



House of Commons
Welsh Affairs Committee

**Review of the LCO
Process: Government
Response to the
Committee's Fifth
Report of Session 2009-
10**

**Tenth Special Report of Session
2009–10**

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The Welsh Affairs Committee

The Welsh Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Office of the Secretary of State for Wales (including relations with the National Assembly for Wales).

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Committee staff

The current staff of the Committee is Dr Sue Griffiths (Clerk), Alison Groves (Second Clerk), Anwen Rees (Inquiry Manager), Christine Randall (Senior Committee Assistant), Annabel Goddard (Committee Assistant), Tes Stranger (Committee Support Assistant) and Rebecca Jones (Media Officer).

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Tenth Special Report

The Committee published its Fifth Report of Session 2009-10 *Review of the LCO Process* on 15 January 2010. The Secretary of State wrote a letter to the Chairman of the Committee on 15 March 2010 which is published as an Appendix to this Special Report.

Appendix

I am writing in response to your Committee's *Review of the LCO Process* that was published on 15 January.

I am extremely grateful for the review your Committee has undertaken. I have taken time to read the report thoroughly and to digest its conclusions and recommendations. The Committee's approach has been thorough and meticulous, grounded in its experience of scrutinising LCOs during the last two years.

I am particularly pleased that your Committee concluded the LCO process to be an effective way of responding to requests for the National Assembly to be given legislative competence over new areas of policy. The report rightly points out the early teething troubles in the new process, problems which have now been largely overcome through the close and co-operative working of all parties involved.

The recommendations made by the Committee build on the progress made during the last two years, and make an important contribution to improving the process further to make it more streamlined and effective. I warmly welcome many of the proposals, and would like to reaffirm my commitment to working with you and other colleagues to ensure the LCO process delivers the powers that the National Assembly needs.

The Committee rightly points out that the system took time to bed-down, and that the LCO procedure, as a new process without precise parallel elsewhere, created real challenges for all parties involved. I agree that things could have been done better at the outset. The desire to show immediate momentum in 2007 meant that some of the early LCOs lacked precision, and were not underpinned by a clear purpose. Consultation with Government departments before some LCOs were launched had been practically non-existent.

We learnt some important lessons from these early experiences, and the improvements which we subsequently put in place have resulted in a process which is growing in strength, effectiveness and transparency. We now have London and Cardiff working closely together from the start of the process, with both Governments communicating far more effectively between each other than before.

We apply a robust project management approach, ensuring inter-governmental teams work on LCOs from the outset to agreed timescales and deadlines. This tightly managed process, together with the improvements your Committee and the National Assembly have made to pre-legislative scrutiny procedures, have resulted in a process that is much more efficient and effective than before. I am proud that we have to date delivered full law making powers for the National Assembly in a total of 58 different areas. This is a real achievement and one that would not have been possible without the improvements I have described and the assistance of your Committee.

Turning to the Committee's recommendations, I fully agree that every proposed LCO should continue to undergo pre-legislative scrutiny in the House of Commons. I believe the value of such scrutiny is evident to all those involved in the LCO process. I also agree that it is sensible to adopt a more flexible approach to scrutiny, and that an accelerated process could be implemented for LCOs with no significant legal or policy questions.

The Committee is right to support debate on an LCO in the Welsh Grand Committee, or on the floor of House, only when it is particularly controversial or has implications for specific constituencies and localities. I believe that debating the Welsh Language LCO in Grand Committee, and on the floor of the Commons, proved beneficial, but I support the Committee in favouring its use sparingly.

Closer working between the Committee and the National Assembly is eminently sensible. It seems to me that there is a great deal of scope for pre-legislative scrutiny in Parliament and the National Assembly to be complementary, and to avoid unnecessary duplication. I am therefore pleased that your Committee has forged strong working relationships with the Assembly, and that you feel confident in drawing on evidence obtained by the Assembly during its scrutiny of LCOs.

Proposals for a more flexible approach also extend to your Committee's scrutiny of LCOs. You recommend changes to Parliamentary standing orders to allow departmental select committees to establish more than one sub-committee simultaneously, and procedural changes to allow the Committee to invite any MP who is not a member to attend evidence sessions on LCOs and to ask questions. I recognise the heavy additional workload which LCOs have placed on your Committee, and that these recommendations are made with a view to easing the burden. Future arrangements for the pre-legislative scrutiny of LCOs are clearly a matter for the new Parliament, and I shall take a keen interest in how these recommendations are taken forward.

I am disappointed that the Committee considers parts of the LCO process to be insufficiently transparent, but acknowledge that there is no formal procedure in place to inform the Committee on the progress of discussions between the Government and the Welsh Assembly Government to agree proposed LCOs. As the report makes clear, in practical terms this makes it difficult to predict when the Committee will receive a given

LCO for scrutiny and, in turn, makes it harder for the Committee to plan its programme of work.

I agree that the Committee's oversight of the process and ability to plan ahead effectively would be enhanced by regular, formal updates on the progress of proposed LCOs. These would underpin the extensive informal contacts that are already well established. I would hope that suitable arrangements could be put in place in the new Parliament.

I also agree that this more formal reporting system would be complemented by regular formal dialogue between Wales Office Ministers and members of the Committee. This would help to better inform the Committee about progress on particular LCOs and identify any issues which are impeding progress. I would expect these improvements to address the shortcomings your Committee identified in its report, and for it not to be necessary for the Committee to call Ministers and officials from Whitehall departments to explain any delays in the process. I am of course happy to review the situation regularly as part of the new reporting system.

Finally, the Committee expressed concern about what it considers to be the developing complexity of the law in Wales. It believed this to be the result of the complexity of certain Orders and the need to keep track of the developing settlement overall.

Taking LCOs first, I agree that some of the earlier proposed LCOs were particularly wide in scope and, for the reasons I set out earlier, were not drafted as clearly or precisely as they should have been. Effective scrutiny of these LCOs proved all the more important in ensuring the final drafts were fit for purpose. The drafting of LCOs has improved markedly as the LCO process has developed, and those LCOs put forward in the Assembly Government's more recent legislative programmes, for 2008-09 and 2009-10, have been much better defined and therefore agreed in far shorter timescales. I expect this trend to continue and would not anticipate further LCOs of the scale or complexity of, say, the Environment LCO. Similarly, the Assembly Government and the Wales Office have worked together in recent months to simplify explanatory memoranda in terms of their structure and language. The memorandum to the Welsh Language LCO is a good example of this improved approach.

I agree fully that clarity and transparency are fundamental to the evolving legislative settlement in Wales. Information that is easy to access and simple to read is key to ensuring the public understand the powers which have been devolved to Wales. There have been various initiatives to present the law in a user-friendly manner, two of which the Committee noted in its report: the Assembly powers' tracking notes and the latest version of Schedule 5 to the Government of Wales Act 2006. In addition, the Assembly Government has produced a summary guide to the LCO process, providing an easy to read explanation of the Environment LCO in particular.

Nevertheless, the Committee is right to highlight the need for more work to be done to provide clear and simple information on what powers the Assembly and the Welsh

Ministers have. I agree that the *Wales Legislation Online* service provides a useful basis for taking matters forward, and I intend to discuss with the First Minister what approach the Welsh Assembly Government is taking towards improving the provision of information

Rt Hon Peter Hain MP
Secretary of State for Wales

15 March 2010