98 of 30 March 1998 for the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms (OJ L 125, 27.4.1998, p. 1).

[13] Council Regulation (EC) No 1967/2006 of 21 December 2006 concerning management measures for the sustainable exploitation of fishery resources in the Mediterranean Sea (OJ L 409, 30.12.2006, p. 11);

below it by floating devices and drifting with the current, either independently or with the boat to which it may be attached. It may be equipped with devices aiming to stabilise the net or to limit its drift such as a sea-anchor or an anchor on the bottom attached at one single end of the net.

Article 3

Prohibition of driftnets

It shall be prohibited:

(a) to catch any marine biological resource with driftnets; and

(b) to keep any kind of driftnet on board of fishing vessels

Article 4

Amendments of related Regulations

1. In Article 20 of Regulation (EC) No 850/98, paragraph 3 is deleted.

2. Regulation (EC) No 812/2004 is amended as follows:

(a) Article 1a is deleted;

(b) in Annex I, points A (b) and E (b) are deleted;

(c) in Annex III , point D is deleted.

3. Article 2(o), Article 9 and Article 10 of Regulation (EC) No 2187/2005 are deleted.

4. In Annex II (a) of Regulation (EC) No 1967/2006, the words "and drifting nets" are deleted.

Article 5

Repeal

Regulation (EC) No 894/97 is repealed.

Article 6

Entry into force

This Regulation shall enter into force on 1 January 2015.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament	*For the Council*
The President	*The President*

Cynulliad Cenedlaethol Cymru
National Assembly for Wales

Y Pwyllgor Amgylchedd a Chynaliadwyedd

Environment and Sustainability Committee

Alun Davies AM
Minister for Natural Resources and
Food
Welsh Government

24 June 2014

Annwyl Alun

Ban on the use of driftnets

We have been notified of a proposal published by the European Commission for a blanket-ban on the use of all driftnets within the EU's fisheries.

Given the significant concerns raised by the fisheries sector in Wales about the potential impacts of the proposal on the industry we wish to give due consideration to the issue.

I would be grateful if you could write to us outlining the Welsh Government's position on the proposals and details of the representations you have made to date to the UK Government, as the Member State, and directly to the European Commission.

The Committee would be grateful for a response by 9 July.

Yn gywir,

Alun Ffred Jones AM
Chair of the Environment and Sustainability Committee

Document is Restricted

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

Llywodraeth Cymru
Welsh Government

David Melding AM
Chair, Constitutional and Legislative Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

18 June 2014

Dear David

We have spoken about the Wales Bill in Business Committee and, of course, the Constitutional and Legislative Affairs Committee was invited to consider and report on the Wales Bill LCM.

The next stage of Parliamentary scrutiny of the Bill is the House of Commons Report and Third Reading stages scheduled for 24 June. The UK Government has just tabled amendments for Report stage which are now published on the Parliament website. Given its potential significance, I thought it appropriate to draw your attention to one of the amendments, although I should immediately say that this is not obviously relevant to your consideration of the LCM (as it does not touch on the legislative powers of the Assembly), nor does it have any effect on the Standing Order 30 written statement (since it does not affect Welsh Ministers' powers).

Amendment 6 would allow for an Order under clause 11 (which would make provision for the conduct of a Referendum about commencement of income tax provisions) to enable the Electoral Commission to designate an organisation as the lead campaign group on one side of the referendum outcome only (ie it could designate a lead campaigner on either the 'yes' or 'no' side, which organisation might then be able to access the kinds of assistance available to designated organisations), without having to designate a lead organisation on the 'other' side. As you will well recall, this option was not available at the time of the 2011 Assembly powers referendum and I thought that this was significant enough an amendment that your Committee would wish to be aware of it. I understand that the inclusion of this new provision follows discussions between the Commission and the Wales Office.

I hope this is helpful.

Regards
Lesley

Lesley Griffiths AC / AM
Y Gweinidog Llywodraeth Leol a Busnes y Llywodraeth
Minister for Local Government and Government Business

Bae Caerdydd • Cardiff Bay
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English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Correspondence.lesley.Griffiths@wales.gsi.gov.uk

Speech to the Equality and Human Rights Commission
Cardiff meeting, 10-11th March 2014
Democratic Devolution – An Opportunity not a Problem for Human Rights

Personal opening remarks:

We meet today thirty years on from one of the great human rights struggles which dramatically shaped my own political outlook and that of my generation – the miners' strike of 1984/85. Its manifestation in Wales, despite the hardship, gave rise, it is my belief, to the National Assembly for Wales which has become a champion of the cause of equality and human rights.

At the outset, I should say that I am someone who has supported the cause of democratic devolution since the 1970s and I continue to do so today. As chair now of the UK Parliament's Joint Committee on Human Rights I see our current enquiry into devolution and human rights as an opportunity, not only to survey the impact of the Human Rights Act and the Equality Act – and the international human rights treaties to which the UK has signed up - on the devolved parts of the UK but to learn lessons from one another on how devolved administrations and parliaments can learn from each other and indeed teach some lessons to the centre – to Whitehall and the mother of Parliaments at Westminster.

Let me give you two examples from my own Parliamentary experience:

Firstly, in taking through my private member's bill which became the Carers' Equal Opportunities Act in 2004, I was very focussed on the unevenness of human rights and equal opportunities across the UK. I referred to it at the time as a Bill **made in Wales** from the lived experiences of my constituents who were carers. It was an England and Wales Bill or as I characterised it a **Wales and England Bill**. It was based in part on advances already in place thanks to the devolved administrations in Northern Ireland and Scotland. Thanks also to the

existence of the devolved Welsh Government and my good working relationship with the then Health Minister Jane Hutt, I was always able to ask the UK Carers Minister Steve Ladyman, when there was a stalling point in the Bill's progress, "what does the Welsh Health Minister think?", knowing of course that Jane agreed with me on all important matters in relation to the Bill!

And then of course there was the creation of the pioneering and indeed powerful **Welsh Children's Commissioner**. When the UK (or rather England) belatedly created a Children's Commissioner the Welsh Affairs Committee which I then chaired was able to challenge the Children's Minister for England Margaret Hodge and ask her why the English Commissioner had much fewer and weak powers than in Wales and to say to her that weaker powers in England might undermine the stronger Welsh position.

I see these contradictions not as **stumbling blocks** but as **building blocks** for equality and human rights. Nevertheless these contradictions should not now persist into the new more strongly devolved quasi-federal era

It is in that spirit that I am here today as an enthusiastic democratic devolutionist wishing to enhance the cause of human rights and equality in the UK in the spirit of Eleanor Roosevelt who, in her speech before the UN General Assembly in December 1948 on the adoption of the Universal Declaration of Human Rights, said,

> "We stand today at the threshold of a great event both in the life of the United Nations and in the life of mankind. This declaration may well become the international Magna Carta for all men everywhere. We hope its proclamation by the General Assembly will be an event comparable to the proclamation in 1789 [the French Declaration of the

Rights of Citizens], the adoption of the Bill of Rights by the people of the US, and the adoption of comparable declarations at different times in other countries."

But more significantly for us today are Eleanor Roosevelt's other words a decade later in 1958 which are rooted in the lived experiences of families, communities and workplaces:

> "Where, after all, do universal human rights begin? In small places, close to home – so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world." [i]

For me it is that clarity of purpose rooted in people's daily lives which inspires us all. In our meeting last week with the chair of the this Commission, Baroness O'Neill, I was greatly encouraged by the outline she and her colleagues gave of where you as a Commission are going with such a strong focus on protecting the most vulnerable and marginalised, realising the rights of people with disabilities and fairer workplaces.

But I think, given why we are all here today, I must say something about my Committee's **inquiry** into devolution and human rights. The idea of this inquiry was circulating in and around our work for a while, but we formally agreed before Christmas to dedicate some of our time in 2014 and early 2015 to assess to what extent the current devolutionary settlements (insofar as they are static, and events in Scotland later in the year may prove how dynamic they are!) have assisted or have held back the protection and promotion of human rights. My Committee will

be calling for written evidence later in the year, taking some oral evidence, and then reporting in 2015 before the General Election. We hope that the Report we issue will be of use to the new Parliament and the new Government – and to other key institutions such as yourself.

My Committee is also clear from its work how the whole issue of **local government** could be wrapped up under this title of devolution. We understand how the problem of transmitting responsibility for human rights from central government to local government is a great challenge – something, Baroness O'Neill, you stressed to the Committee when we spoke about devolution at your pre-appointment hearing eighteen months ago. However, such an inquiry is perhaps for another Parliament, and another JCHR!

Now, I was in Belfast with members of my Committee on Thursday of last week. It was the first in a series of three visits we will be making in connection with this inquiry – we intend to visit Edinburgh in May or June and then we will come here to Cardiff, we hope, in October.
It was a useful visit. We managed to cover a number of significant issues – women's rights, children's rights, and of course the issue of transitional justice and dealing with the past – and we tried to look at all of these things from the perspective of devolution, to see how such a wide range of matters was being dealt with in Northern Ireland *by the people* of Northern Ireland.

We also of course explored how the Executive there – principally the Office of First Minister/deputy First Minister – and the Assembly dealt with human rights issues in policy development, in reporting to international bodies, in scrutinising policy and legislation. I won't go into detail here – not least because Northern Ireland of course falls outside your own remit – but clearly the unusual political context there still dominates so much of what goes on that some important human rights activity is frustrated and thwarted, although some other areas clearly flourish.

But two general themes arose during our discussions time and time again, whether it was with regard to justice and policing, violence against women and girls, children's wider participation in civil society – or even some things as potentially dry as the scrutiny of Bills and the assumption of obligations under international human rights treaties. Those two things were **communication** and **accountability**.

Devolution ought to enhance both communication and accountability. The distance from central Government in Whitehall, or from the Westminster Parliament, to a retired couple on benefits in Swansea, or to a migrant family in Glasgow, or to a group of unemployed teenagers in Belfast can for all practical purposes be immense. Remote government can be inaccessible, effectively silent and invisible – and thus unaccountable and irrelevant. Bringing governments and parliaments – and other institutions – closer to the people should only enhance communication. And with easier communication comes greater accountability – after all, unless a message is intelligible, no-one can properly be held to account for its content.

And what can we say of the accountability of the devolved government of London? What are the complex questions there particularly on the continually vexed accountability of policing? [ii]

I had the privilege to attend the launch of the Welsh government's strategy for Independent Living in September 2012, which showed how devolution can lead to strides forward in human rights provision in at least one area of the United Kingdom. This I believe was the fruit of good communication with disabled people in Wales, - who gave evidence to us - and full accountability to them – this was the fruit of full participation by the disabled community in Wales in political discourse.

But there is a flip-side to this. Unless there is clarity in communication about responsibility for human rights, unless every link in the chain of devolution communicates clearly and cooperatively in both directions, the chance of unaccountability (and of confusion) remains – and with confusion can come misunderstanding, and with misunderstanding distrust. I can recall the words of Professor O'Flaherty, then Chair of the Northern Ireland Human Rights Commission, in an evidence session before my Committee at the end of 2011, saying:

> "On the one hand, devolution can bring human rights much closer to the rights holders... On the other hand, ..[there can be].. great difficulty in translating the ... human rights obligation from London to the devolved capital... to encourage the political leaders at that level that they carry with them the responsibility of the state to deliver not just on the European Convention but also on the array of other treaties."

The more links there are in the chain, the easier it can be for some to believe or assume that others will take the strain, that responsibility for areas of human rights strategy, or policy, or promotion and protection, lie elsewhere. Even when there is good will on all sides, new arrangements and the new relationship they establish require time to explore, to navigate and properly to understand. I note that the Silk Commission only last week recommended changes to the devolutionary settlement here which will – if accepted – usher in further changes which will need bedding down until accountability and communication become clear.

Some of these difficulties in **accountability and communication** are inevitable, especially when devolution is still new, and devolved institutions are coming to terms with their relationship to central government and to other bodies. The confusion that abounded in some policy areas in Westminster following devolution as to what sort of questions could be tabled by MPs to the NIO, the Scotland Office or even to the Wales Office was considerable. The devolution Acts set down in writing areas of the 'new constitution' of the UK for the first time,

but with the rest still famously unwritten it was like having a jigsaw puzzle where half of the pieces were still largely blank. The complete picture was still difficult to grasp.

Some difficulties are also a function of complexity – and the devolution settlement in Northern Ireland is the most complex of the three in the UK. Complexity can still bedevil human rights policy today, whether it is areas where children's rights overlap areas of immigration policy – as we found out in our inquiry into migrant children – or where matters relating to housing and benefits have enormous potential implications for issues connected with justice and community relations, which may in turn have consequences for policing – as the discussions in Northern Ireland in 2012 over the Welfare Reform Bill made clear. You yourselves will be aware of the importance of good relationships, good communication and – where necessary – memoranda of understanding between you and central institutions and with other devolved bodies so you can know exactly where the buck stops, where responsibilities lie, who will do what and how you will take your work forward cooperatively with greatest effect.

But some challenges are down to what I might politely call idleness and mischief. Insofar as devolution breeds bureaucracies, idleness can be a greater menace than before. And political failure in just one area of the chain will break it, no matter how many links there are. The failure of the Northern Ireland Executive to input important reports to UN bodies with regard to two – possibly three – international human rights treaties wasn't a matter of confusion or of idleness (the officials did all that they could and seem to have done it well) but of failure of political will to do what ought to have been done. When this failure – or neutralisation – of political will, clear in Northern Ireland, can hold up the proper protection and promotion of human rights, and when the will (or means) of the Government in Whitehall to remedy that failure is lacking, then it comes down (as always it must) to the people. As Bob Collins of the Equality Commission for Northern Ireland pointed out to us in oral evidence in December 2011, this is

one conundrum of devolution: what should happen when "a local administration can operate at a slower pace than the nation as a whole"?

I haven't made much reference to political will – this is because this has to be **a given** for there to be real progress in human rights. Devolution ought to allow for that political will to develop and be strengthened to reflect what people want their representatives, their government, to do. Of course, the issue of political will is one area of the human rights arena in Northern Ireland where the principal difficulties lie, especially with regard to transitional justice. But some areas of what was once a complete impasse have broken down – in the area of policing much has been done (although much remains to be done). So where there's a will there ***is*** a way. And the more accountable a parliament and a government is to its people, and the more those people can communicate what they want to those who lead in their society, then the greater ought be the political will of those leaders to act.

And so we come back to the quotation from Eleanor Roosevelt that I used earlier in this speech – with human rights beginning in "small places, close to home". The great hope for progressive realisation of all our rights rests with the people – that is, with us. And that is surely one of the greatest lessons that devolution can teach us.

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[i] "The Great Question," remarks delivered by Eleanor Roosevelt at the United Nations in New York on March 27, 1958

[ii] See the challenging article by Owen Jones, 'The Met's problem isn't bad apples: it's the whole barrel.' **Guardian**, March 10, 2014. P.26

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