



Law

Reforming the law

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Our ref:
Your ref:

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Dear Dr. Lloyd,

Inquiry into the Scrutiny of Subordinate and Delegated Powers

Thank you for your letter of 16 December, which I saw on my return from Christmas leave on 5 January.

As you say there, following a reference from the then Leader of the House of Commons in April 2005, a project on Post – Legislative Scrutiny was included in our Ninth Programme of Law Reform; and work began on it in July 2005. The Law Commission produced its Report (LC 302) on 25 October 2006.

Harriet Harman published the Government's response to our Report - 'Post – Legislative Scrutiny – The Government's Approach' (Cm 7320) on 20 March 2008. This indicated that, in the light of our Report, the Government intended to introduce a new systematic approach for strengthening the scrutiny of legislation three to five years after it is enacted. Commons committees themselves, on the basis of a Memorandum on appropriate Acts submitted by the relevant Government department, and published as a Command paper, are to decide whether to conduct further post – legislative scrutiny of the Act in question (see paragraph 9 of Cm 7320).

The Cabinet Office policy official responsible for this subject, whom you might wish to contact about subsequent developments, is Tom Healey (020 7276 0351 tom.healey@cabinet-office.x.gsi.gov.uk). He tells me that the first Memoranda from Departments, under the new system Harriet Harman announced, are currently expected to emerge within the next few weeks.

On the particular questions you raise, I should explain that the Law Commission only looked at post-legislative scrutiny as part of the specific project we undertook as part of our Ninth Programme and on which we reported in LC 302. It does not form part of our present Tenth Programme. In accordance with our usual working practices, once our Report was published, our interest in the subject ceased and the team within the Commission that had been working on it was dissolved. So there is really no residual expertise here.

We therefore have no ongoing views or policy regarding the review of any legislation falling within the competence of the Welsh Assembly or the executive competence of Welsh Ministers. It follows also that we have no views on whether the National Assembly should give preference to considering any particular recommendations in LC 302.

The Law Commission would only undertake further work on post legislative scrutiny if this formed part of a new project, which the Commission agreed to take on, for example in its Eleventh Programme or as a specific ad hoc reference, properly funded, and our other existing commitments permitting. The Eleventh programme is due to start in April 2011 and we expect to launch the consultation process for candidate projects for that programme early in 2010.

I hope this explains our position to you. Please do get in touch again, if there is any further information, which you think we could give you at this stage, or if you wish to discuss the possibility of our doing further work on this, either as an ad hoc project or as part of our Eleventh programme.

Yours sincerely,

William Arnold

W Arnold
Chief Executive