



Rt Hon Paul Murphy MP
Secretary of State for Wales
Gwydyr House
Whitehall
London
SW1A 2ER

Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Y Gwir Anrh yr Arglwydd Elis-Thomas AC,
Llywydd
The Rt Hon the Lord Elis-Thomas AM,
Presiding Officer

Eich cyf . Your ref 08/Sub/693
Ein cyf . Our ref PO443

15 August 2008

Dear Paul,

I am very grateful for your letter of the 21 July, setting out your conclusions to the review into the scrutiny arrangements for orders in Council and framework powers. I am also grateful for the accompanying annexes, and for the copy of your letter to the chair of the Welsh Affairs Select Committee.

I write specifically in order to address an issue that the Welsh Affairs Select Committee referred to, in its recent memorandum to the Secretary of State for Wales, on the procedure for pre-legislative scrutiny of Legislative Competence Orders (LCOs). It states that the current volume of proposed Orders is "swamping the system, both at Westminster and in the Assembly" (Conclusion 13).

However, this conclusion, which has attracted much publicity, is, in my opinion, clearly contrary to the evidence actually set out in the memorandum itself.

The Assembly acquired its new legislative powers on the 25 May 2007. During the first twelve months following that date, 7 proposed LCOs were laid before the Assembly, five of which were proposed by the Assembly Government and two by back-benchers. As the memorandum itself makes clear, only four of these proposed Orders have as yet been referred to the Welsh Affairs Committee.

Bae Caerdydd
Caerdydd
CF99 1NA

Cardiff Bay
Cardiff
CF99 1NA

Ffôn • Tel: 029 2089 8911
Ffacs • Fax: 029 2089 8117

Ebost • Email: Dafydd.Elis-Thomas@wales.gov.uk

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In paragraph 21 of its Memorandum, the Committee refers to the fact that it had expected to have to deal with "four or five LCOs annually". In fact, it has only been asked to deal with four. Far from being swamped by more LCOs than expected, the number it has had to deal with has been at the lower end of what was estimated.

The Memorandum states that the Committee has already reported on three of the four LCOs referred to it, and expects to report on the fourth soon. In the Committee's own words "We have published timely reports on all (sic.) of the proposed Orders which have been referred to us so far" (paragraph 2).

So the Committee's claims about its performance during the first year of the process obviously does not support any suggestion that the system is being "swamped".

Some confusion has however been caused by the Committee's statement that "In fact the number of LCOs which have been proposed in the last 12 months has reached 11 already" (paragraph 22). The Committee has unjustifiably sought to compare this figure of 11 with the "four or five" LCOs which it expected to have to consider. The reference to a figure of 11 "proposed" LCOs in twelve months is incorrect and is seriously misleading in a number of respects.

The 11 "proposed" LCOs is in fact a list of all *proposals for* LCOs which have been announced by the Assembly Government and by individual AMs during the first 14 months since the new powers were acquired. It actually includes one proposal which has *already been rejected* by the Assembly itself as well as one whose principle has *not yet even been considered* by the Assembly and two (one from the Assembly Government and one from an individual AM) which have so far *only been the subject of announcements* and have not yet been laid before the Assembly.

In portraying a picture of a system in danger of being "swamped" the Welsh Affairs Committee has not compared like with like. It has sought, simultaneously, to raise groundless fears, based on a misleading figure of 11 proposed LCOs, that it will be "swamped" by the number of LCOs it is expected to consider, whilst at the same time claiming to have dealt with the four Orders actually referred to it in a "timely" way, although strictly it has only actually reported on 3 out of the 4 LCOs referred to it.

During the same period the Assembly's own committees have, on the other hand, fully completed consideration and reported on 7 actual proposed LCOs, with no suggestion that this has imposed an excessive strain on the Assembly's more limited resources and certainly no claim that the system is being "swamped".

I hope this clarifies the present position in relation to the volume of LCOs being dealt with by the Select Committee following consideration by the National Assembly for Wales.

I am grateful to you for your review and emphasise my wish, and the wish of the National Assembly that the new legislative arrangements are made as effective as possible.

Yours ever,

A handwritten signature in black ink, appearing to read 'P. Elis-Thomas'.

Y Gwir Anrh yr Arglwydd Elis-Thomas AC, Llywydd
The Rt Hon the Lord Elis-Thomas AM, Presiding Officer