

To: Committee on Statutory Instruments
From: Committee Clerk

Date: June 2011

Paper Reference: CSI (4)-01-11(p1)

Remit of the Committee

Purpose

1. This paper sets out the remit of the Committee on Statutory Instruments for the information of Committee Members.

Committee's Remit

2. The Committee's remit was set out in the motion establishing the Committee as follows:

"...the National Assembly for Wales; in accordance with Standing Order 16.1, establishes a Committee on Statutory Instruments to carry out the functions of the responsible committee set out in Standing Orders 21.2 and 21.3 and to consider any other legislative matter, other than the functions required by Standing Order 26, referred to it by the Business Committee."

The Committee's Specific Functions

Standing Order 21.2

3. This standing order places a duty on the Committee to consider all statutory instruments that are required by law to be laid before the Assembly, test them against the specific grounds listed in the Standing Order and, if the Committee has any concerns, report these to the Assembly within 20 days.

Standing Order 21.3

4. This standing order allows the Committee to report on a number of other matters concerning individual Statutory Instruments, which have become known by the shorthand term of "merits reports". It provides the Committee with a mechanism for drawing attention to subordinate legislation that, while it may not give concern on the technical grounds covered by standing order 21.2, raises other matters that the Committee believes should be drawn to the attention of the Assembly

5. The full standing orders and the specific reporting grounds are set out in the Annexe to this paper.

Other Legislative Matters

6. The Business Committee may also refer any other legislative matter to the Committee (except the scrutiny of Assembly Bills under Standing Order 26). No such matters have yet been referred to the Committee.

Recommendation

7. Members are invited to:

- note the content of this paper and the remit of the Committee; and
- consider whether there are any issues regarding the Committee's remit or the operation of the Committee that they wish to discuss.

Steve George
Committee Clerk

STANDING ORDER 21.2

21.2 A responsible committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special attention to the instrument or draft on any of the following grounds:

- (i) that there appears to be doubt as to whether it is intra vires;
- (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly; or
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

STANDING ORDER 21.3

21.3 A responsible committee may consider and report on whether the Assembly should pay special attention to any statutory instrument or draft statutory instrument required by any enactment to be laid before the Assembly on any of the following grounds:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly;
- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;
- (iv) that it inappropriately implements European Union legislation; or
- (v) that it imperfectly achieves its policy objectives.