

COMMITTEE FOR THE SCRUTINY OF THE FIRST MINISTER

EVIDENCE PAPER – THE LEGISLATIVE PROGRAMME

Introduction

1. This paper provides written evidence to inform the Committee for the Scrutiny of the First Minister on the matter of the Government's Legislative Programme.

The Legislative Programme

2. In July 2011 I announced the Government's five-year legislative programme aimed at improving public services and creating opportunities for everyone. At that time I announced that the Government would bring forward over 20 Bills during the Fourth Assembly, and in July this year I updated the Assembly on our plans for eight of those Bills to be introduced in 2012/13.
3. To date we have introduced Bills on Local Government Byelaws, School Standards and Organisation, Public Audit and a mandatory Food Hygiene Rating scheme. Before the end of this year we intend to bring forward the Local Government (Democracy) (Wales) Bill and the Human Transplantation (Wales) Bill.

Developing the Legislative Programme

4. Individual legislative proposals are made by Ministers based on policy development by Departments, looking ahead to the future needs of Wales, and the priorities of Cabinet. The Programme is agreed by Cabinet before being announced in my annual legislative statement. The Programme is ambitious, and reflects my aims for legislation in Wales in the context of the current powers available under the Government of Wales Act 2006.

Capacity and expertise

5. Delivering the legislative programme is one of the top priorities for this Government, and I have spoken to civil servants individually and collectively about the importance I place on this.
6. However I recognise that the capacity and capability of our civil service to deliver the legislative programme needs to be strengthened. There are fewer officials than there were before, and many of them have not developed primary legislation before. For those that have legislative experience this has generally been in the context of working with Whitehall Departments on legislation to be passed by Parliament for or in relation to Wales.
7. The primary law making powers of the National Assembly for Wales are new, and I want to ensure that the skills and capabilities of civil servants working for the Welsh Government are developed to prepare legislation for scrutiny in the

Assembly. This has included increasing the drafting capacity of the Office of the Legislative Counsel.

8. I welcome the appointment of the new Permanent Secretary who will, together with his senior team, ensure that the skills and capabilities of our officials are developed as we need and governance arrangements are strengthened. A new legislative training programme has been designed and will shortly be rolled out; this is designed to support the skills and behaviours necessary to develop and deliver legislation in Wales. Also a Legislative Programme Board has been established, which is overseen by the Director General for Strategic Performance, Finance and Planning; the Board is responsible for ensuring the delivery of the legislative programme.

Impact of legislation

9. Assessing the impact of legislation on those it affects is an essential part of the policy development process. In particular, and especially as we are moving through a period of significant financial constraint, we must be able to identify and quantify the financial implications of our proposals – what they are and where they fall. We have a procedure for doing this – the Regulatory Impact Assessment (RIA) within the Explanatory Memorandum – which applies equally to all pieces of our legislation. Working through this will ensure that we develop and publish a costed options appraisal alongside the justification and rationale for the Bill.
10. The effect of this can be seen in all our Bills. However, I accept that we may not have always got this aspect of our legislative preparations quite right and some of our stakeholders feel we could do more to engage with them at an earlier stage.
11. Preparing coherent policy is at the core of any Bill and officials work extremely hard to ensure that is done. Translating the impact of those proposals into practice and evaluating the full range of consequences, requires detailed analysis. In the past we have, rightly, prioritised this and in doing so sometimes not got to grips with the detailed financial implications until relatively late in the process. This was identified in the Counsel General's review at the end of the last Assembly.
12. We are therefore seeking to make sure that the timing of the preparation of the RIA is more realistically built in to the legislative process. But, altering the timing alone will not increase the quality or improve the robustness of the product, which is required to maintain the credibility of a draft Bill more widely. We need to engage stakeholders as well.

Engagement

13. In principle, I am committed to ensuring that there is early and open engagement with those who will be affected by our legislation, such as local authorities, or the health service or business. However, it is inevitable that our policy approach will change through the preparation of Green and White papers, the Bill itself; and

again through Assembly scrutiny. Consequently, the RIA, financial implications and, to some extent the balance of the options appraisal will also change. It is therefore important that we are able to make those modifications in a neutral way, rather than being seen to be making fundamental changes to the policy approach.

14. This raises questions as to the nature of the engagement with stakeholders. I see two distinct elements of engagement – first, the technical and operational that will drive the production and modification of RIA itself; and second, the proper debate through consultation and scrutiny. It is important that the two can be advanced separately (but often in parallel) which will demand discipline – and confidence - from the Government and stakeholders alike. And, those technical and operational discussions will have to take place against a background of trust and respect to enable the free and frank exchange of views that will form the basis for properly robust conclusions.
15. The Government has, to date, consulted upon three draft Bills, seven White Papers, four Green Papers, and a further nine policy consultations connected to legislative proposals. I would like to place on record my thanks to those individuals and organisations who have taken the time to attend consultation events, write into the Welsh Government or give evidence to the Assembly during its scrutiny of our legislation. This engagement has proved extremely useful in understanding the impact of the proposals, the matters that need to be considered for effective development, and preparing to support implementation.
16. I am confident that our ambitious legislative programme will be delivered in full during this Fourth Assembly.