

REPORT OF THE COMMITTEE ON THE INQUIRY INTO THE OUTBREAK OF E.COLI IN WALES

Committee Membership:

Jocelyn Davies (Chair)	South Wales East
Jeff Cuthbert	Caerphilly
Val Lloyd	Swansea East
Jonathan Morgan	South Wales Central
Jenny Randerson	Cardiff Central
Karen Sinclair	Clwyd South

1. Recommendations

1.1 The Committee recommends that:

- i. the National Assembly for Wales causes an inquiry to be held under the Inquiries Act 2005.
- ii. The terms of reference for the inquiry should be:
“to inquire into the circumstances that led to the outbreak of E.coli 0157 infection in South Wales in September 2005, and into the handling of the outbreak; and
to consider the implications for the future and make recommendations accordingly.”
- iii. Professor Hugh Pennington should be appointed to chair the inquiry.
- iv. All remaining functions under the Inquiries Act 2005 for the purpose of the inquiry into the outbreak of E.coli 0157 disease in South Wales should be delegated to the First Minister.

2. Background

2.2 The first cases of E.coli 0157 infection were diagnosed at the Princess of Wales Hospital, Bridgend on 16 September 2005. Within a week 150 cases were identified in the South Wales valleys, with 42 schools affected. Following the death of 5-year old Mason Jones on 4 October, a police investigation was launched. By 14 November 168 cases compatible with E.coli 0157 infection had been identified.

2.3 On 5 October the National Assembly for Wales established a Committee under Standing Order 8.1:

- to consider the terms and conditions for an inquiry under the Inquiries Act 2005; and
- to report to the National Assembly by 7 December 2005 on its conclusions.

2.4 The Committee met on 7 and 17 November.

2.5 Before the first meeting of the Committee, key organisations were invited to submit their suggestions for the inquiry's terms of reference. A list of the organisations is at Annex 1. Their responses were incorporated into the committee papers listed at Annex 2.

3. The Inquiries Act 2005

3.1 The Act provides a comprehensive statutory framework for the National Assembly for Wales to set up formal, independent inquiries to look into matters of public concern. It makes provision for:

- setting the terms of reference, appointing the Chair to conduct the inquiry and appointing additional panel members or assessors;
- the conduct of the inquiry, including the power of the chair to require evidence, and the power to restrict public access where appropriate.

The Act requires the production of a report.

3.2 Under section 62 of the Government of Wales Act 1998, the National Assembly can delegate its powers under the Inquiries Act to any committee of the Assembly or to the First Minister, who in turn may delegate functions to the Assembly's staff through the Permanent Secretary.

3.3 The Director of Legal Services in the Welsh Assembly Government provided a paper (E.coli(2) 02-05(p3)) setting out the options for delegation. The annex to the paper, reproduced at Annex 3 to this report, summarises Assembly functions under the Inquiries Act.

4. Nomination of Person to Chair the Inquiry

4.1 Section 5(4) of the Inquiries Act requires the National Assembly to consult the person it proposes to appoint, or has appointed, to chair the inquiry about the terms of reference. The Committee decided that it should identify a suitable candidate to recommend to the Assembly for appointment as Chair, so that it could invite that person to discuss terms of reference with the Committee.

4.2 At the meeting on 7 November the Committee agreed that the inquiry should be chaired by somebody with expert knowledge of E.coli infection. The Committee decided that Professor Hugh Pennington should be asked to chair the inquiry. Professor Pennington led the group that investigated the circumstances leading to the 1996 outbreak of infection with E.coli 0157 in Central Scotland.

4.3 Professor Pennington agreed that his name should be put forward and he attended the meeting of the Committee on 17 November.

5. Delegation of Functions under the Inquiries Act 2005

5.1 Some of the powers and functions can be carried out by the full Assembly in response to the Committee's report. These are the decision to cause an independent public inquiry to be held in accordance with section 1, and the identification of the person to chair the inquiry. The Assembly may also endorse the terms of reference recommended by the Committee and agreed with Professor Pennington.

5.2 The Committee considered whether all other powers should be delegated to the First Minister, or whether some should be reserved to the Assembly. The powers it considered reserving are:

- the power to amend the terms of reference under section 5(3);
- the power to terminate the Chair under section 12, and the power to appoint a replacement pursuant to section 7(1);
- the power to suspend the inquiry under section 13(1); and
- the power to restrict public access to the inquiry under section 19(2)(a).

5.3 The Committee took the view that it was most unlikely that these powers would need to be exercised, but if they were needed it might not be easy for the full Assembly to do so, particularly if issues arose during a recess. Alternatively, if all remaining powers were to be delegated, the Assembly would be able to monitor the way in which the First Minister exercised them. Under section 62(8) of the Government of Wales Act 1998 it would be open to the full Assembly to exercise the powers.

5.4 The Committee noted that a number of inquiries into the outbreak were underway, including a police investigation, and that the timing of the inquiry would need to have regard to these.

5.5 The Committee therefore recommends that all functions under the Act, other than those referred to in paragraph 1.1 (i) to (iii), for the purposes of the inquiry into the outbreak of E.coli disease in Wales should be delegated to the First Minister.

6. Inquiry Rules

6.1 Section 41 of the Inquiries Act provides that the Assembly, as the "appropriate authority" may make rules by statutory authority dealing with matters of evidence and procedure, documentation and awards of expenses. The power is permissive. The Committee noted that such rules were not yet in place, but that the Department for Constitutional Affairs was expected to consult soon on rules to apply in England. It would be open to the Assembly to adopt these.

6.2. The Director of Legal Services, Welsh Assembly Government advised the Committee that in order for statutory rules to be brought into effect by the National Assembly for Wales in Spring 2006, or shortly thereafter, it would be necessary for a Minister to bring forward the relevant Assembly general subordinate legislation in accordance with Standing Order 24. The delegation of the section 41 power would need to be made generally, rather than being confined to the inquiry into the E.coli outbreak in South Wales.

6.3. In the absence of rules made under section 41, section 17 (1) provides that the Chair of the inquiry shall direct its procedure and conduct. The Committee noted that if statutory rules were not in place when the inquiry begins, the Chair could use the draft rules as the basis for controlling the inquiry. In view of the provisions of section 41 the Committee concluded that it should not make a recommendation on inquiry rules.

7. Terms of Reference

7.1 The Committee discussed what might be included in the terms of reference with Professor Pennington and the following:

- Acting Deputy Chief Medical Officer
- Chartered Institute of Environmental Health, Wales
- Children's Commissioner
- Food Standards Agency, Wales
- Wales Centre for Health
- Welsh Local Government Association.

7.2 The Committee also received written submissions from the National Public Health Service, Wales; the UK E.coli Support Group (Haemolytic Uraemic Syndrome Help); and the Governors of Cwmdar Primary School, Aberdare and Mountain Ash Comprehensive School.

7.3 The Committee was advised that section 29(2) of the Inquiries Act says that "The terms of reference of the inquiry must not require it to determine any fact or make any recommendation that is not wholly or primarily concerned with a Welsh matter." Section 29(5) defines "Welsh matter" as one in relation to which the National Assembly for Wales has functions. Subject to this, there were a number of important issues raised in discussion and in the written submissions that the Committee considered should be addressed by the Inquiry. They include:

- i. the cause of the outbreak, including the raising, marketing, slaughtering of livestock and the processing of meat;
- ii. legislation, regulation and guidance on the control of food production;
- iii. the procurement of school meals;
- iv. the response to the outbreak by the statutory agencies;
- v. communication and release of information, including timeliness of the release of information and the role of the media;
- vi. the teaching and practice of hygiene in schools, including giving information to children about the outbreak;

- vii. the appropriateness of closing a school in response to an outbreak;
- viii. the care and guidance given to patients suffering from E.coli 0157 infection and their families and the long term health problems of sufferers of Haemolytic Uraemic Syndrome; and
- ix. lessons to be learned from the outbreak.

7.4 The Committee considered whether these issues should be detailed in the terms of reference but, after consultation with Professor Pennington, Members concluded that it would be better for the terms of reference to be drafted broadly, to ensure that the inquiry Chair was not fettered in pursuing lines of inquiry that might emerge from the evidence.

7.5 The Committee therefore recommends that the terms of reference should be:

“to inquire into the circumstances that led to the outbreak of E.coli 0157 infection in South Wales in September 2005, and into the handling of the outbreak; and to consider the implications for the future and make recommendations accordingly.”

Jocelyn Davies AM
Chair
29 November 2005

**Organisations Invited to Make Suggestions on the Terms of Reference
for the Inquiry**

Chartered Institute of Environmental Health, Wales
Chief Medical Officer for Wales
Children's Commissioner
Consumer Association
Food Standards Agency, Wales
National Public Health Service for Wales
Wales Centre for Health
Welsh Local Government Association
Ms Claire Hudson

Chairs of Governors of the following schools:

Rhydri Primary, Caerphilly	Hendre Infants, Caerphilly
Deri Primary, Bargoed	Greenhill Primary, Hengoed
Ysgol Gymraeg, Blackwood	Archbishop McGrath Secondary, Bridgend
Abertaf Primary, Mountain Ash	Pengeulan Primary, Mountain Ash
Cwmdar Primary, Aberdare	Rhigos Primary, Aberdare
Glenboi Primary, Mountain Ash	Cwmbach Infants, Aberdare
St John the Baptist Secondary, Aberdare	Penygraig Infants, Tonypanyd
Measycoed Primary Pontypridd	Cynon Infants, Mountain Ash
Caradog Primary, Aberdare	Aberdare Town Church,
Capcoch Primary Aberdare	Comin Junior, Aberdare
YGG Llwynceilyn, Porth	Cwmlai Primary, Tonyrefail
Hirwaun Primary, Aberdare	Parc Lewis primary, Pontypridd
Treorchy Comprehensive	Glantaf Infants, Pontypridd
Hawthorn Primary, Pontypridd	Mountain Ash Comprehensive
Ton Pentre Infants,	Bedlinog Primary, Treharris

Troed y Rhiw Infants
Troedyrhiw

Gellifaelog, Merthyr Tydfil

Ynyswen Infants, Treorchy

YGG Abercynon

Ysgol Yr Castell, Caerphilly
Blaengawr Primary, Aberdare

Pen y Dre Secondary, Merthyr
Tydfil

Penyrenghlyn Community Primary
Treorchy

Ysgol Yr Eos, Tnypandy

Upper Rhymney Primary,
Rhymney

Cwrt Rawlin Primary, Caerphilly

Papers Received by the Committee

Meeting 7 November 2005

E.Coli(2) 01-05 (p1) - Paper from the Permanent Secretary

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-01-05-p1-e.html>

E.Coli(2) 01-05 (p2) - Paper from Julie Barratt, Director, Chartered Institute of Environmental Health Wales

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-01-05-p2-e.html>

E.Coli(2) 01-05 (p2a) - Paper from Joy Whinney, Director, Food Standards Agency Wales

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-01-05-p2a-e.html>

E.Coli(2) 01-05 (p3) - Responses received from other consultees

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-01-05-p3-e.html>

Meeting 17 November 2005

E.Coli(2) 02-05 (p1) - Paper from WLGA on the terms of reference

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05-paper1-e.htm>

E.Coli(2) 02-05 (p2) - Paper from the Chair of the Chief Medical Officer's Review of public health measures

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05-paper2-e.htm>

E.Coli(2) 02-05 (p3) - Paper from the Director of Legal Services, Welsh Assembly Government

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05-paper3-e.htm>

E.Coli(2) 02-05 (p3) Annex - Summary of Assembly Functions

[http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05\(p3\)Annex-e.htm](http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05(p3)Annex-e.htm)

E.Coli(2) 02-05 (p4) Responses received from School Governors

<http://www.wales.gov.uk/keypubassemecoli/content/EColi-2-02-05-paper4-e.htm>

**Summary of the Functions of the National Assembly for Wales under the
Inquiries Act 2005**

**(extract from the paper provided by the Director of Legal Services,
Welsh Assembly Government)**

Section, Subsection	Provision
1(1) & (2)	Enables any Minister to cause an independent inquiry to be held and sets out the circumstances in which the inquiry may be established. It provides that any references to “Minister” also include references to the National Assembly for Wales (NAW).
4(1)–(3)	Gives NAW power to appoint, by an instrument in writing, members (including the chairman) of an inquiry panel, members to be appointed after consultation with the person it has appointed, or proposes to appoint, as chairman. The instrument appointing the chairman must state that the inquiry is to be held under the Act.
5(1)–(3)	Requires NAW to specify a date and the terms of reference for any inquiry after consultation with the chairman. Gives NAW power to amend the Terms of Reference if it considers that the public interest so requires.
6(1) & (4)	Imposes a duty to inform NAW of an inquiry to be held either in advance or as soon as is reasonably practicable by means of a statement (either written or oral).
6(2) & (3)	Requires that details of the chairman, membership and terms of reference (including any amendments) be included in any statement.
7(1)–(3)	Gives NAW the power to appoint members to fill a vacancy (including that of the chairman) or, with the consent of the chairman, further members to an inquiry panel.
8(1) & (2)	Sets out the criteria to which the NAW must have regard when appointing the inquiry panel to ensure the expertise, necessary balance etc., as appropriate, having regard to the terms of reference.
9(1)	The NAW is prohibited from appointing anyone to the inquiry panel whose interest or association could be regarded as affecting the impartiality of the panel.

Section, Subsection	Provision
10	This section sets out whom the NAW is required to consult before appointing a judge as a panel member.
11(1)–(4)	Gives NAW the power before the inquiry has been set up to appoint assessors to assist the inquiry panel, after consultation with the inquiry chairman. This power vests in the chairman after set up of the inquiry.
11(5)	Requires consent of NAW to any decision by the chairman to terminate the appointment of an assessor appointed by the Assembly.
12(3) & (5)	Provides power for the NAW to terminate appointment of any member of the inquiry panel on the grounds that the member (a) is unable to carry out the duties required (b) has failed to comply with the requirements of the Act (c) their interest or association could be regarded as affecting the impartiality of the panel (unless NAW was aware beforehand) or (d) has been guilty of misconduct which makes the member's appointment unsuitable.
12(4)	If a panel member is temporarily unable to carry out their duties, the NAW may have regard to the likely duration of the inquiry when deciding whether the appointment should be terminated.
12(6) & (7)	The NAW must consult the chairman before exercising powers under section 12 (3) above, must inform the affected member of the proposed decision (and of the reasons for it) and take into account any representations made by the member, and consult other panel members if requested to do so by the affected member.
13(1)–(4)	Sets out the circumstances in which NAW may, by notice, after consulting the chairman, suspend an inquiry to allow other proceedings to be completed.
13(5)	Requires that a copy of any notice suspending an inquiry, to include the reasons for suspension, be laid before the NAW.
14(1)(b)	Provides the NAW with the power to end an inquiry, by notice to the chairman, before delivery of the report of the inquiry.
14(2)	Precludes the ending of the inquiry by NAW at any date prior to the notice being given to the chairman (under section 14(1)(b) above).

Section, Subsection	Provision
14(3)	Requires the NAW to consult the inquiry chairman before using the powers conferred in section 14(1)(b) above.
14(4)	Where a notice has been given by NAW under section 14(1)(b) above, it must contain the reasons for ending the inquiry and a copy must be laid before NAW.
15 & 16	Provides the NAW with the power to convert an inquiry established under other legislation to one under this Act and sets out the procedure for doing so. The NAW may, after consulting the chairman, change the terms of reference when converting the inquiry.
19	Provides power for the NAW by way of a “restriction notice” to restrict (a) the attendance at an inquiry (or part of an inquiry) and (b) disclosure or publication of any evidence or inquiry documents, having regard to matters specified in the section. Section 19(4) sets out matters to be considered prior to issuing such notices.
20	Any such notices may be varied or revoked by giving notice to the chairman. Power after the end of the inquiry to revoke, relax or vary restriction orders or notices containing disclosure restrictions that are still in force.
23	Receipt of confidential information from the inquiry panel.
24	Receipt of the report of the inquiry panel (setting out facts determined and recommendations made). Additionally, receipt of any interim report from the chairman.
25(1)–(3)	Establishes a duty for NAW to arrange for the publication of an inquiry report unless the chairman has been notified by NAW to make these arrangements.
25(4)	Where NAW is responsible for publication, it may withhold material from publication in compliance with a legal obligation or if it is necessary in the public interest.
26	Requirement to lay the published inquiry report before the NAW.
27	To be consulted by a UK Minister prior to that Minister giving permission allowing a UK inquiry to determine facts or make recommendations in relation to a Welsh matter.

Section, Subsection	Provision
29	Gives the NAW power to cause an inquiry to be held into a matter that is wholly or primarily concerned with a matter in relation to which the NAW has functions.
31(1)	Imposes a requirement on NAW to specify the relevant part of the UK to which the inquiry relates.
31(2)	Provides an obligation on NAW to specify which set of procedural rules apply in the case of a joint inquiry involving another UK administration.
32	Provides NAW with power to hold a joint inquiry involving another UK administration.
34	Provides NAW with the option of agreeing in writing responsibilities of those parties concerned for the joint inquiry.
36(1)	Provides a power to certify to the appropriate court that a person has failed to comply with, or acts in breach of, a notice under section 19 or 21 or an order made by an inquiry, or threatens to do so.
39	Provides for payment by NAW of inquiry expenses. These are: remuneration and expenses of panel members, assessors, solicitor or counsel to the inquiry or any person engaged to provide assistance; amounts awarded under section 40: and other expenses incurred (e.g. cost of publishing reports). Where NAW believes the panel is acting outside the scope of the Terms of Reference and notifies the chairman accordingly it is not obliged to meet such expenses (subject to anything to the contrary in the Rules).
40(4)	Provides NAW with the power to impose conditions or qualifications on expenses or compensation for lost time awarded to inquiry witnesses etc.
41(1)–(4)	Gives the NAW power to make rules regarding the conduct of inquiries (dealing with matters of evidence and procedure, return and keeping of documents after the end of the inquiry and awards under section 40). These rules must be made by statutory instrument.

