

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 4 – Ty Hywel**

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Meeting date:  
**24 September 2012**

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Meeting time:  
**14:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



For further information please contact:

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### Agenda

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- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

#### Negative Resolution Instruments

#### **CLA169 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2012**

Negative Procedure. Date made 17 July 2012. Date laid 18 July 2012. Coming into force date 1 September 2012

#### **CLA172 – The Higher Education Funding Council for Wales (Supplementary Functions and Revocation) Order 2012**

Negative Procedure. Date made 18 July 2012. Date laid 19 July 2012. Coming into force date 31 August 2012

#### **CLA173 – The Adoption Agencies (Wales) (Amendment) Regulations 2012**

Negative Procedure. Date made 18 July 2012. Date laid 19 July 2012. Coming into force date 1 September 2012

**CLA175 – The Housing (Wales) Measure 2011 (Consequential Amendments to Subordinate Legislation) Order 2012**

Negative Procedure. Date made 9 August 2012. Date laid 13 August 2012.  
Coming into force date 3 September 2012

**CLA176 – The Town and Country Planning (General Permitted Development) (Amendment) (Wales) (No. 2) Order 2012**

Negative Procedure. Date made 6 September 2012. Date laid 11 September 2012. Coming into force date 5 October 2012

**CLA177 – The Town and Country Planning (Compensation) (Wales) (No.2) Regulations 2012**

Negative Procedure. Date made 6 September 2012. Date laid 11 September 2012. Coming into force date 5 October 2012

**CLA 178 – The Bluetongue (Wales) (Amendment) Regulations 2012**

Negative Procedure. Date made 15 September 2012. Date laid 19 September 2012. Coming into force date 10 October 2012

Affirmative Resolution Instruments

**CLA170 – The Smoke-free Premises etc. (Wales) (Amendment) Regulations 2012**

Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date 17 October 2012

**3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

**CLA171 – The Waste (England and Wales) (Amendment) Regulations 2012**

(Pages 1 – 18)

Negative Procedure. Date made 17th July 2012. Date laid before Parliament 19th July 2012. Date laid before the National Assembly for Wales 19th July 2012. Coming into force date 1st October 2012

**CLA174 – The Conservation of Habitats and Species (Amendment) Regulations 2012** (Pages 19 – 46)

Negative Procedure. Date made 20th July 2012. Date laid before Parliament 25th July 2012. Date laid before the National Assembly for Wales 25th July 2012. Coming into force date 16th August 2012

Affirmative Resolution Instruments

None

**4. Committee for the Scrutiny of the First Minister: approach to work and topics for scrutiny** (Pages 47 – 49)

**Papers:**

CLA(4)-19-12(p1) – Potential scrutiny topics

**5. Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction** (Pages 50 – 57)

Lord Carlile of Berriew C.B.E. Q.C

**Papers:**

CLA(4)-17-12(p2) – Additional Responses WJ – Lord Carlile of Berriew C.B.E., Q.C. – Submission to the Lord Richard Commission

CLA(4)-19-12(p3) – Additional Responses WJ – Lord Carlile of Berriew C.B.E., Q.C – Press Release

**6. Business Committee – Review of Committee Structure and Timetable** (Pages 58 – 88)

**Papers:**

CLA(4)-19-12(p4) – Letter from Presiding Office dated 20 July 2012

CLA(4)-19-12(p4) – Annex 1

CLA(4)-19-12(p4) – Annex 2

**7. International research project on the control of the EU legislative process: Early Warning System** (Pages 89 – 107)

**Papers:**

CLA(4)-19-12(p5) – Dr Boronska-Hryniewiecka 's e-mail

CLA(4)-19-12(p6) – The Chair's response to Dr Boronska-Hryniewiecka's e-mail

CLA(4)-19-12(p6) – Annex: the role of regional parliaments in the Early Warning System

**8. Paper(s) to note** (Pages 108 – 112)  
**CLA(4)-18-12 - Report of the Meeting 16 July 2012**

**Date of the next meeting**  
1 October 2012

**9. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:**

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish

**10. Consideration of the evidence submitted to Inquiry to date**

(Pages 113 – 116)

**Paper to Note:**

**CLA(4)-19-12(p7) - Conference on devolution 1919 – 1920**

**Evidence of Lord Carlile of Berriew C.B.E., Q.C.**

**Draft Report on Committee study visit to Northern Ireland** (Pages 117 – 129)

**Paper to Note:**

**CLA(4)-19-12(p8) - Report on the visit to Northern Ireland**

**CLA(4)-19-12(p9) - Second Programme of Law Reform – NILC11 (2012)**

[http://www.nilawcommission.gov.uk/index/publications/second\\_programme\\_of\\_law\\_reform\\_-\\_may\\_2012\\_to\\_march\\_2015\\_-\\_nilc11\\_2012.htm](http://www.nilawcommission.gov.uk/index/publications/second_programme_of_law_reform_-_may_2012_to_march_2015_-_nilc11_2012.htm)

**CLA(4)-19-12(p10) - Law bodies and resources in the Crown Dependencies**

**11. Food Hygiene Rating (Wales) Bill** (Pages 130 – 208)

**Papers:**

**CLA(4)-16-12(p4) - Food Hygiene Rating (Wales) Bill**

**CLA(4)-16-12(p5) - Explanatory Memorandum**

**CLA(4)-19-12(p11) - Letter from the Chair to the Minister for Health and Social Services Lesley Griffiths AM dated 3 July 2012**

**CLA(4)-19-12(p12) - The Minister's response dated 17 July 2012**

**CLA(4)-19-12(p13) - Draft Report**

CLA(4)-19-12

CLA171

## **Constitutional and Legislative Affairs Committee Draft Report**

**Title: The Waste (England and Wales) (Amendment) Regulations 2012**

**Procedure: Negative**

These composite regulations amend the Waste (England and Wales) Regulations to substitute regulation 13 and 14(2) to ensure the correct transposition of provisions of Directive 2008/98/EC (the revised Waste Framework Directive) relating to the separate collection of waste.

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 (ix) in respect of this instrument – that it is not made in both English and Welsh.

### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

1. The Waste (England and Wales) Regulations 2011 transposed provisions of the revised Waste Framework Directive relating to the separate collection of waste paper, metal, plastic and glass.

Regulation 13 (2) of those Regulations provided that co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling) is a form of separate collection.

Judicial review proceedings were brought, challenging the transposition in particular in relation to the provision concerning co-mingled waste. The Welsh Ministers and Defra accepted that the original regulation 13 did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection, and that consequently the 2011 Regulations needed to be amended.

In December 2011 the proceedings were stayed until 13 June 2012 on the undertaking of the Welsh Ministers and Defra to consult on proposals to amend the 2011 Regulations.

The Explanatory Memorandum states that the instrument was laid before recess, in keeping with an agreement with the Claimants and Interested Parties, to extend the stay of proceedings in the judicial review from 13 June to 25 July, to allow the Welsh Ministers and Defra time to lay amending regulations before that date.

The Explanatory memorandum provides no further information as to whether the Claimants and Interested Parties in the litigation are satisfied that the Regulations as amended correctly transpose the revised Waste Framework Directive.

2. Regulation 2 (5) provides for the insertion of a new regulation 49 into the 2011 Regulations, which requires the Secretary of State to review the operation and effect of those Regulations in relation to England within 5 years after 1<sup>st</sup> October 2012 and within every 5 years after that. The Explanatory Memorandum is silent as to why in the event that it was not considered appropriate for the Welsh Ministers to carry out a review, this is the case.

**David Melding AM**  
**Chair, Constitutional and Legislative Affairs Committee**

**24 September 2012**

**The Government has responded as follows:**

**The Waste (England and Wales) (Amendment) Regulations 2012**

1. Under Standing Order 21.2 (ix) – That the regulations are not made in both English and Welsh.

These composite regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for this Instrument to be made bilingually.

2. Under Standing Order 21.3 (ii) – that it gives rise to issues of public policy likely to be of interest to the Assembly. The Explanatory Memorandum provides no further information as to whether the Claimants and Interested Parties in the litigation are satisfied that the Regulations as amended correctly transpose the revised Waste Framework Directive.

The Claimants and Interested Parties were provided with a draft of the regulations on 4 July 12. The Claimants indicated by letter on 13 July 12 that they were not content with the amending regulations, but gave no substantive reasons for their position. Substantive reasons were provided by letter on 16 August, after the regulations were laid. It would therefore at best, only have been possible to have indicated in the Explanatory Memorandum, the bare fact that the Claimants were not satisfied.

In any event it would not have been appropriate to make legislation subject to approval by the Claimants or the Interested Parties .The purpose of the legislation was to correct what we acknowledged was a defect in the original regulation 13 , which did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection . The fact that the Claimants were not content with the amendments was relevant to the ongoing judicial review, but not to the making of this legislation.

3. Under Standing Order 21.3 (ii) – That it gives rise to issues of public policy likely to be of interest to the Assembly. The Explanatory Memorandum is silent as to why in the event that it was not considered appropriate for Welsh Ministers to carry out a review.

The current UK Government’s policy is to include a clause in all regulations that requires a review in a specified timescale. The Welsh Government does not have a similar policy in Wales. Welsh Ministers are able to review the regulations at any time. Consequently, the inclusion of the review provision in the instrument, was relevant only to England.

*This Statutory Instrument has been made in consequence of defects in S.I. 2011/988 and is being issued free of charge to all known recipients of that Statutory Instrument.*

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STATUTORY INSTRUMENTS

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**2012 No. 1889**

**ENVIRONMENTAL PROTECTION, ENGLAND AND WALES**

**The Waste (England and Wales) (Amendment) Regulations 2012**

<i>Made</i>	- - - -	<i>17th July 2012</i>
<i>Laid before Parliament</i>		<i>19th July 2012</i>
<i>Laid before the National Assembly for Wales</i>		<i>19th July 2012</i>
<i>Coming into force</i>	- -	<i>1st October 2012</i>

The Secretary of State is designated(a) for the purposes of the European Communities Act 1972(b) in relation to the environment. The Welsh Ministers are designated(c) for the purposes of that Act in relation to the prevention, reduction and management of waste.

The Secretary of State, in relation to England, and the Welsh Ministers, in relation to Wales, make the following Regulations in exercise of the powers conferred by section 2(2) of that Act.

**Citation and commencement**

1.—(1) These Regulations may be cited as the Waste (England and Wales) (Amendment) Regulations 2012.

(2) They come into force on 1st October 2012.

**Amendment of the Waste (England and Wales) Regulations 2011**

2.—(1) The Waste (England and Wales) Regulations 2011(d) are amended as follows.

(2) For regulation 13 substitute—

**“Duties in relation to collection of waste**

13.—(1) This regulation applies from 1st January 2015.

(2) Subject to paragraph (4), an establishment or undertaking which collects waste paper, metal, plastic or glass must do so by way of separate collection.

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(a) S.I. 2008/301.

(b) 1972 c. 68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c. 51) and section 3(3) of, and Part 1 of the Schedule to, the European Union (Amendment) Act 2008 (c. 7).

(c) S.I. 2010/1552.

(d) S.I. 2011/988, to which there are amendments not relevant to this instrument.

(3) Subject to paragraph (4), every waste collection authority must, when making arrangements for the collection of waste paper, metal, plastic or glass, ensure that those arrangements are by way of separate collection.

(4) The duties in this regulation apply where separate collection—

(a) is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery; and

(b) is technically, environmentally and economically practicable.”.

(3) In regulation 14, for paragraph (2) substitute—

“(2) This duty applies where keeping waste separate is necessary to ensure that waste undergoes recovery operations in accordance with Articles 4 and 13 of the Waste Framework Directive and to facilitate or improve recovery.”.

(4) In regulations 38(2) (compliance notices), 39(2) (stop notices) and 42(3) (penalties), for “13(1)” substitute “13(2)”.

(5) After regulation 48, insert—

#### **“Review**

**49.**—(1) The Secretary of State must from time to time—

(a) carry out a review of these Regulations in relation to England;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Waste Framework Directive (which is implemented in part by means of these Regulations) is implemented in other member States.

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;

(b) assess the extent to which those objectives are achieved; and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) The first report under this regulation must be published before the end of the period of 5 years beginning with 1st October 2012.

(5) Reports under this regulation are afterwards to be published at intervals not exceeding 5 years.”.

17th July 2012

*John Griffiths*  
Minister for Environment and Sustainable Development  
one of the Welsh Ministers

16th July 2012

*Taylor of Holbeach*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

#### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations amend the Waste (England and Wales) Regulations 2011 (S.I. 2011/988) (“the 2011 Regulations”) to ensure proper transposition of Directive 2008/98/EC of the European Parliament and of the Council on waste (OJ No L 312, 22.11.08, p3).

Paragraphs (2) and (3) of regulation 2 respectively provide for the substitution of new regulations 13 and 14(2) of the 2011 Regulations. Regulation 2(4) makes changes consequential on renumbering.

Regulation 2(5) provides for the insertion of a new regulation 49 into the 2011 Regulations, which requires the Secretary of State to review the operation and effect of those Regulations in relation to England within 5 years after 1st October 2012 and within every 5 years after that.

A full impact assessment of the effect of the 2011 Regulations on business, the voluntary sector and the public sector was prepared and annexed to the Explanatory Memorandum which is available alongside that instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk). No separate impact assessment has been produced for this instrument as no additional impact on business, the voluntary sector or the public sector is anticipated.

## **Explanatory Memorandum to the Waste (England and Wales) (Amendment) Regulations 2012**

This Explanatory Memorandum has been prepared by the Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Waste (England and Wales) (Amendment) Regulations 2012.

*John Griffiths AM*

17 July 2012

## 1. Description

The instrument amends the Waste (England and Wales) Regulations 2011 (SI 2011/988)<sup>1</sup> (“the 2011 Regulations”) to substitute regulation 13 and 14(2), to ensure the correct transposition of provisions of Directive 2008/98/EC (the revised Waste Framework Directive) relating to the separate collection of waste.

## 2. Matters of special interest to the Constitutional and Legislative Affairs Committee

Composite regulations are appropriate as the change is to composite legislation, and in these regulations there is no policy difference between the Welsh Ministers and the Secretary of State.

The instrument is not being made bilingually as it amends an earlier composite England and Wales instrument.

The 2011 Regulations were made under section 2(4) of the Pollution Prevention and Control Act 1999 and section 2(2) of the European Communities Act 1972, and transposed, for England and Wales, the revised Waste Framework Directive<sup>2</sup>. This instrument, which deals with a more limited transposition issue, is made solely under section 2(2) of the European Communities Act 1972.

Welsh Ministers are designated in relation to the prevention, reduction and management of waste under section 2(2) of the European Communities Act 1972. Under this power there is discretion whether to use a negative or affirmative procedure. Because some of the enabling powers for the 2011 Regulations required affirmative procedure, the whole of the instrument was made subject to affirmative procedure. The proposals in the 2012 Regulations are not using enabling powers subject to affirmative procedure, consequently, the affirmative procedure is not being used.

Judicial review proceedings were brought in relation to the way the 2011 Regulations transposed the requirements of the revised Waste Framework Directive relating to the separate collection of waste (dealt with in Articles 10 and 11 of that Directive). In December 2011, those proceedings were stayed until 13 June 2012, on the undertaking of the Welsh Ministers and Defra to consult on proposals to amend the 2011 Regulations. Following that consultation, this instrument is being made.

The instrument is being laid before recess, in keeping with an agreement with the Claimants and Interested Parties, to extend the stay of proceedings in the judicial review from 13 June to 25 July, to allow the Welsh Ministers and Defra time to lay amending regulations before that date .

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<sup>1</sup> [http://wales.gov.uk/topics/environmentcountryside/epq/waste\\_recycling/legislation/rwfd/?lang=en](http://wales.gov.uk/topics/environmentcountryside/epq/waste_recycling/legislation/rwfd/?lang=en)

<sup>2</sup> Directive 2008/98/EC on Waste and repealing certain Directives

### **3. Legislative background**

The enabling power that is relied on is the designation of the Welsh Ministers in relation to the prevention, reduction and management of waste under section 2(2) of the European Communities Act 1972. The Welsh Ministers have the relevant enabling power by virtue of Article 3 of the European Communities (Designation) (No 2) Order 2010 (SI 2010/1552)<sup>3</sup>, which designated to the Welsh Ministers, power to make provision for the purpose of implementing any EU obligation in relation to the prevention, reduction and management of waste. In addition, Section 71 of the Government of Wales Act 2006 (GOWA 2006)<sup>4</sup> provides that the Welsh Ministers may do anything which is calculated to facilitate, or is conducive or incidental to, the exercise of any of their functions.

This instrument is made on a composite basis with the Department for Environment, Food and Rural Affairs (Defra), and subject to annulment (the negative procedure).

Failure to transpose a European Directive correctly can lead to infringement proceedings<sup>5</sup> by the European Commission.

### **4. Purpose & intended effect of the legislation**

The Waste (England and Wales) Regulations 2011 transposed provisions of the revised Waste Framework Directive relating to the separate collection of waste paper, metal, plastic and glass. Regulation 13(2) of those Regulations provided that “For the avoidance of doubt, co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling with a view to subsequent separation by type and nature) is a form of separate collection”.

Judicial Review proceedings were brought, challenging the transposition of the revised Waste Framework Directive and, in particular, the provision relating to co-mingled collection. The Welsh Ministers and Defra accepted that the original regulation 13 did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection, and that consequently the 2011 Regulations needed to be amended.

This instrument amends the 2011 Regulations by replacing regulation 13 so as to impose a duty on establishments and undertakings, from 1 January 2015, to separately collect waste paper, metal, plastic and glass. It also imposes a duty on waste collection authorities, from that date, when making arrangements for the collection of such waste, to ensure that those arrangements are by way of separate collection. These duties apply where separate collection is “necessary” to ensure that waste undergoes recovery operations in accordance with the Directive and to facilitate or improve

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<sup>3</sup> <http://www.legislation.gov.uk/ukxi/2010/1552/contents/made>

<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2006/32/contents>

<sup>5</sup> <http://ec.europa.eu/environment/legal/law/index.htm>

recovery; and where it is “technically, environmentally and economically practicable”. The duties apply to waste classified as waste from households and waste that is classified as commercial or industrial waste.

This instrument also replaces regulation 14(2) to reflect the changes to regulation 13 to ensure a consistent approach. Consequential changes are also made to reflect changes in paragraph numbering in the new regulation 13.

## **5. Consultation**

A joint Welsh Government and Defra consultation was held between 23 February and 12 April. The consultation period was shortened because it related to a specific issue targeted at a specialist audience and to fit with the timetable of the Judicial Review and stay in proceedings provided by the Court of Administration. However, there was still wide consultation in order to give those interested an opportunity to respond. There were 21 responses in Wales, listed at **Annex 1**.

The joint consultee list is at **Annex 2** to this Explanatory Memorandum. The consultation paper and summary of responses are available at:

<http://wales.gov.uk/consultations/environmentandcountryside/wastereg13/?lang=en>

The joint Welsh Government and Defra response to the consultation is available on the same web link.

A copy of the consultation responses received in Wales will be placed in the Publication Centre, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

After considering the responses to the consultation, the approach to transposition was reconsidered. Rather than follow the exact text for amending regulations that was consulted on, the approach has been revised to a more direct reflection of the language of the Directive.

Regulation 15 of the Waste (England and Wales) Regulations 2011 provides that the appropriate authority (the Welsh Ministers, in relation to Wales, and the Secretary of State, in relation to England) may give guidance on the discharge of the duties in regulations 12 to 14. The Welsh Ministers and the Secretary of State each intend to produce and consult on statutory guidance to ensure a consistent understanding of what the obligations on separate collection mean.

## **6. Regulatory Impact Assessment**

There is no additional impact on business, charities, voluntary bodies or the public sector. The amendment makes clear that separate collection of these four waste streams for recycling by 2015 is the basic requirement of the

Directive subject to the qualifications to this requirement as set out in the Directive.

As a result, a revised Regulatory Impact Assessment has not been produced. There is no change to the RIA<sup>6</sup> produced previously for the consultation on the Waste (England and Wales) Regulations 2011.

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<sup>6</sup> <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=209538&ds=2/2011>  
and <http://www.assemblywales.org/bus-home/bus-third-assembly/bus-guide-docs-pub/bus-business-documents/bus-business-documents-doc-laid.htm?act=dis&id=209539&ds=2/2011>

## Annex 1 - List of respondents<sup>7</sup>

<b>Bridgend County Borough Council</b>
<b>Caerphilly County Borough Council</b>
<b>Campaign for Real Recycling</b> (formed by members of the UK's leading materials re-processors, the community recycling sector and Friends of the Earth)
<b>Cardiff Council</b>
<b>Carmarthenshire County Council</b>
<b>Central Wales Waste Partnership (CWWP)</b> (includes Ceredigion and Powys Local Authorities)
<b>Ceredigion County Council</b>
<b>City and County of Swansea</b>
<b>Commissioner for Sustainable Futures in Wales</b>
<b>Cwm Harry Land Trust Ltd</b> (Social enterprise working with waste materials)
<b>Cwm Taf Local Health Board (LHB)</b>
<b>Cylch</b> (Representing the interests of the community recycling sector and social enterprises involved in preparation for re-use, recycling and composting of wastes)
<b>Federation of Small Businesses</b>
<b>Institute of Civil Engineers Wales (ICE Cymru)</b>
<b>Local Authority Recycling Advisory Committee (LARAC)</b>
<b>Public Health Wales</b>
<b>Resource Association</b> (Trade body for the reprocessing and recycling industries)
<b>South West Wales Regional Waste Management Committee</b> (includes Neath Port Talbot, Bridgend, Carmarthenshire, Pembrokeshire + Swansea Councils)
<b>UK Recyclate</b> (Social enterprise to trade recyclable materials)
<b>Welsh Local Government Association (WLGA)</b>

<sup>7</sup> Bridgend, Carmarthenshire, Ceredigion and Swansea Councils made individual as well as part of a group response.

## **Annex 2**

### **List of Consultees**

Abertawe Bro Morgannwg University  
Action Aid Recycling  
ADAS  
ADEPT  
Advisory Committee on Packaging Members (ACP)  
Age Concern  
Alliance for Cartons & the Environment (ACE (UK))  
Aluminium Federation  
Aluminium Packaging Recycling Organisation (Alupro)  
Aneurin Bevan Health Board  
Ardagh Glass Sorting Limited  
ASH in Wales  
Assistant Police Liaison Officer  
Associated British Ports  
Association for Environment Conscious Building  
Association for Public Service Excellence (APSE)  
Association of London Cleansing Managers  
Association of London Cleansing Officers  
Association of the British Pharmaceutical Industry Wales  
Association of National Park Authorities  
Asthma UK Cymru  
Axion Recycling Ltd  
Betsi Cadwaladr Health Board  
Biffa Waste Services  
Biffpack  
Black Environment Network (UK)  
Black Voluntary Sector Network in Wales  
Blaenau Gwent County Borough Council  
Brecon Beacons National Park  
Bridgend County Borough Council  
British Glass Manufacturers' Confederation (British Glass)  
British Glass Recycling  
British Heart Foundation  
British Lung Foundation  
British Medical Association  
British Metals Recycling Association  
British Plastics Federation (BPF)  
British Ports Association  
BTCV Cymru  
Caerphilly County Borough Council  
Campaign for the Protection of Rural Wales  
Campaign for Real Recycling  
Can-Do Community Recycling Fraserburgh  
Cardiff and Vale Local Health Board  
Cardiff Council  
Cardiff School of Biosciences

Cardiff University  
Carmarthenshire County Council  
Cash from Trash  
Centre for Alternative Technology  
Centre for Ecology and Hydrology  
Centre for Remanufacturing and Reuse  
Centriforce Products Ltd  
Ceredigion County Council  
Chartered Institute of Environmental Health  
Chartered Institute of Waste Management Wales  
Chartered Institution of Water and Environmental Management  
Chase Plastics Ltd  
Chester, Ellesmere Port & North Wales Chamber of Commerce  
Chilton Waste  
City and County of Swansea  
Civic Trust for Wales  
Civil Engineering Contractors association (CECA)  
Cleanapack  
Clothes Aid Services Ltd  
Coed Cymru  
Coethical Limited  
Commission for racial Equality Wales Office  
Community People  
Community Recycling Network - London (LCRN)  
Community Recycling Venture  
Community West Recycling Partnership  
Complete Wasters  
Confederation of British Industry Wales  
Confederation of Paper Industries  
Confederation of Passenger Transport  
Constructing Excellence Wales  
Conwy County Borough Council  
Cory Environmental  
Country Land & Business Association  
Countryside Council for Wales  
Creation Recycling Ltd  
Cwm Taf Health Board  
Cylch - Wales Community Recycling Network  
Cyngor Gwynedd Council  
Denbighshire County Council  
DS Smith Paper Limited  
EMERGE Recycling  
Energy Saving Trust Wales  
Engineering Employers Federation Wales  
Environment Agency Wales  
Environment Council  
Environment Industries Commission  
Environment Trust, The  
Environment Wales  
Environmental Industries Commission (EIC)

Environmental Packaging Solutions  
Environmental Protection UK - Wales  
Environmental Resources Management (ERM)  
Environmental Service Group Limited  
Environmental Services Association (ESA)  
Environmental Trust Scheme Regulatory Body (Entrust)  
Environmental Waste Controls plc  
Envirowise  
Equality & Human Rights Commission  
EQ Waste Management  
European Metal Packaging (EMPAC)  
Farming and Wildlife Advisory Group (FWAG Cymru)  
Federation of Environmental Trade Associations (FETA)  
Federation of Master Builders for Wales  
Federation of Small Businesses  
Flintshire County Council  
Forestry Commission Wales  
Forum for the Future  
Forum of Private Business (FPB)  
Four Communications Group on behalf Waste Recycling Group  
Friends of the Earth  
Global Action Plan  
Greater London Authority (GLA)  
Greater Manchester Waste Limited  
Green Alliance  
Green Beacons Recycling  
Green Business Network (GBN)  
Greenpeace  
Grosvenor Waste Management Ltd  
Groundwork Wales  
Grundon Waste  
Halcrow Group Ltd  
Health and Safety Executive  
Hybu Cig Cymru (Meat Promotion Wales )  
Hywel Dda Health Board  
Independent Waste Paper Processors Association (IWPPA)  
Industrial Packaging Association, The (IPA)  
Industry Council for Packaging & the Environment  
Institute of Biological Sciences, Cardiff University  
Institute of Directors Wales  
Institute for Environment & Health  
Institute for European Environmental Policy (IEEP)  
Institute of Directors  
Institute of Environmental Management & Assessment  
Institute of Environmental Science  
Institute of Geography and Earth Sciences  
Institute of Grassland and Environmental Research  
Institute of Packaging  
Institute of Rural Studies  
Institute of Welsh Affairs

Institute of Civil Engineers  
Isle of Anglesey County Council  
JBT Waste Services Limited  
Keep Britain Tidy  
Keep Wales Tidy  
LARAC  
Lazarus Environmental Ltd  
Local Authority Recycling Advisory Committee (LARAC)  
Local Government Association (LGA)  
Local Government Planning and Environmental Bar Association  
London Community Resource Network (LCRN)  
London Councils  
London Recycling Consortium  
London Waste and Recycling Board  
May Gurney Ltd  
Mayer Parry Recycling Ltd  
Merthyr Tydfil County Borough Council  
Metal Packaging Manufacturers Association (MPMA)  
Monmouthshire County Council  
National Association of Waste Disposal Officers (NAWDO)  
National Farmers Union Wales  
National Public Health Service  
Neath Port Talbot County Borough Council  
Network Recycling  
New Earth Solutions  
New Local Government Network  
Newport City Council  
NFU Cymru  
Norfolk Environment Waste Services Limited  
North East Recycling Ltd  
North Wales Economic Forum  
Novelis UK Ltd  
NTech Environmental  
Older Peoples Commission for Wales  
One Voice Wales  
Oxford Environmental Change Institute  
Packaging & Industrial Films Association  
Packaging Federation  
Palm Paper Limited  
Paper Agents Association  
Paper Chasers, Birmingham  
Paperchain Recycling Ltd  
Paperpak Ltd  
Pembrokeshire Coast National Park  
Pembrokeshire County Council  
Plaid Cymru  
Plastics Sorted Limited  
Police Liaison Officer  
Powys County Council  
Powys Teaching Health Board

Premier Waste Management Ltd  
Prime Recycling  
Princes's Trust Wales  
Public Health Wales NHS Trust  
RECYC  
Recycle IT!  
Recycling Consortium  
Recycling Industries Alliance  
Recycling of Used Plastics Limited  
Recyclo Ltd  
Resource Association  
Resource Recovery Forum  
Rhondda Cynon Taf County Borough Council  
RICS Wales  
Royal Pharmaceutical Society  
RSPB Cymru  
SafetyKleen UK Ltd  
Save Waste and Prosper Ltd (SWAP)  
SCA Recycling  
Scarborough Authorised Reuse Centre Ltd (SCARCE)  
School of Biological Sciences, University of Wales  
Seaford Partnership Waste Forum  
Seagulls Re-use  
Shanks Waste Management Ltd  
Shields Environmental  
Simply Green Recycling Ltd  
SITA UK Ltd  
Small Business Service  
Smurfit Kappa Group  
Snowdonia National Park  
SPARK Plc  
Stereecycle  
Sterile Technologies Group  
Stonewall Cymru  
Sustainable Energy  
Sustainability First  
Sustainability Northwest  
Sustainable Organic Resources Partnership (SORP)  
Sustainable Recycling Solutions UK Ltd  
Sustainable Wales  
Sustainalite Ltd  
Swap - Save Waste And Prosper Ltd  
SWS Compak Ltd  
TEG Environmental Limited  
Textile Recycling Association  
The Carbon Trust in Wales  
The Church in Wales  
The Recycling Consortium (TRC)  
The Sustainable Environment Research Centre  
The Wales Environmental Standards Group

Torfaen County Borough Council  
Tradebe Waste Management  
TUC Cymru  
UK Environmental Law Association (UKELA)  
UK Recyclate Ltd  
University of Wales Trinity St David  
Vale of Glamorgan Council  
Valpak Limited  
Veolia Environmental Services  
Velindre NHS Trust  
Viridor Waste Management Limited  
Wales Automotive Forum  
Wales Biomass Centre  
Wales Council for Voluntary Action  
Wales Environment Trust  
Wales Environmental Link  
Wales Social Partners Unit Ltd  
Waste Management Industry Training & Advisory Board (WAMITAB)  
Waste Recycling Foundation Ltd  
Waste Recycling Group Ltd  
Waste Watch  
Wastefile UK  
Wastepack  
WasteWISE  
Welsh Agriculture Organisations Society  
Welsh Ambulance Service NHS Trust  
Welsh Association of Chief Police Officers  
Welsh Conservative Party  
Welsh Environmental Services Association (WESA)  
Welsh Institute of Rural Studies  
Welsh Labour Party  
Welsh Liberal Democrats  
Welsh Local Government Association  
Welsh School of Architecture, Cardiff University  
West Wales ECO Centre  
White Rose Consortium  
White Rose Environmental  
Windsor Waste Management  
Women's Environmental Network  
WRAP  
Wrexham County Borough Council  
WWF Cymru  
Zero Waste Alliance UK

CLA174

## **Constitutional and Legislative Affairs Committee Report**

**Title: The Conservation of Habitats and Species (Amendment) Regulations 2012**

### **Procedure: Negative**

These composite regulations amend the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (the “Habitats Regulations”). They place new duties on the Secretary of State and Welsh Ministers, Natural England, Countryside Council for Wales, the Environment Agency, Forestry Commission, Local Authorities and, in relation to the marine area, other competent authorities to take measures to preserve, maintain and re-establish habitat for wild birds. The regulations place a duty on competent authorities to use all reasonable endeavours to avoid any pollution or deterioration of these habitats. The regulations also place a duty on any competent authority, in exercising any of their functions, to have regard to the requirements of Directive 2009/147/EC (the “Wild Birds Directive”) and of Directive 92/43/EEC (the “Habitats Directive”).

The regulations also make a number of further amendments to the Conservation of Habitats and Species Regulations 2010 to ensure certain provisions of the Wild Birds and Habitats Directives are transposed clearly.

The regulations also amend section 15 of the National Parks and Access to the Countryside Act 1949 to make clear that local authorities are able to designate Local Nature Reserves for the purposes of re-establishing bird habitat.

### **Technical Scrutiny**

The following points are identified for reporting under Standing Order 21.2 (ix) in respect of this instrument – that it is not made in both English and Welsh.

### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

1. The Explanatory Memorandum states that the amendments are being introduced in response to correspondence received from the European Commission regarding gaps in the UK transposition of the Wild Birds Directive, and that the

Regulations have been made on a composite basis as they are required to be made urgently.

2. The Regulations are subject to the negative procedure. Welsh Ministers pursuant to the designation under Section 2(2) of the European Communities Act 1972 have a choice as to which Assembly procedure is to be followed. Whilst the Regulations do not amend any provision of an Assembly Act or Measure, they do make minor amendments to a piece of UK primary legislation.
3. Regulation 23 requires the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after these Regulations come into force and within every five years after that. The Explanatory Memorandum is silent as to why it was not considered appropriate for the Welsh Ministers to carry out a review.

However, the Committee has been given to understand that, while the UK Government now requires review provisions in all new legislation which imposes a regulatory burden, Welsh Ministers have not adopted a similar policy. Consideration was given to whether a review provision should be included but it was decided not to do so on the basis that:

- there is no obligation on Welsh Ministers to adopt a review provision in relation to regulatory burdens;
- the NEF agenda/Environment Bill will provide for reviews of the legislation; and
- it is understood that neither of the other devolved administrations intend to insert a similar provision in their regulations.

**David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**24 September 2012**

**The Government has responded as follows:**

**The Conservation of Habitats and Species (Amendment) Regulations 2012**

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not

considered reasonably practicable for this instrument to be made or laid bilingually.

**2012 No. 1927**

**WILDLIFE**

**COUNTRYSIDE**

**MARINE MANAGEMENT**

**The Conservation of Habitats and Species (Amendment)  
Regulations 2012**

*Made* - - - - - *20th July 2012*

*Laid before Parliament* *25th July 2012*

*Laid before the National Assembly for Wales* *25th July 2012*

*Coming into force* - - - *16th August 2012*

The Secretary of State is designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment, and the Welsh Ministers are designated<sup>(c)</sup> for those purposes in relation to the conservation of natural habitats and of wild fauna and flora.

In exercise of the powers conferred on them by section 2(2) of the European Communities Act 1972, the Secretary of State and the Welsh Ministers make these Regulations, the Welsh Ministers in relation to Wales, to the extent that they are designated to do so, and the Secretary of State in relation to every other aspect.

**Title, commencement, interpretation and extent**

**1.**—(1) These Regulations may be cited as the Conservation of Habitats and Species (Amendment) Regulations 2012 and come into force on 16th August 2012.

(2) In these Regulations, “the 2010 Regulations” means the Conservation of Habitats and Species Regulations 2010<sup>(d)</sup>.

(3) Except as provided in paragraphs (4) and (5), these Regulations extend to England and Wales only.

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(a) S.I. 2008/301.

(b) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51), section 27(1)(a), and the European Union (Amendment) Act 2008 (c.7), Part 1 of the Schedule.

(c) S.I. 2002/248, amended by S.I. 2006/3329. The designation is subject to the exceptions set out in Schedule 2 to that Order. That Order continues to have effect, and the functions conferred on the National Assembly for Wales by means of that Order are now exercisable by the Welsh Ministers, by virtue of section 162 of, and paragraphs 28(1) and 30 of Schedule 11 to, the Government of Wales Act 2006 (c.32).

(d) S.I. 2010/490, amended by S.I. 2011/603 and 625 and 2012/637.

(4) This regulation and regulations 2 to 7, regulation 8 in so far as it relates to regulations 9 and 9A of the 2010 Regulations, and regulations 19 to 21 also extend to Scotland and Northern Ireland.

(5) Regulations 3(4) and 24 extend to Scotland only.

### **Amendment of the 2010 Regulations**

2. The 2010 Regulations are amended in accordance with regulations 3 to 24.

### **Amendment of regulation 2**

3.—(1) Regulation 2(a) (extent) is amended as follows.

(2) In paragraph (2)—

(a) for sub-paragraph (b) substitute—

“(b) regulations 9 (duties relating to compliance with the Directives) and 9A (duties in relation to wild bird habitat), in so far as those regulations apply in relation to the exercise of a function which relates to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998(b) (reserved matters));”;

(b) after sub-paragraph (c) insert—

“(ca) Chapter 1 of Part 6 (assessment of plans and projects: general provisions), in so far as that Chapter applies in relation to plans and projects—

(i) which do not relate to a matter specified in Chapters 2 to 9 of that Part, and

(ii) which relate to a reserved matter (within the meaning of Schedule 5 to the Scotland Act 1998);”.

(3) For paragraph (4) substitute—

“(4) The following provisions also extend to Northern Ireland—

(a) regulations 9 and 9A, in so far as those regulations apply in relation to the exercise of a function which relates to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998(c));

(b) Chapter 1 of Part 6, in so far as that Chapter applies in relation to plans and projects—

(i) which do not relate to a matter specified in Chapters 2 to 9 of that Part, and

(ii) which relate to an excepted matter (within the meaning given by section 4(1) of the Northern Ireland Act 1998);

(c) regulation 100, in so far as it applies in relation to a marine licence under Part 4 of the Marine Act in respect of anything done in the course of carrying on an activity which relates to a matter which is an excepted matter by virtue of paragraph 4 of Schedule 2 to the Northern Ireland Act 1998 (defence of the realm etc.);

(d) regulation 107A, in so far as it applies in relation to the exercise of any power by the Secretary of State, and regulations 102, 103 and 105 in so far as they apply to marine policy statements by virtue of regulation 107A; and

(e) in Schedule 6—

(i) sub-paragraphs (3) and (5) of paragraph 5, and sub-paragraph (1) of paragraph 5 in so far as it relates to those sub-paragraphs, and

(ii) paragraph 7,

and regulation 132 in so far as it relates to those provisions.

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(a) Regulation 2 was amended by S.I. 2011/625.

(b) 1998 c.46.

(c) 1998 c.47.

(4A) This regulation and regulations 1, 3, 5, 7, 8, 128 and 131 also extend to Northern Ireland in so far as they have effect in relation to the provisions specified in paragraph (4).

(4B) Chapter 1 of Part 6 also extends to Northern Ireland in so far as it has effect in relation to the provision specified in paragraph (4)(c).”.

(4) Omit paragraph (5).

### **Amendment of regulation 3**

4.—(1) Regulation 3 (interpretation) is amended as follows.

(2) In paragraph (1)—

(a) for the definition of “the appropriate authority” substitute—

““the appropriate authority” means the Secretary of State in relation to England and the Welsh Ministers in relation to Wales (but see modifications of the meaning of that term in regulations 9(4) and 9A(12)(a), and modifications of references to that term in regulations 67(1)(b), (3)(c), (5) and (8)(b), 94(6), 106(3)(b) and 107A(3)(c)), and any person exercising any function of the Secretary of State or the Welsh Ministers;”;

(b) after the definition of “the devolved administrations” insert—

““the Directives” means the Habitats Directive and the new Wild Birds Directive;”;

(c) in the definition of “marine area”, for “regulation 9(8)” substitute “regulations 9(5) and 9A(12)(b)”;

(d) after the definition of “the new Wild Birds Directive” insert—

““Northern Ireland inshore region” means the area of sea within the seaward limits of the territorial sea adjacent to Northern Ireland;”;

(e) in the definition of “the WCA 1981”, at the end omit “and”;

(f) in the definition of “Welsh inshore region”, for “Wales.” substitute “Wales;”;

(g) after the definition of “Welsh inshore region” insert—

““wild bird” means a bird which is—

(a) a member of a species referred to in Article 1 of the new Wild Birds Directive, and

(b) wild.”.

(3) In paragraph (6)—

(a) at the end of sub-paragraph (c), omit “and”;

(b) in sub-paragraph (d), for “Scottish inshore region.” substitute “Scottish inshore region;”;

and

(c) after sub-paragraph (d) add—

“(e) any reference to Northern Ireland includes the Northern Ireland inshore region; and

(f) any reference to the United Kingdom includes its internal waters and the English inshore region, the Welsh inshore region, the Scottish inshore region and the Northern Ireland inshore region.”.

(4) In paragraph (7)—

(a) in sub-paragraph (a), for ““Welsh inshore region” and “Scottish inshore region”” substitute ““Welsh inshore region”, “Scottish inshore region” and “Northern Ireland inshore region””;

(b) at the end of sub-paragraph (a), omit “or”; and

(c) for sub-paragraph (b) substitute—

“(b) paragraph (8); or

(c) regulation 4(2)(a)(ii).”.

(5) In paragraph (8)—

- (a) for sub-paragraph (a) substitute—
  - “(a) the territorial sea adjacent to England is so much of the territorial sea adjacent to the United Kingdom as is not the territorial sea adjacent to Wales, the territorial sea adjacent to Scotland or the territorial sea adjacent to Northern Ireland;”;
- (b) in sub-paragraph (b)—
  - (i) for ““the sea adjacent to Wales”” substitute ““the territorial sea adjacent to Wales””, and
  - (ii) at the end, omit “and”;
- (c) in sub-paragraph (c)—
  - (i) for ““the sea adjacent to Scotland”” substitute ““the territorial sea adjacent to Scotland””, and
  - (ii) at the end, for “Order 1999.” substitute “Order 1999; and”; and
- (d) after sub-paragraph (c) add—
  - “(d) “the territorial sea adjacent to Northern Ireland” is to be construed in accordance with article 2 of the Adjacent Waters Boundaries (Northern Ireland) Order 2002(a).”.

#### **Amendment of regulation 5**

##### **5. In regulation 5 (nature conservation bodies)—**

- (a) in paragraph (1), for “paragraphs (2) and (3)” substitute “paragraphs (2) to (4)”; and
- (b) for paragraphs (2) and (3) substitute—

“(2) In regulations 48 (surveillance of conservation status of habitats and species) and 50 (monitoring of incidental capture and killing), “nature conservation body” means Natural England, the Countryside Council for Wales or the Joint Nature Conservation Committee**(b)**.

(3) In a provision of Part 6 (assessment of plans and projects) which extends to England and Wales only, “the appropriate nature conservation body” means—

- (a) Natural England, in relation to England, or
- (b) the Countryside Council for Wales, in relation to Wales,

except in relation to an effect on a European offshore marine site, in which case it means the Joint Nature Conservation Committee.

(4) In a provision of Part 6 which extends to Scotland or Northern Ireland, “the appropriate nature conservation body” means—

- (a) Natural England, in relation to England,
- (b) the Countryside Council for Wales, in relation to Wales,
- (c) Scottish Natural Heritage, in relation to Scotland, or
- (d) the Department of the Environment in Northern Ireland, in relation to Northern Ireland,

except in relation to an effect on a European offshore marine site, in which case it means the Joint Nature Conservation Committee.”.

#### **Amendment of regulation 7**

**6. In regulation 7 (competent authorities), in paragraph (3)(a), after “includes” insert “the Broads Authority and”.**

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(a) S.I. 2002/791.

(b) The Joint Nature Conservation Committee was established by the Environmental Protection Act 1990 (c.43), section 128(4), and reconstituted by the Natural Environment and Rural Communities Act 2006 (c.16), section 31 and Schedule 4.

## Amendment of regulation 8

7. In regulation 8 (European sites and European marine sites), in paragraph (2)(a), for “Great Britain” substitute “the United Kingdom”.

## Substitution of regulation 9

8. For regulation 9 (exercise of functions in accordance with the Habitats Directive) substitute—

### “Duties relating to compliance with the Directives

9.—(1) The appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must exercise their functions which are relevant to nature conservation, including marine conservation, so as to secure compliance with the requirements of the Directives.

(2) Paragraph (1) applies, in particular, to functions under the following enactments—

- the Dockyard Ports Regulation Act 1865(a),
- subsection (2) of section 2 of the Military Lands Act 1900(b) (provision as to byelaws relating to the sea, tidal water or shore),
- Part 3 of the 1949 Act (nature conservation),
- the Harbours Act 1964(c),
- section 15 of the Countryside Act 1968(d) (areas of special scientific interest),
- Part 2 of the Control of Pollution Act 1974(e) (pollution of water),
- Part 1 (wildlife) and sections 28 to 28S(f) and 31 to 35A(g) of the WCA 1981 (which relate to sites of special scientific interest),

- 
- (a) 1865 c.125.
  - (b) 1900 c.56; section 2(2) was amended by SR & O 1924/1370, the Crown Estate Act 1961 (c.55), section 1, and S.I. 1964/488.
  - (c) 1964 c.40.
  - (d) 1968 c.41; section 15 was amended by the WCA 1981, section 72(8) and Part 1 of Schedule 17; the Environmental Protection Act 1990 (c.43), paragraph 4(2) of Schedule 9 and Part 6 of Schedule 16; the Countryside and Rights of Way Act 2000 (c.37), section 75(3); the Abolition of Feudal Tenure etc. (Scotland) Act 2000 (asp 5), paragraph 29(1) and (2) of Schedule 12; and the Natural Environment and Rural Communities Act 2006 (c.16), paragraph 48 of Schedule 11 and Schedule 12.
  - (e) 1974 c.40.
  - (f) Section 28 was substituted, and sections 28A to 28C and 28D to 28R were inserted, by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9; sections 28 to 28C and 28D to 28R were amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraph 79 of Schedule 11; section 28 was amended by the Marine Act, paragraph 2 of Schedule 13; section 28A was amended by the Marine Act, paragraph 3 of Schedule 13; section 28B was amended by the Marine Act, paragraph 5 of Schedule 13; section 28C was amended by the Marine Act, paragraph 6 of Schedule 13; sections 28CA and 28CB were inserted by the Marine Act, paragraphs 7 and 8 of Schedule 13; section 28D was amended by the 2006 Act, section 56, and the Marine Act, paragraph 9 of Schedule 13; section 28E was amended by the 2006 Act, paragraph 80 of Schedule 11; section 28G was amended by the 2006 Act, paragraph 81 of Schedule 11 and Schedule 12; section 28P was amended by the 2006 Act, section 55; and section 28S was inserted by the 2006 Act, section 58(1).
  - (g) Sections 31 to 34 were repealed as regards Scotland by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 4 of Schedule 7; section 31 was amended by the Criminal Justice Act 1982 (c.48), sections 37 and 46, by the Countryside and Rights of Way Act 2000 (c.37) (“the 2000 Act”), paragraph 3 of Schedule 9, by the Constitutional Reform Act 2005 (c.4), paragraph 37 of Schedule 9, and by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), section 55(5) and paragraph 79 of Schedule 11; section 32 was amended by the Agriculture Act 1986 (c.49), section 20(1), (2) and (3), by the 2000 Act, paragraph 4 of Schedule 9 and Part 3 of Schedule 16, and by the 2006 Act, paragraph 79 of Schedule 11; section 33 was amended by the 2006 Act, paragraph 82 of Schedule 11; section 34 was amended by the Local Government Act 1985 (c.51), paragraph 7 of Schedule 3, by the Planning (Consequential Provisions) Act 1990 (c.11), paragraph 54(1) of Schedule 2, by the Local Government (Wales) Act 1994 (c.19), paragraph 65(3) of Schedule 16, by the 2000 Act, section 78, and by the 2006 Act, paragraph 83 of Schedule 11 and Schedule 12; section 34A was inserted by the 2006 Act, paragraph 84 of Schedule 11; section 35 was amended by the 2006 Act, paragraph 85 of Schedule 11, and the Marine Act, paragraph 10 of Schedule 13; and section 35A was inserted by the Marine Act, paragraph 11 of Schedule 13.

sections 131, 132 and 134 of the Environmental Protection Act 1990(a) (which relate to nature conservation functions of the Countryside Council for Wales),  
the Water Resources Act 1991(b),  
the Land Drainage Act 1991(c),  
the Sea Fisheries Acts within the meaning of section 1 of the Sea Fisheries (Wildlife Conservation) Act 1992(d) (conservation in the exercise of sea fisheries functions),  
the Natural Environment and Rural Communities Act 2006(e),  
the Planning Act 2008(f),  
the Marine Act, in particular any functions under Parts 3, 4, 5 and 6 of that Act (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively), and  
these Regulations.

(3) Without prejudice to the preceding provisions, a competent authority, in exercising any of their functions, must have regard to the requirements of the Directives so far as they may be affected by the exercise of those functions.

(4) The reference in paragraph (1) to the appropriate authority—

- (a) to the extent that that paragraph applies in relation to Scotland, includes the Secretary of State exercising functions in relation to Scotland; and
- (b) to the extent that that paragraph applies in relation to Northern Ireland, includes the Secretary of State exercising functions in relation to Northern Ireland.

(5) In paragraph (1), “marine area” includes—

- (a) the Northern Ireland inshore region; and
- (b) the Scottish inshore region.

#### **Duties in relation to wild bird habitat**

**9A.**—(1) Without prejudice to regulation 9(1), the appropriate authority, the nature conservation bodies and, in relation to the marine area, a competent authority must take such steps in the exercise of their functions as they consider appropriate to secure the objective in paragraph (3), so far as lies within their powers.

(2) Except in relation to the marine area, the Environment Agency, the Forestry Commissioners(g), local authorities, the Broads Authority(h) and National Park authorities must take such steps in the exercise of their functions as they consider appropriate to contribute to the achievement of the objective in paragraph (3).

(3) The objective is the preservation, maintenance and re-establishment of a sufficient diversity and area of habitat for wild birds in the United Kingdom, including by means of the upkeep, management and creation of such habitat, as appropriate, having regard to the requirements of Article 2 of the new Wild Birds Directive.

(4) Paragraph (1) applies, in particular, to—

- (a) functions under the following enactments—

- 
- (a) 1990 c.43; section 131 was amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraph 120 of Schedule 11; section 132 was amended by the 2006 Act, paragraph 121 of Schedule 11 and Schedule 12, and the Marine Act, section 313(1) and (3); and section 134 was amended by the 2006 Act, paragraph 123 of Schedule 11 and Schedule 12, and the Marine Act, section 313(1) and (4).
  - (b) 1991 c.57.
  - (c) 1991 c.59.
  - (d) 1992 c.36; section 1 was amended by S.I. 1999/1820 and the Marine Act, section 11 and Part 4 of Schedule 22.
  - (e) 2006 c.16.
  - (f) 2008 c.29.
  - (g) See section 1(1) of the Forestry Act 1967 (c.10).
  - (h) The Broads Authority was established by section 1 of the Norfolk and Suffolk Broads Act 1988 (c.4).

sections 17, 18, 20 and 21(6)(a) of the 1949 Act (which relate to nature reserves), section 7 (management agreements) of the Natural Environment and Rural Communities Act 2006(b),

Parts 3, 4, 5 and 6 (marine planning, marine licensing, nature conservation and management of inshore fisheries, respectively) of the Marine Act, and

these Regulations; and

(b) any function exercisable in relation to town and country planning.

(5) Paragraph (2) applies, in particular, to—

(a) functions under the following enactments—

sections 21(c) and 90(d) of the 1949 Act (which relate to nature reserves and local authority byelaws, respectively),

sections 3 (management of forestry land) and 10 (application for felling licence and decision of Commissioners thereon) of the Forestry Act 1967(e),

sections 3 and 6 of the Norfolk and Suffolk Broads Act 1988(f) (the Broads Plan and byelaws, respectively);

section 66 of the Environment Act 1995(g) (National Park Management Plans);

sections 38 and 39 of the Flood and Water Management Act 2010(h) (which relate to incidental flooding or coastal erosion), and

these Regulations; and

(b) any function exercisable in relation to town and country planning.

(6) In subsection (3)(a) of section 123 of the Marine Act (creation of network of conservation sites), as it applies in relation to the marine area(i), the reference to “the conservation or improvement of the marine environment” includes the objective in paragraph (3), and accordingly the duty in section 124 of the Marine Act (report) applies in relation to that objective.

(7) In considering which measures may be appropriate for the purpose of securing or contributing to the objective in paragraph (3), appropriate account must be taken of economic and recreational requirements.

(8) So far as lies within their powers, a competent authority in exercising any function in or in relation to the United Kingdom must use all reasonable endeavours to avoid any pollution or deterioration of habitats of wild birds (except habitats beyond the outer limits of the area to which the new Wild Birds Directive applies).

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(a) Section 17 was amended by the Natural Environment and Rural Communities Act 2006 (c.16) (“the 2006 Act”), paragraphs 15 and 16 of Schedule 11; section 18 was amended by the Arbitration Act 1996 (c.23), Schedule 4, and the 2006 Act, paragraphs 15 and 17 of Schedule 11; section 20 was amended by the Telecommunications Act 1984 (c.12), paragraph 28 of Schedule 4, the Water Act 1989 (c.15), paragraph 13 of Schedule 25, the Communications Act 2003 (c.21), paragraph 20 of Schedule 17, and the 2006 Act, paragraph 15 of Schedule 11; and section 21(6) was amended by the 2006 Act, paragraph 15 of Schedule 11.

(b) 2006 c.16.

(c) Section 21 was amended by the Local Government Act 1972 (c.70), Schedule 30, the Local Government (Scotland) Act 1973 (c.65), Schedule 29, and the Natural Environment and Rural Communities Act 2006, paragraphs 15 and 19 of Schedule 11.

(d) Section 90 was amended by the Countryside Act 1968 (c.41), Schedule 5; the Local Government Act 1972 (c.70), paragraph 39 of Schedule 17 and Schedule 30; the Environmental Protection Act 1990 (c.43), paragraph 1(14) of Schedule 8; and the Natural Environment and Rural Communities Act 2006, paragraph 10(l) of Schedule 11.

(e) 1967 c.10. Sections 3 and 10 were amended by S.I. 1999/1747; section 10 was also amended by the Nature Conservation (Scotland) Act 2004 (asp 6), paragraph 2 of Schedule 7.

(f) 1988 c.4; section 6 was amended by the Natural Environment and Rural Communities Act 2006, paragraph 112(a) of Schedule 11.

(g) 1995 c.25; section 66 was amended by the Natural Environment and Rural Communities Act 2006, paragraph 143 of Schedule 11.

(h) 2010 c.29.

(i) Section 123(3)(a) applies in relation to the “UK marine area”, defined in section 42 of the Marine Act in terms which include the area comprised in the marine area.

(9) The appropriate authority must take any steps they consider necessary to facilitate or co-ordinate arrangements to secure the taking of steps under paragraphs (1) and (2) by the bodies mentioned in those paragraphs.

(10) After consultation with the appropriate nature conservation body, the appropriate authority must give guidance to the Environment Agency, the Forestry Commissioners, local authorities, the Broads Authority, National Park authorities and any other competent authority they consider appropriate—

- (a) to facilitate the determination by those bodies of the extent to which the diversity and area of habitat for wild birds is sufficient; and
- (b) on the steps that it may be appropriate to take under paragraph (1) or (2).

(11) In exercising a function to which paragraph (1) or (2) applies, a body to which guidance has been given under paragraph (10) must have regard to that guidance.

(12) In this regulation—

- (a) references in paragraphs (1), (9) and (10) to the appropriate authority—
  - (i) to the extent that this regulation applies in relation to Scotland, include the Secretary of State exercising functions in relation to Scotland, and
  - (ii) to the extent that this regulation applies in relation to Northern Ireland, include the Secretary of State exercising functions in relation to Northern Ireland;
- (b) in paragraphs (1) and (2), “marine area” includes—
  - (i) the Northern Ireland inshore region, and
  - (ii) the Scottish inshore region; and
- (c) “local authority” has the same meaning as in regulation 7.

#### **Review by appropriate nature conservation body**

**9B.**—(1) The appropriate nature conservation body must, from time to time—

- (a) review the extent to which the objective in regulation 9A(3) has been met, other than in relation to the marine area;
- (b) set out the conclusions of the review in a report, including any recommendations for further action; and
- (c) send the report to the appropriate authority.

(2) In carrying out the review, the nature conservation bodies must, so far as is reasonable, take account of any measures taken which contribute to the achievement of that objective, whether or not taken pursuant to a requirement imposed by any enactment.

(3) The nature conservation bodies may act together to fulfil the duty under paragraph (1).”.

#### **Amendment of regulation 12A**

**9.** In regulation 12A(a) (classification of sites as special protection areas), for paragraph (6) substitute—

“(6) In this regulation “the United Kingdom’s territory” means the United Kingdom and the offshore marine area (as defined in regulation 4(2)(a)).”.

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(a) Regulation 12A was inserted by S.I. 2011/625.

### **Amendment of regulation 18**

**10.** In regulation 18 (certain payments under management agreements), in paragraph (1)(a), for “paragraph (1)(a) of regulation 20 (restriction on carrying out operations specified in notification)” substitute “section 28E(1)(a)(a) of the WCA 1981 (duties in relation to sites of special scientific interest)”.

### **Amendment of regulation 19**

**11.** In regulation 19 (notification of potentially damaging operations)—

- (a) in paragraph (1), for “regulations 20 to 22” substitute “regulation 21”;
- (b) in paragraph (2)—
  - (i) for “Habitats Directive” substitute “Directives”, and
  - (ii) for “amend” substitute “vary”; and
- (c) omit paragraphs (3) and (4).

### **Revocation of regulation 20**

**12.** Regulation 20 (restriction on carrying out operations specified in notification) is revoked.

### **Amendment of regulation 21**

**13.** In regulation 21 (assessment of implications for European sites), in paragraph (1), for “an application for consent under regulation 20(2)(a)” substitute “a notice of a proposal under section 28E(1)(a) of the WCA 1981”.

### **Revocation of regulation 22**

**14.** Regulation 22 (notification of appropriate authority in case of risk) is revoked.

### **Substitution of regulation 23**

**15.** For regulation 23 substitute—

#### **“Sites of special scientific interest which become European sites: duty to review**

**23.—**(1) This regulation applies where a consent for an operation has been given under section 28E(3)(a) of the WCA 1981 (or having effect as if given under that section(b)) in relation to land included in a site of special scientific interest which, after the date of that consent, becomes land within a European site.

(2) The appropriate nature conservation body must, as soon as reasonably practicable, review the consent and affirm, modify or withdraw it.

(3) Regulation 21 applies for the purposes of paragraph (2), with the following modifications—

- (a) as if the reference in regulation 21(1) to a notice of a proposal under section 28E(1)(a) of the WCA 1981 were a reference to a consent under section 28E(3)(a) of that Act; and
- (b) as if the reference to giving consent in regulation 21(2) were a reference to affirming that the consent should remain in force.”.

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(a) Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c.16), paragraphs 79 and 80 of Schedule 11.

(b) See paragraph 8(1)(b) of Schedule 11 to the Countryside and Rights of Way Act 2000 (c.37).

### **Amendment of regulation 36**

16. In regulation 36 (management scheme for European marine site), in paragraph (1), for “Habitats Directive” substitute “Directives”.

### **Amendment of regulation 38**

17. In regulation 38 (European marine sites: byelaws and orders), omit paragraph (5).

### **Amendment of regulation 58**

18. In regulation 58 (offence of breaching licence condition), for paragraph (1) substitute—

“(1) It is an offence for a person to contravene or fail to comply with a licence condition.”.

### **Amendment of regulation 60**

19. In regulation 60 (application of provisions of Chapter 1 of Part 6), for paragraph (1) substitute—

“(1) The requirements of the assessment provisions and the review provisions apply—

- (a) subject to and in accordance with the provisions of Chapters 2 to 7, in relation to the matters specified in those provisions; and
- (b) subject to regulation 61(7)(c), in relation to all other plans and projects not relating to matters specified in Chapters 2 to 9.”.

### **Amendment of regulation 61**

20. In regulation 61 (assessment of implications for European sites and European offshore marine sites)—

(a) for paragraph (7) substitute—

“(7) This regulation does not apply in relation to—

- (a) a site which is a European site by reason of regulation 8(1)(c);
- (b) a site which is a European offshore marine site by reason of regulation 15(c) of the 2007 Regulations; or
- (c) a plan or project to which any of the following apply—
  - (i) the Offshore Petroleum Activities (Conservation of Habitats) Regulations 2001(a) (in so far as this regulation is not disapplied by regulation 4 (plans or projects relating to offshore marine area or offshore marine installations) in relation to plans or projects to which those Regulations apply),
  - (ii) the Environmental Impact Assessment (Agriculture) (England) (No 2) Regulations 2006(b),
  - (iii) the Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007(c), or
  - (iv) the Merchant Shipping (Ship-to-Ship Transfers) Regulations 2010(d).”; and
- (b) in paragraph (8), for “Great Britain” substitute “the United Kingdom”.

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(a) S.I. 2001/1754, amended by S.I. 2007/77 and 1842 and 2010/1513.

(b) S.I. 2006/2522, amended by S.I. 2009/1307 and 3264, 2010/1159 and 2011/1824.

(c) S.I. 2007/2933 (W.253).

(d) S.I. 2010/1228, amended by S.I. 2011/974 and 2183 and 2012/742.

### **Amendment of regulation 67**

**21.** In regulation 67(a) (modifications of regulations 61 to 66 in certain cases)—

(a) in paragraph (7)(b), for ““marine works” has” substitute ““marine works” and “harbour works” have”; and

(b) after paragraph (7) add—

“(8) Where a general provision applies in relation to a plan or project which does not relate to a matter specified in Chapters 2 to 9, to the extent that that general provision applies in relation to Scotland or Northern Ireland, that provision applies with the following modifications—

(a) any reference to the Welsh Ministers is omitted; and

(b) for any reference to the appropriate authority, substitute a reference to the Secretary of State.”.

### **Insertion of regulation 129A**

**22.** After regulation 129 insert—

#### **“Research**

**129A.**—(1) The appropriate authority must take such steps to encourage research and scientific work as they consider necessary—

(a) having regard to the objectives in Article 2, and the obligation in Article 11, of the Habitats Directive; and

(b) for the purpose of the protection or management, and in relation to the use, of any population of wild birds.

(2) The appropriate authority must supply such information as they consider appropriate to the European Commission and, in the case of information supplied for the purposes of the Habitats Directive, to member States, to further the proper co-ordination of research carried out by member States or by the European Commission for the purposes of the Directives.

(3) In deciding what steps to take under paragraph (1), the appropriate authority must have particular regard to the need for research and scientific work—

(a) on the subjects listed in Annex V to the new Wild Birds Directive; or

(b) which may be required to implement Articles 4 and 10 of the Habitats Directive.”.

### **Addition of regulation 135**

**23.** After regulation 134 add—

#### **“Review**

**135.**—(1) In relation to England, the Secretary of State must from time to time—

(a) carry out a review of these Regulations;

(b) set out the conclusions of the review in a report; and

(c) publish the report.

(2) In carrying out the review the Secretary of State must, so far as is reasonable, have regard to how the Directives are implemented in other member States.

(3) The report must in particular—

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(a) Regulation 67 was amended by S.I. 2011/625.

- (a) set out the objectives intended to be achieved by the regulatory system established by these Regulations;
  - (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.
- (4) The first report under this regulation must be published before the end of the period of five years beginning with 16th August 2012.
- (5) Reports under this regulation are afterwards to be published at intervals not exceeding five years.”.

#### **Amendment of Schedule 6**

**24.** In Schedule 6 (amendments of legislation), omit paragraph 6 (amendment of the 1994 Regulations).

#### **Transitional provision**

**25.** Any notice given before 16th August 2012 under, or having effect as if given under(a), regulation 20(1)(a) of the 2010 Regulations as in force immediately before that date, has effect as if given under section 28E(1)(a) of the Wildlife and Countryside Act 1981(b).

#### **Amendment of the National Parks and Access to the Countryside Act 1949**

**26.** In section 15 of the National Parks and Access to the Countryside Act 1949(c) (meaning of “nature reserve”), after subsection (2) insert—

“(2A) In subsection (2)(b) the reference to preserving flora or fauna includes enabling or facilitating its recovery or increase.”.

20th July 2012

*Richard Benyon*  
Parliamentary Under Secretary of State  
Department for Environment, Food and Rural Affairs

10th July 2012

*John Griffiths*  
Minister for Environment and Sustainable Development  
One of the Welsh Ministers

### **EXPLANATORY NOTE**

*(This note is not part of these Regulations)*

These Regulations amend the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490(d)) (“the 2010 Regulations”), which make provision transposing Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora (“the Habitats

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- (a) See regulation 23(1) of the 2010 Regulations (as in effect immediately before the date of commencement of these Regulations).
  - (b) 1981 c.69. Section 28E was inserted by the Countryside and Rights of Way Act 2000 (c.37), paragraph 1 of Schedule 9, and amended by the Natural Environment and Rural Communities Act 2006 (c.16), paragraphs 79 and 80 of Schedule 11.
  - (c) 1949 c.97. Section 15 was substituted by the Natural Environment and Rural Communities Act 2006 (c.16), paragraph 12 of Schedule 11.
  - (d) Amended by S.I. 2011/603 and 625 and 2012/637.

Directive”)(a) and certain aspects of Directive 2009/147/EC on the conservation of wild birds (“the Birds Directive”)(b).

These Regulations extend to England and Wales. They also extend to Scotland and Northern Ireland to a limited degree.

Regulation 7 provides that Part 6 of the 2010 Regulations has effect in relation to plans and projects affecting European sites in the United Kingdom, and regulation 19 provides that the assessment and review provisions of that Part apply in relation to plans and projects not specifically mentioned in that Part.

Regulation 8 substitutes regulation 9 of the 2010 Regulations, to provide that public bodies must exercise their conservation functions so as to comply with the Habitats Directive and the Birds Directive.

Regulation 8 also inserts regulation 9A, which imposes new duties on public bodies in relation to wild bird habitat, and regulation 9B, which requires nature conservation bodies to review and report on whether the obligations under regulation 9A have been met.

Regulations 10 to 15 simplify the provisions applying to cases where land which is a site of special scientific interest under the Wildlife and Countryside Act 1981 (c.69) is also a European site under the 2010 Regulations.

Regulation 16 provides that management schemes may be established for European marine sites in order to secure compliance with the requirements of the Birds Directive as well as the Habitats Directive.

Regulation 17 removes a restriction on the making of byelaws or orders for the protection of European marine sites.

Regulation 22 inserts regulation 129A of the 2010 Regulations, concerning research and scientific work for the purposes of the Habitats Directive and the Birds Directive.

Regulation 23 requires the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after these Regulations come into force and within every five years after that.

A transposition note and full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector are available from the International Protected Areas team, Department for Environment, Food and Rural Affairs, Temple Quay House, 2 The Square, Bristol BS1 6EB, and are published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

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(a) OJ No L 206, 22.7.1992, p.7, last amended by Council Directive 2006/105/EC (OJ No L 363, 20.12.2006, p.368).

(b) OJ No L 20, 26.1.2010, p.7.

## **Explanatory Memorandum to the Conservation of Habitats and Species (Amendment) Regulations 2012**

This Explanatory Memorandum has been prepared by the Environment and Sustainable Development Department and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Conservation of Habitats and Species (Amendment) Regulations 2012.

I am satisfied that the benefits outweigh any costs.

*John Griffiths*

Minister for Environment and Sustainable Development, one of the Welsh Ministers

10 July 2012

## **1. Description**

These regulations amend the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (the “Habitats Regulations”). They place new duties on the Secretary of State and Welsh Ministers, Natural England, Countryside Council for Wales, the Environment Agency, Forestry Commission, Local Authorities and, in relation to the marine area, other competent authorities to take measures to preserve, maintain and re-establish habitat for wild birds. The regulations place a duty on competent authorities to use all reasonable endeavours to avoid any pollution or deterioration of these habitats. The regulations also place a duty on any competent authority, in exercising any of their functions, to have regard to the requirements of Directive 2009/147/EC (the “Wild Birds Directive”) and of Directive 92/43/EEC (the “Habitats Directive”).

The regulations also make a number of further amendments to the Conservation of Habitats and Species Regulations 2010 to ensure certain provisions of the Wild Birds and Habitats Directives are transposed clearly.

The regulations also amend section 15 of the National Parks and Access to the Countryside Act 1949 to make clear local authorities are able to designate Local Nature Reserves for the purposes of re-establishing bird habitat.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

These amendments are being introduced in response to correspondence received from the European Commission regarding gaps in the UK transposition of the Wild Birds Directive.

The legislation is being made on a composite basis as the regulations are required to implement Community law on an urgent basis, late introduction of the legislation could result in substantial infraction fines, and, because it is desirable to have a common England-Wales regulatory regime covering transposition of a European Directive. The regulations also introduce new duties for relevant authorities working in both England and Wales such as the Environment Agency.

This statutory instrument is subject to annulment of the Assembly (negative procedure). The regulations do not amend any provision of an Assembly Act or Measure, but they do make minor amendments to a piece of UK primary legislation (National Parks and Access to the Countryside Act 1949 – see above). They do not impose obligations of special importance. Rather, they serve to further clarify the UK's transposition of the Wild Birds and Habitats Directive. Accordingly, there is no factor indicating the use of the affirmative procedure.

## **3. Legislative background**

The Welsh Ministers are designated for the purposes of section 2(2) of the European Communities Act 1972 in relation to the conservation of natural

habitats and of wild fauna and flora in relation to Wales. They would rely on that designation in order to make the amendment to the Habitats Regulations in relation to Wales. The amendments to the Habitats Regulations transpose Articles 2, 3 and 4(4) and 10 of the Wild Birds Directive.

These amendments will be complimented by amendments to the Offshore Marine Conservation Regulations 2007. These UK wide regulations will be made by the Secretary of State.

#### **4. Purpose & intended effect of the legislation**

The Wild Birds Directive (Council Directive 79/409/EEC now codified in Directive 2009/147/EC) provides a mechanism for protecting all wild bird species naturally occurring in the European Union. It was adopted as a response to increasing concern about the decline in Europe's wild bird populations resulting from pollution, loss of habitats as well as their unsustainable exploitation. The Wild Birds Directive recognises that habitat loss and degradation are serious threats to the conservation of wild birds. It sets broad objectives for a wide range of activities designed to protect wild birds.

The Habitats Directive (Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora) protects biodiversity through the conservation of natural habitats and species of wild fauna and flora. The Directive lays down rules for the protection, management and exploitation of such habitats and species.

The Habitats Regulations transpose the Habitats Directive and certain elements of the Wild Birds Directive in England and Wales. The Regulations also extend to Scotland and Northern Ireland to a limited extent.

#### Articles 2, 3 and 4(4) of the Wild Birds Directive

Article 2 of the Wild Birds Directive requires Member States to take requisite measures to maintain wild bird populations at a level which corresponds in particular to ecological, scientific and cultural requirements, while taking account of economic and recreational requirements, or to adapt the population of these species to that level. Articles 3 and 4(4) of the Wild Birds Directive are designed to ensure Member States preserve, maintain or re-establish a sufficient diversity and area of habitats for all the species of naturally occurring birds and to ensure that outside those areas which are specifically designated as important bird habitats, efforts are taken to avoid pollution or deterioration of habitats. The purpose of these obligations is to help to ensure that populations of wild bird species are maintained at a level which corresponds in particular to ecological scientific and cultural requirements, while taking account of economic and recreational requirements.

Following correspondence with the European Commission, the UK and devolved administrations have concluded that more needs to be done to transpose the provisions of Articles 2, 3 and 4(4) of the Wild Birds Directive. These regulations are intended to ensure clearer transposition of these provisions by giving additional and specific duties to relevant bodies.

In particular, the Regulations:

- place new duties on the Secretary of State, Welsh Ministers, the appropriate nature conservation bodies and, in relation to a marine area, any relevant competent authority to ensure steps are taken to protect and create bird habitat;
- place new duties on the Environment Agency, the Forestry Commission and local authorities to take steps to contribute to the protection and creation of bird habitat;
- place an obligation on the Secretary of State and Welsh Ministers to consider designating Marine Conservation Zones for the purpose of protecting and creating bird habitat;
- place new duties on competent authorities to avoid pollution or deterioration of bird habitat;
- place a duty on the nature conservation bodies to review and report on the implementation of the duties described above to the Secretary of State and Welsh Ministers;
- place a duty on the Secretary of State and Welsh Ministers to provide guidance to local authorities, the Environment Agency, the Forestry Commission and any other relevant body to assist them in meeting these new duties;
- place a duty on the Secretary of State and Welsh Ministers to take steps to facilitate and co-ordinate actions to ensure other bodies meet these new duties;
- place a duty on the Secretary of State, Welsh Ministers, appropriate nature conservation bodies and, in the marine area, relevant competent authorities, to secure compliance with the Wild Birds Directive;
- place a duty on competent authorities to have regard to the Wild Birds Directive in exercising any of their functions;
- allow management schemes to be established for European marine sites for the purposes of securing compliance with the requirements of the Wild Birds Directive;
- amend section 15 of the National Parks and Access to the Countryside Act 1949 to enable local authorities to designate Local Nature Reserves for the purposes of re-establishing bird habitat.

The Regulations also make the following amendments to transpose more clearly certain elements of the Habitat Directive.

### Revocation of Regulations 20 and 22 of the Habitats Regulations

The instrument revokes regulations 20 and 22 of the Habitats Regulations and makes consequential amendments to related regulations 18, 19, 21 and 23.

Currently, there is an overlap in the controls imposed by the Site of Special Scientific Interest (SSSI) regime under Part 2 of the Wildlife and Countryside Act 1981 (the “1981 Act”) and the regime imposed by regulations 19-23 of the Habitats Regulations where land is designated both as a SSSI and a European site. Revoking regulation 20 will remove some overlap between the two regimes. It would also address one specific inconsistency that currently provides that, in circumstances where an owner or occupier has given the appropriate nature conservation body notice of a proposal to carry out an operation on land notified as a European site, and where the appropriate nature conservation body has not responded to that notification, after four months the owner or occupier may carry out the operation. Revoking this regulation removes the inconsistency with section 28F(2) of the 1981 Act, which provides that where the appropriate nature conservation body does not respond to a notification from the owner or occupier within four months, consent to the operation is deemed to be refused. This change will not make any difference in practice to the controls that are applied because, mindful of this inconsistency, the appropriate nature conservation body currently use the powers available under section 28F(2) of the 1981 Act to control operations.

Additionally, revoking regulation 20 will also remove a superfluous criminal offence, given a similar offence under the 1981 Act, though the latter carries possibility of higher penalties.

Revoking regulation 22 will remove a provision for the appropriate nature conservation body to notify the Secretary of State or Welsh Ministers where it considers that there is a risk that an operation that it has not given consent to may be carried out. We consider that this provision serves no practical purpose.

### Amendment of Regulation 38 of the Habitats Regulations

Removal of regulation 38(5) will ensure that the Welsh Ministers powers to make orders in relation to European protected sites are consistent with their powers in respect of Marine Conservation Zones (section 134 of the Marine & Coastal Access Act 2009).

### Amendment of Regulation 58 of the Habitats Regulations

Amendment to regulation 58 will make it clear that this offence applies to anyone authorised to carry out activities under the licence.

### Amendment of Regulation 60 and 61 of the Habitats Regulations

Amendment to regulation 60 will make it clear that the appropriate assessment provisions apply to any plan or project which a competent authority proposes to undertake or give consent to (unless this requirement is already specifically

applied in legislation). At present, the Regulations provide that the appropriate assessment provisions are applied to all those consenting regimes listed in Chapters 2 to 9 of the Regulations. For other plans or projects, at present the need to undertake appropriate assessments is covered by the general duty to comply with or have regard to the Directive, as set out in regulation 9.

The instrument makes a consequential amendment to regulation 61 to disapply regulation 61 where there would otherwise be an overlap with certain other regulations, which are already in place to govern the assessment of plans or projects which may have an effect on European sites and European offshore marine sites.

#### New Regulation 129A of the Habitats Regulations – Research

This new regulation will place a duty on the Secretary of State and Welsh Ministers to take appropriate steps to encourage research and scientific work for the maintenance or restoration of habitats and species at favourable conservation status, and for the protection, management and use of any population of wild bird. The Secretary of State and Welsh Ministers will also be required to share appropriate information with the European Commission, and, in the case of the Habitats Directive, other Member States to assist in the effective co-ordination of research.

### **5. Consultation**

These Regulations proposals have not been subject to public consultation as they seek to ensure clearer transposition of the EC Wild Birds Directive and are an urgent response to formal correspondence instigated by the European Commission. The measures and the additional measures proposed (not related directly to the formal correspondence) will not have a significant impact on any person or body and will impose no significant additional burdens on business or any other stakeholder.

However, in preparing these Regulations, the Welsh Government has liaised with other Welsh Government Departments, DEFRA and the devolved administrations in Scotland and Northern Ireland, and delivery bodies such as the Countryside Council for Wales, the Environment Agency Wales and the Forestry Commission Wales.

The regulations place a duty on the Secretary of State and Welsh Ministers, after consultation with the nature conservation bodies, to issue guidance to local authorities, the Environment Agency, the Forestry Commission and any other relevant body considered appropriate to assist these bodies in meeting their new duty to take steps to contribute to the protection and creation of bird habitat.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### Option 0

Do nothing. Rely on existing measures to deliver the obligations.

#### Option 1

Introduce a duty on specified authorities to take steps to secure the purposes of Article 3(2). Introduce a duty on all public bodies to strive to avoid pollution and deterioration of bird habitats outside protected areas to secure the purpose of Article 4(4) and take steps to encourage research and scientific work which necessary to deliver Article 10.

#### Option 2

Introduce duties as Option 1 and an additional power for the relevant agency to impose management schemes for the purposes of meeting 3(2)(b)-(d) obligations.

### **Costs and Benefits**

#### **Option 0:**

##### Costs:

No additional costs for businesses or individuals over and above current commitments.

##### Benefits:

This does not clarify the transposition of the Wild Birds Directive, nor provide the legal underpinning for the measures being taken to deliver the obligations and therefore creates a risk of infraction.

#### **Option 1:**

##### Costs:

This option involves relevant authorities (Welsh Ministers, Environment Agency, Countryside Council for Wales, Forestry Commission and local authorities) having a duty to ensure (as far as lies within their powers) the preservation and maintenance of the requisite habitat for birds. It provides a basis of statutory duties on the relevant authorities' activities which already take place when they carry out their existing biodiversity functions and, as a result, no additional costs are anticipated. Clearly the existence of a legislative obligation carries more weight than where the obligation is undertaken as a matter of policy. The introduction of the statutory duties will underpin a range of measures already used in practise.

The Countryside Council for Wales, along with the other UK statutory nature conservation bodies will incur costs in producing guidance for other authorities on how to meet their obligations, and in carrying out monitoring to measure how far the appropriate authorities are complying with the duty placed on them and

then reporting their conclusions. This duty has been included in the remit for CCW for 2012-2013.

For the marine area this option clarifies and specifies the role the Marine and Coastal Access Act 2009 will have in meeting Article 3(2) obligations. If further Marine Conservation Zones (MCZs) are required to meet any shortfall in our Article 3(2) obligations this could fall within the scope of our current work under the 2009 Act to identify and designate MCZs that will contribute to a network of ecologically coherent marine protected areas. This could incur additional costs for Wales. We expect that the review mechanism for Article 3(2) will fall within scope of the current marine monitoring and surveillance programme that JNCC carry out so will not incur any additional cost for Wales.

### Benefits:

This option involves the Welsh Ministers, Environment Agency, Natural England, Forestry Commission and local authorities having new duties to ensure (so far as lies within their powers) the preservation and maintenance of the requisite habitat for birds. It involves introducing a statutory duty to underpin the activities already undertaken by the relevant bodies when they are carrying out their existing biodiversity functions. Delivery of the obligations will be achieved using powers the relevant bodies already have at their disposal and which, for the most part, are already used to deliver outcomes relating to birds, their habitats and other biodiversity outcomes. As a result of this, it is not anticipated that any significant additional costs will result from the introduction of the new legislative obligations.

It is intended that the statutory guidance will

- i. set out what the priorities are and which species (or groups) need particular attention;
- ii. inform the relevant authorities about how much habitat they might need to create/manage to achieve a certain result;
- iii. show the relevant authorities what sort of actions they can take to meet their obligations in respect of the priority species; and
- iv. guide them as to the types of habitats or specific locations where action could best be taken.

This will have the benefit of giving the relevant authorities clear information when looking at the existing functions they carry out to see how they can be tailored to meet the obligations under the Birds Directive.

This should lead to improved outcomes for birds which are expected to be increases in the amount of habitat for wild birds where these obligations are seen as a priority. This will encourage growth of bird populations given time. Existence of the guidance is a significant contributory factor in underpinning the achievement of our obligations under several articles of the Birds Directive.

As an example local authorities already have powers to designate Local Nature Reserves (LNRs) using Section 21 of the National Parks and Access to the Countryside Act 1949. The considerations to be worked through when declaring a LNR include looking at the habitats and species of interest and considering

the value of the site as a place where people can enjoy contact with wildlife. By introducing this new duty, we will make it mandatory to take account of the specific considerations for birds outlined in Article 3(2) to upkeep and manage habitats outside of protected areas, to re-establish destroyed biotopes and to create biotopes, but guidance will be adjusted and this will simply be part of the consideration processes which already exist. In addition local authorities will be able to use the statutory guidance (described above) to determine for what species they should take action and the extent and type of habitat they should be aiming to create, manage or re-establish.

In considering the correspondence with the Commission it was decided to review the clarity of the UK's transposition more broadly and it was concluded that we should take this opportunity to make certain other amendments to the Regulations that either supplement the other Option 1 proposals or which amend the Regulations in other ways to make legislative provisions comprehensive, clearer or more consistent, thus making the Regulations easier to understand (and thus aiding compliance).

These are:

(a) powers to be used by local authorities to deliver the obligations in Article 3(2) contained in sections 17, 18, 20 and 21 of the National Parks and Access to the Countryside Act 1949, relating to the establishment of nature reserves. To ensure that these powers are sufficiently wide to meet all the obligations contained in Article 3(2)(b)-(d) of the Directive, we propose to make a minor amendment to section 15(2)(b) of the 1949 Act to provide that "Land is managed for a conservation purpose if it is managed for the purpose of "preserving flora, fauna or geological or physiographical features of special interest in the area", including enabling the increase or recovery of that flora or fauna.

This will make clear that local authorities may establish nature reserves not just to protect those bird habitats that already exist on the site, but also to take action to re-establish such habitat where possible.

(b) the regulations also bring some consistency to the legislative provisions covering the powers available to the Countryside Council for Wales to control operations likely to damage the conservation interests in protected sites. Changes made to the powers available within Sites of Special Scientific Interest (SSSIs) by the Countryside and Rights of Way Act 2000 and Natural Environment and Rural Communities Act 2006 were not reflected in the Habitats Regulations and as a result different, and inconsistent, legislative provisions apply in the same set of circumstances.

Revocation of regulation 20 of the Habitats Regulations and further, minor consequential amendments to related regulations 18 – 23 will ensure consistency between the two regimes that impose controls on SSSIs and European protected sites. In particular, this will address one specific inconsistency that currently provides that, in circumstances where an owner or occupier has given the nature conservation body notice of a proposal to carry out an operation on land notified as an SSSI, and where the nature

conservation body has not responded to that notification, after 4 months the owner or occupier may carry out the operation. Revoking this regulation will make the approach consistent with section 28F(2) of the Wildlife and Countryside Act 1981 as amended, which provides that where the appropriate nature conservation body does not respond to a notification from the owner or occupier within 4 months, consent to the operation is deemed to be refused. This change will not make any difference in practice to the controls that are applied because, mindful of this inconsistency, the nature conservation body currently use the powers available under section 28F(2) of the 1981 Act to control operations.

Additionally, revoking regulation 20 will also remove a criminal offence that is duplicated within the Wildlife and Countryside Act 1981 but which carries inconsistent penalties.

These changes will not, therefore, result in any additional burdens, but will have the benefit of removing redundant and inconsistent provisions to provide clarity for owners and occupiers affected by these provisions.

(c) Amendments to regulation 60 will provide that the appropriate assessment provisions apply to any plan or project which a competent authority proposes to undertake or give consent to. At present, the Habitats Regulations provide that the appropriate assessment provisions are applied to all those consenting regimes listed in Chapters 2 to 8 of the Regulations. For other plans or projects the need to undertake appropriate assessments is covered by the general duty to comply with the Directive, as set out in regulation 9. This amendment is entirely consistent with the Directive.

(d) regulation 38 of the Habitats Regulations allows the Marine Management Organisation (MMO) and Welsh Ministers to make byelaws/orders for the protection of a European marine site under the Marine Act 2009. This helps us to meet our obligations to protect special areas of conservation (SAC) under Article 6 of the Habitats Directive and Special Protection Areas (SPA) under Article 4 of the Wild Birds Directive.

Removal of regulation 38(5) of the Habitats Regulations will ensure that the MMO and Welsh Ministers have byelaw/order making powers which are consistent with those of the Inshore Fisheries Conservation Authorities (sections 155 to 162 of the Marine and Coastal Access Act 2009) and consistent with the MMO's and Welsh Minister's powers to make byelaws/orders in respect to Marine Conservation Zones. Achieving management of marine activities through a byelaw/order enables a proper consultation process to be followed (except in the cases of emergency).

We believe that the measures set out in (a) to (d) above will not have any significant impact on any person or body and will impose no significant additional burdens on business or any other stakeholder. (a) simply facilitates achievement of the Article 3(2) obligations. (b) eliminates an inconsistency in regulatory provisions which should be regarded as welcome clarification, particularly as it will not lead to any change in the way the controls operate. (c)

simply clarifies the existing regulatory position which will lead to greater certainty. In relation to (d), the MMO and Welsh Ministers currently have powers to control potentially damaging activities through amendments to marine and fisheries licences so the only additional activities that the byelaw/order power could affect are unregulated activities (such as recreational activities). However we expect that the effect of applying the new byelaw/order power to these unregulated activities is fairly minimal and, therefore, do not expect any significant cost associated with this amendment.

## **Option 2:**

### Costs

We have considered whether introducing additional powers of compulsion into the arrangements proposed in Option 1 would assist in delivering our obligations under Article 3(2)(b)-(d) of the Directive.

All the proposals set out in Option 1 would still be needed under Option 2. Under Option 2, however, CCW would be given extended powers to compel landowners and occupiers in certain cases to enter into management schemes which CCW considers would make an important contribution to meeting the Article 3(2) obligations – particularly those related to the creation or re-establishment of bird habitat.

There is considerable evidence that voluntary agreements with landowners and occupiers are effective in delivering these obligations. For example, a similar power has been available to CCW since the Countryside and Rights of Way Act (CROW) which allows them to impose management schemes for Sites of Special Scientific Interest (SSSIs).

To avoid the creation of an open-ended power, which could potentially apply to any area of land, we would identify transparent criteria for selecting individual pieces of land to establish where this power could be exercised. The criteria would need to identify habitats that are or could be particularly important for maintaining or increasing bird populations. Due to the diversity of bird habitats, and the wide range of types of land that might be relevant – rural, urban, terrestrial, water, marine, woodland etc. it would be challenging to prescribe criteria to define key habitats that might be important for birds. Consequently individual land owners might strongly challenge why their land had been chosen for this purpose, rather than some other, similar, piece of land. An imposed scheme could be perceived to place a disproportionate burden on those landowners involved and the criteria developed would need to be sufficiently robust. Imposition of schemes would be rare. However having the power to do this would be an additional lever to encourage voluntary participation.

### Benefits

This should lead to improved outcomes for birds which are expected to be increases in the amount of habitat for wild birds but at an additional cost to Option 1.

## **Risks**

### **Option 0: Risks**

Taking no action could result in appropriate and competent authorities being unaware of their obligations under the Wild Birds Directive and failing to use their existing powers to meet these obligations and is unlikely to satisfy the concerns of the Commission about our transposition.

### **Option1: Risks**

Additional marine conservation zones may be required, leading to restrictions on certain activities, although economic and recreational considerations can be taken into account (as allowed by Article 2 of the Directive).

### **Option 2: Risks**

A proposal to introduce new powers to enable CCW to impose management schemes on any part of the country outside currently designated areas would be difficult to justify in circumstances where we are satisfied that the objective can be achieved by other (voluntary) means.

## **Preferred Option**

Option 0 would not address the problem and is unlikely to satisfy the Commission's concerns about transposition. Option 1 is preferred as implementation is achievable with existing powers, but does not confer any power of compulsion to ensure that the statutory objective can be achieved. The new statutory guidance is expected to provide relevant authorities with clear information to meet obligations under the Birds Directive leading to improved outcomes for birds which are likely to more than offset the small additional costs of the statutory nature conservation bodies producing statutory guidance. Option 2 would also lead to improved outcomes for birds (which are expected to be increases in the amount of habitat for wild birds) but at an additional cost to Option 1. A proposal to introduce new powers to enable CCW to impose management schemes on any part of the country outside currently designated areas would be difficult to justify in circumstances where we are satisfied that the objective can be achieved by other (voluntary) means.

## **Post implementation review**

The Countryside Council for Wales will carry out monitoring to measure how far the appropriate authorities are complying with the duty placed on them and then reporting their conclusions.

The review clause at paragraph 23 imposes obligations on the Secretary of State only.

CSFM(4)-01-12

Committee for the Scrutiny of the First Minister 11 July

## **Committee for the Scrutiny of the First Minister – Note of Private Meeting**

### ***In attendance***

David Melding (Chair)  
Paul Davies  
Mark Drakeford  
Elin Jones  
Eluned Parrott

### ***Frequency and location of meetings***

1. It was agreed that the Committee will meet once a term.
2. It was agreed that the Committee would aim to hold one meeting a year in North, Mid or West Wales, ideally in the summer term if that corresponds with the First Minister's diary commitments.

### ***General approach and content of meetings***

3. It was agreed that at each meeting the Committee should look at one broad topic related to the strategic vision of the Welsh Government as well as a specific subject area that is central to the Welsh Government's programme.
4. To that end, it was decided that the first two issues that the Committee will scrutinise will be:
  - The Legislative Programme: The First Minister's role in formulating, planning and coordinating the Welsh Government's legislative programme, progress achieved during the Fourth Assembly given its new legislative powers, relations with the National Assembly for Wales, capacity and expertise within the civil service and civic society for delivering the programme, and flexibility in responding to change.
  - Promoting Enterprise: The First Minister's vision for promoting "enterprise" in the Welsh economy, including how it is mainstreamed and

coordinated throughout and across the Welsh Government, with a focus on the development of cross-cutting policy areas such as Enterprise Zones and social enterprises.

5. It was agreed that the Committee would write to Committee Chairs to make them aware of the work it will be undertaking, and to invite possible subject areas for future scrutiny.

**Committee Service  
July 2012**

## Annex A

### Potential Future Scrutiny Topics

- International relations and promoting Wales abroad, including relations with the UK Government
- Silk Commission - Welsh Government response, next steps, and relationship with UK Government
- Building capacity and development of the civil service in Wales
- First Minister's Delivery Unit, and its performance, particularly in the area of health
- Major energy facilities and infrastructure, the devolution of energy matters, and investment for Wales
- Welsh Government's relationship with the third sector and NGOs
- Strategic and corporate planning in the Welsh Government, including links between departmental portfolios
- Regeneration, in both rural and urban areas
- Major public appointments
- Ministerial Code
- Future European funding and relationships with Europe and the UK Government

# Agenda Item 5

**COMMISSION ON THE POWERS AND ELECTORAL ARRANGEMENTS OF THE NATIONAL ASSEMBLY FOR  
WALES**

**MINUTES OF PROCEEDINGS**

**of the**

**EVIDENCE OF:**

Lord Carlile of Berriew

**held at**

**The Boothroyd Room, Portcullis House, Westminster**

**on**

**THURSDAY 12 JUNE 2003**

**In Attendance**

**Lord Richard, Chair, Richard Commission**

**Ted Rowlands, Richard Commission**

**Tom Jones, Richard Commission**

**Peter Price, Richard Commission**

**Dr Laura McAllister, Richard Commission**

**Sir Michael Wheeler-Booth, Richard Commission**

**Paul Valerio, Richard Commission**

**Vivienne Sugar, Richard Commission**

**Eira Davies, Richard Commission**

**Huw Thomas, Richard Commission**

**Lord Carlile**

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## **Proceedings**

### **Lord Richard**

Thank you very much for coming. We are very grateful to you for giving up the time to come and see the Commission. I wonder if you would be kind enough to identify yourself for the sake of the transcript and then after you have done that if you would like to open up the subject from your point of view and then we can see where we should go.

### **Lord Carlile**

Thank you very much, Lord Richard. I am Alex Carlile, Lord Carlile and I was a Liberal Democrat MP from 1983 to 1997 representing Montgomeryshire. I was much involved in the discussions with Ron Davies in his time as the Shadow Secretary of State for Wales. There led to the devolution settlement which was eventually enacted and I have long been a supporter of the principle of devolution and since it started broadly of its practice.

I know that you have received, although I do not expect you to have it in front of you, a copy of a printed version of the Lloyd George lecture which I gave on the 19<sup>th</sup> June 2002 at the Criccieth Festival. I do not have a huge amount to add to what I said there and I would invite you in due course to take that into account.

If I can just headline a few points that might be useful as an introduction though. My main concern about devolution is that it does not yet have the clear support of the public in Wales as a reality, let alone as a concept. I live in mid-Wales. My two nearest towns are Newtown and Welshpool. My take on the public's view of the devolution process is that in so far as they are aware of it they are fairly cynical about it and in so far as they are cynical about it they think it is the political parties lining up a few nice jobs for some of their members. It may be that is unduly cynical and unfair, but I am sure it is a fair representation of the views which are felt by many people, and I base that in part on the limited campaigning I did as a member of my party, the Liberal Democrats, during the devolution election recently.

I think there has been some improvement in public perception, but I think it is very slow.

I believe that devolution has to be allowed to evolve. I believe it will evolve. My fear is that in general terms the evolution of the political process proceeds at the same pace as the evolution of the species and I do not myself believe that that is quite fast enough, I hope that this Commission will be able to give the devolution process, which is with us to stay, a bit of a kick along the route of further evolution..

The way I would describe our present devolution settlement in Wales is that it is eclectic. As a result, it is confusing. There are some parts of some statutes which are not devolved; there are other parts of statutes which are devolved, with ridiculous consequences. The example I always cite is that the Westminster Parliament is responsible for bugs on the Montgomery Canal whereas the Welsh Assembly is responsible for boats. Actually, I think I put it the wrong way round, which shows how confused people, can get. The true position is that the Westminster Parliament, because of British Waterways, is responsible for boats on the Montgomery Canal; the Welsh Assembly through its environmental responsibility is responsible for bugs on the Montgomery Canal and there is a conflict between bugs and boats on the Montgomery Canal. It makes it extremely difficult for that serious conflict, which actually has millions of pounds riding on it, because of possible tourist development -- Tom Jones will know all about this from his local knowledge -- millions of pounds riding on it, but it is very difficult to reach a solution and that is an example of where eclectic devolution is not working.

I believe that one of the things this Commission might do is to encourage Central Government to be a little bit less eclectic and to look at other countries where devolution is, to use a word I absolutely loathe but I cannot think of a better one, a little bit more holistic.

I also think that the eclecticism is at fault because it excludes some major functions. If I can give you two examples which I highlighted in my Lloyd George lecture, they are the police and the courts. At the moment we have four police forces in Wales, which are subject to the usual Home Office arrangements and accountable to the Home Office through the police authority, ACPO and all the other bodies. This is a personal view only, but my view is that the police force in Wales might benefit from some reform. It may be, for example, that four police forces are too many and that one might be quite enough, or two. I believe that that kind of important policy issue could be dealt with much more quickly and much more successfully in the devolved Assembly and I do not see that we in Wales are less capable of dealing with those issues than the devolved assemblies in Nevada, or New Mexico, or British Columbia or in the States of Australia.

Turning to the legal system, it is said by some that one of the reasons why we cannot have a fuller form of devolution, including some primary legislative powers is we do not have a separate legal system. That, in my view, is utter nonsense. If we look at the Commonwealth countries, Australia and Canada, where there is a significant measure of devolution, (and I have been to Canada recently), what they say to you there is something like this, "Oh, devolution works fine, having a Supreme Court in British Columbia is fine, it works very well. We have a little bit of trouble with Quebec, because they have a different legal system, but we manage". So, in other words, they turn the argument on its head and say that the disadvantage to devolution is having a separate legal system in Quebec and I guess they would say similar things with the somewhat different legal system in Louisiana in the United States.

So I would like to see devolution as a more holistic venture, and those are two examples of the kinds of policy areas that I would like to see included.

The final thing I wanted to say was -- well, two things really -- one is about primary legislative powers. It is a logical part of a devolutionary process that a devolved Parliament should have devolved primary legislative powers within constitutional limits and there are many other countries that do that.

The final thing I wanted to add is about membership of the Assembly. I know that there are a lot of representations about the size and the proportional election system. My view is that the Assembly will increase its size at its peril, because I do not believe that the people of Wales would regard increasing the size from 60 as remotely acceptable. They would regard it as the political parties once again feathering their own nests.

**Lord Richard**

Thank you very much indeed. Could I start off, perhaps, by pursuing with you really the holistic element that you think is lacking. You have given us two examples: one of the canal problem and the other the police problem. What do you think the Government should be doing that they are not doing?

**Lord Carlile**

I think that the Government in Westminster on the legislative side, as shown by the canal problem, should be taking a long hard look at all those aspects of legislation where the responsibilities are mixed between Westminster and the Assembly, and in every situation where it is possible to do so, without damaging the national interests, the powers should be devolved on a more holistic basis to Wales. I am not suggesting, obviously, that -- sorry, I will pause there, you were going to say something.

**Lord Richard**

I was just going to say, for example, is that what you think that devolution should in effect be sort of by subject rather than by power, in the sense that Wales has responsibility for its education, or the whole of health.

**Lord Carlile**

I do.

**Lord Richard**

The bitty things.

**Lord Carlile**

I do, and I think that was the intention originally. I do not quite know how it has happened, but somewhere along the line a large amount of legislation was looked at and a very difficult process, to be fair, had to be carried out at high speed and decisions were made that certain aspects should be retained in Whitehall, but we are now beginning to see the disadvantages of that, of which I have given you a slight caricature on the canal problem. In agriculture there are some responsibilities which are partly Westminster and partly Assembly. In education there are others. The historical evidence is that Wales has always run its own education system pretty well and it was left to get on with it without too much interference from others, and I do believe that the committee system of the Assembly works in the interests of the efficient deployment of resources and creation of everyday policy.

I chaired an enquiry for the Welsh Assembly on the safety of children in the National Health Service. I had a panel of 20 experts or so. It was rather like this commission in a sense. We produced a big-ish report with 150 recommendations and I was astonished by the rapidity of implementation of many of our recommendations. It happened in a way which would have been unimaginable under the old system with which you, Chairman, and I are very familiar: the old grand committee and Welsh Select Committee session, Welsh questions once a month and the whole nightmare of believing that whatever we did nothing much was going to happen for a very long time, but it is not so with the Assembly. Where something is urgent it happens.

**Sir Michael Wheeler-Booth**

Lord Carlile, drawing on your experience as a Member of Parliament here, we have been told that there is supposed to be a so to speak co-legislative process between the Assembly and Westminster Parliament on primary legislation. Some witnesses have suggested this does not work too badly but others have suggested it does, it works badly. What is your view?

**Lord Carlile**

First of all, the arrangement is informal, so it depends on the goodwill of the people who are involved. From my viewpoint as a member of the Lords, I think it has worked reasonably well. That is because ministers in the Assembly have been keen to come here and explain what they want, to discuss the effect on Wales of different items of legislation and to do so frankly and freely in a non-partisan atmosphere. Most of the meetings at which these matters are discussed are completely non-partisan, so I think it has worked quite well, but it is informal. I think some might take the view that a more institutionalised arrangement would be a better guarantee of these co-operative systems working well. I have my doubts about that, but it does depend on the attitude of the Government in Wales at any given time. There has been a change, from a coalition to a Labour Government in Wales and we will have to see how that works in the next few months, but I would expect them to be entirely co-operative.

### **Ted Rowlands**

With so many ministers of justice, as you suggest, can we define, would it be a lock, stock and barrel of transfer from the Lord Chancellor's responsibilities, plus some Home Office, or between the two, or are there certain aspects of the Lord Chancellor and the Home Office which would be still preferably done on a UK basis?

### **Lord Carlile**

If we can take them separately. So far as the Lord Chancellor's Department judicially are concerned, I would view perhaps British Columbia as my template. British Columbia has its own High Court structure, it has its own Supreme Court, which is pretty supreme. I have cited British Columbia Supreme Court cases in courts in England and Wales and they are of some authority. There are some very good judges and the system is well developed, but it is subject to the federal structure of Canada and the Canadian Supreme Court, which is extremely supreme, and deals with all constitutional issues.

In reality we have already a lot of devolution of the justice system in Wales. We have Welsh Magistrates' Courts which effectively are controlled in Wales. Crown Courts are controlled within Wales under the Wales and Chester circuit. The county courts are controlled by the Lord Chancellor's Department within Wales. The Technology and Construction Court, which deals with building disputes, sits in North and South Wales. The Commercial Court, there is now a Commercial Court judge based in Cardiff permanently, who will sit in North or Mid Wales. The Divisional Court, which is extremely important, dealing with judicial review has made it its practice to sit in Wales whenever possible to deal with devolution issues, and we have three extremely expert Welsh judicial review judges in John Thomas, Stephen Richards and, Maurice Kay.

The Court of Appeal Criminal Division tries to sit in Wales from time to time to hear Welsh appeals, so we are already three-quarters of the way there. My view is that we should have a Welsh division of the High Court which would sit up to Court of Appeal level in Wales, but would be subject to the normal final appellate jurisdiction of the House of Lords and would be part of the ordinary law of precedent that applies in all our courts. So a Court of Appeal Wales decision would be of the same authority as any other Court of Appeal decision, and I am not suggesting that there should only be Welsh judges. I think there is an advantage to have judges who have sat in England as well in it and, indeed, one could cite the Hong Kong Final Court of Appeals as an example of one which has benefited from judges of more than just its own domestic jurisdiction.

### **Ted Rowlands**

Would the logic of that also be Welsh criminal justice bills as opposed to an England and Wales criminal justice bill? We have a succession of them. Does that mean in fact you would not have the same policy, and the same concern, or any of these other issues that at the moment are the substance of the criminal justice bills?

### **Lord Carlile**

I would not myself find any difficulty in looking at -- let us call it state legislation on criminal justice issues. It happens all over the world in federal jurisdictions to a limited extent. Broadly I think that we would have to ensure that the foundations -- for example, of sentencing policy -- would be the same throughout England Wales. As to prisons, there is the practical problem that there are not enough local prisons in Wales to send all the Welsh criminals to, and Welsh prisons also have a lot of English criminals.

I think that there is room for some quite separate arrangements, and Scotland is a good example of this, for example in dealing with youth crime. It may be that we can deal with youth crime far more effectively in Wales using a Welsh solution than necessarily following a solution which is prescribed for Reading, or Brixton, or other very heavily populated areas of England.

### **Ted Rowlands**

You would think of perhaps a devolution of the youth justice side but not necessarily of the justice system as a whole. Is that right?

### **Lord Carlile**

I would think of a devolution of the justice system that would build into it the requirement that some legislation would have to be on a UK wide basis. It is just what they do in the United States. It is just what they do in Canada. I do not think there is any particular difficulty about achieving that.

### **Ted Rowlands**

Devolution is not federalism. You are actually a federalist.

### **Lord Carlile**

I would not actually use the F word to describe myself. I have tried to avoid it. I think I am a devolutionist rather than a federalist, but I think if you want to call the sort of solution that I am offering federalist then I will not be unduly offended. The state has to be responsible for what is in the interests of the state, but you devolve what you can devolve if you are going to have better Government through the devolution process. Using the youth courts as an example I think we would have a better process through devolution than we get through the London Parliament.

**Dr Laura McAllister**

Can I ask you about the Sewell Convention; how it has been used in Scotland. From your own experience and your knowledge outside the Parliamentary side, can you present first some of the arguments for and against that being a widely used concept in an Assembly which has primary legislative powers.

**Lord Carlile**

You will have to explain to me how it has been used in Scotland because I have not made a particular study of how it has been used in Scotland.

**Dr Laura McAllister**

It has been used in many more cases, much more frequently, and there has been submissions raised about problems with scrutiny on the part of the Parliament when there is a change in a piece of legislation.

**Lord Carlile**

I have experience professionally of one case in which the Sewell Convention was used in a very broadly interpreted way, and from what I remember of giving advice in that case, I was surprised that it had been applied so broadly. The definition of devolution issues in Wales though is different for legislative reasons from the definition of devolution issues in Scotland and I would not pretend to be an expert in this; this is only through the one case in which I advised a few months ago, but my perception was that the way in which devolution issues are adjudged in Scotland has actually worked quite well. It has kept in the Scottish courts the full integrity of the Scottish legal system and has given them an interesting constitutional role that has not caused any noticeable clashes with Westminster as yet, but I do think that the way in which devolution issues are defined is a very complex question and is closely allied to issues like the reform of the House of Lords, the reform of the judicial committee of the House of Lords in which we know there are strains between some of the Law Lords at the present time. Does that answer your question?

**Dr Laura McAllister**

I think it does. I just wonder, we may be going beyond your expertise in this particular area, but in Scotland as well, for the capacity for a scrutiny reserve to ensure that things were not being ended dramatically and not being debated or scrutinised by the Scottish Parliament. I just wonder if that is something that we need to look at, because the Sewell or the equivalent would inevitably be used in the case of Wales.

**Lord Carlile**

I do not pretend to any expertise in this area. I think what I would say is I do not know of any credible evidence to suggest that the Welsh are any worse at dealing with issues of that kind than the Scots. The notion that the Scots have more experience I think is on the whole fairly risible as between the creation of the Scottish Parliament, and the last time they passed any legislation in the Scottish Parliament I think everyone who had been involved in the previous Scottish Parliament, their children, their grandchildren and several generations thereafter met their maker long ago. I do think we actually started from much the same point as Scotland and it is ever so slightly offensive to the Welsh that they were thought to be less capable of accepting a significant measure of devolution as compared with our friends in Scotland.

**Huw Thomas**

You have made the argument for more powers in terms of legislation to pass to Wales, and yet you have held very strongly the argument that there should not be an increase in the numbers of AMs. I just wondered whether you considered that therefore the Assembly in terms of its size, the number of backbenchers after all is fairly constrained, can actually handle the kind of legislative programme that would then take place?

**Lord Carlile**

You are talking to someone who thinks that the House of Commons could work perfectly well if it only had 300 members, so the answer logically has to be yes. Incidentally, the House of Lords could manage perfectly well with 100 members. So, again, the answer has to be logically yes. I think that we are given to very large legislatures in this country; not as large as in some countries, but having recently visited some offices on

Capitol Hill, I noted that one Republican congressman I visited had I think he told me he had 350,000 constituents, and he seemed to be managing quite well, albeit with staff that those of us who have been Members of Parliament would have envied, or perhaps not!

**Lord Richard**

You cannot say that 60 is a huge number.

**Lord Carlile**

I do not think 60 is a huge number.

**Lord Richard**

I do not think 80 would be either.

**Lord Carlile**

I do not think 60 is necessarily the right number. I think the point I was trying to make was that as it happens there are 60. There have been two devolution elections for an Assembly of 60 members and I think the public are not going to be terribly impressed if suddenly the numbers go up to 80 or 90.

**Paul Valerio**

Perhaps you are right, but some evidence we have suggests that there was not sufficient time given by AMs to scrutiny. If we were to accept that there is an argument for more powers to be evolved is not the existing system more intolerable if you have the small number of AMs not giving the full work adequately, and the basic reason you might come to that conclusion is the public perception that they will not wear more than 60, so it is a bit of a dilemma which way I can treat it.

**Lord Carlile**

I have been impressed so far from what I have seen about the way they have organised themselves. I do not yet believe that they are so overworked and overstretched that they could not deal with the critical mass of work which would be involved in an evolutionary increase in their activity.

I am also concerned about the credibility of political organisations. If the Assembly had been able to do more, and I do not blame them for this but it is a fact, in saying what the Assembly is, what it does then I might take a different view. I frequently say to people, "You may be cynical about the Assembly but let me just remind you that the Assembly governs Wales in almost all aspects" which I believe to be true, but the public need a lot of convincing over that. In the chattering classes even, out of Cardiff at any rate, and out of the very strongly Welsh speaking areas of the west, the Assembly has a long way to go to reach a level of credibility, even in its contact with the local County Council. It certainly has not happened in Powys yet.

**Vivienne Sugar**

Whatever the Commission recommends later this year, the current settlement is still going to be with us for another few years. I would like to have your observations on the effectiveness of scrutiny of primary legislation as it affects Wales under the current system.

**Lord Carlile**

I can only speak of the documents that I have received from the Assembly --

**Vivienne Sugar**

No, I mean scrutiny by the House of Commons.

**Lord Carlile**

Scrutiny here of Welsh secondly legislation.

**Vivienne Sugar**

No, of things which affect Wales but are going through as primary legislation.

**Lord Carlile**

In terms of primary legislation, each political party has a front bench which deals with Welsh affairs, and I think under that practical arrangement there is a decent level of scrutiny of legislation affecting Wales, the primary legislation affecting Wales. In this place, in both houses I think there is precious little scrutiny of secondary legislation and of the deliberations of the Assembly. Ministers are extremely reluctant to trespass into the Assembly's area of work, partly because it is often right that they should not and partly because it is a good excuse for not answering questions. So I think that the scrutiny here of what the Assembly does is thin. Indeed, the materials from the Assembly that are readily available in the libraries of this place are not all one would wish them to be, but that may have been because of the earlier days at least of the Assembly's Website, which has improved a lot, but was not terribly good.

In terms of the Assembly scrutiny of what is happening here, my impression from the material I receive from the Assembly is that it is strong, that they pay close attention to what happens here and if the volume of material that I receive through my own party is anything to go by then there is an effective level of scrutiny.

**Lord Richard**

Can I thank you very much indeed.

**Lord Carlile**

Thank you very much indeed.

**Lord Richard**

Thank you very much indeed. It was very useful and very helpful.

ONE of Wales' most senior lawyers last night called for a Welsh High Court to be set up.

Lord Carlile QC said the move would demonstrate the maturing of the Assembly, set up three years ago, and improve the quality of justice in the country.

Delivering the annual David Lloyd George lecture, part of the Criccieth Arts Festival, last night, Lord Carlile said Wales historically had its own legal institutions, including a chief justice.

He praised initiatives set up by senior judges to devolve legal powers to Wales.

The former Liberal Democrat MP for Montgomeryshire said: "There now sit in Wales several superior courts of record and three Civil Justice Centres have been established to provide the means for the resolution of civil disputes of all types without having the case heard in London or elsewhere outside Wales.

"It means that the judicial review of administrative action can and does routinely occur in Wales if the challenge is to the actions of the Assembly, Welsh local government or other publicly accountable bodies.

"In addition, as the Court of Appeal has sat in Cardiff on several occasions, there is a reasonable expectation that judicial review appeals to that court will be heard within Wales."

Lord Carlile said Wales was larger than several American states, each of which had its own judicial structure, and larger than some European countries.

He added: "I pose the suggestion that the development of a Wales Division of the High Court of Justice, with the full range of High Court jurisdiction for all first instance and review cases arising wholly within Wales and including mercantile, chancery and family cases, would be cost-effective and beneficial as well as consistent with the process of evolution of devolution."

Lord Carlile also suggested one single police force would better serve the Welsh people rather than the four current forces overseen by the Home Office.

He said: "A single police force for Wales might provide significant efficiency and operational improvements as well as economies of scale.

"The Assembly is already involved, as it provides 52pc of the funding for the police in Wales through the police precept on council tax bills. The Liberal Democrats and Plaid Cymru have supported the move towards devolution of police functions.

"The Labour Government has opposed it steadfastly, and the Conservative Party seems undecided - or possibly as open to suggestion as Oppositions usually are. When it was suggested, in separate debates, in the House of Lords recently by Lord Thomas of Gresford QC and myself, the government barely seemed to take it as a serious suggestion. It is."

Lord Carlile said the absence of greater powers caused "understandable frustrations".

He said: "At the height of the foot-and-mouth crisis of 2001 the Welsh Minister for Rural Affairs, Carwyn Jones, expressed mounting frustration that the Assembly was expected to manage the crisis in Wales but did not have the powers to do so effectively."



David Melding AM  
Chair, Constitutional and Legislative Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

20 July 2012

*Dear David*

## **Business Committee – Review of Committee Structure and Timetable**

You will be aware that when the Business Committee agreed the committee structure in June 2011 we also agreed to review how well the structure was working after around 12 months. The Committee considered the attached paper at its meeting on 26 June (Annex 1) and this letter summarises the results of our discussion, along with further discussions in July on the timetable.

A feature of the committee structure in this Assembly is that subject-based committees carry out both **legislative and policy scrutiny**. The system we put in place provided time, and sufficiently large memberships, to allow work to be undertaken in smaller groups where committees felt that was appropriate and necessary to balance these responsibilities. The model also aimed to bring the subject specialism of Members to bear on the scrutiny of legislation. Our view is that the dual legislative and policy scrutiny role has yet to be fully tested and so we conclude that no change to the fundamental structure is necessary at this point. We will, though, keep the system under review as the volume of legislation increases.

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We discussed the **mainstreaming of European issues** across all committees and agreed that it has worked well, creating a higher profile and more thorough scrutiny for European matters as a result.

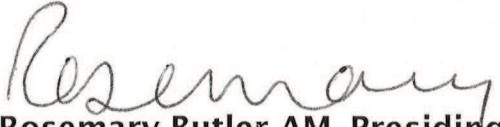
We also considered the pressures that have arisen around the **committee timetable** and in particular the difficulties experienced by Public Accounts Committee and the Constitutional & Legislative Affairs Committee. The PAC is the only committee in our system that is required by the Government of Wales Act 2006 and it fulfils a critical role in the parliamentary scrutiny of government expenditure. Over the coming months the Committee will also be undertaking the legislative scrutiny of the Public Audit (Wales) Bill. The Committee has encountered considerable difficulty in fulfilling its role within the constraints of the much more limited time slot assigned to it on Tuesday mornings. The CLA Committee meets on a Monday afternoons and this has caused practical difficulties for some Members.

Overall, our view is that the timetable works well, barring these two issues, in allowing effective committee work within the constraints we face as a small legislature. We agreed to make slots available on Monday afternoons for the Public Accounts Committee, in addition to the weekly Tuesday slot, and to let the Committee decide which slots it needs to use. We also acknowledged that there might need to be flexibility with political group meetings on Tuesday mornings to accommodate longer meetings where necessary. We also agreed that the Constitutional and Legislative Affairs Committee should continue to be scheduled in its Monday slot. We will give further consideration to the use of Monday as part of the regular committee timetable during the autumn term.

In our original report to the Assembly defining the remits of committees, we also set out **the role that committee chairs must fulfil on behalf of the Assembly** in delivering its strategic objectives (see Annex 2). One year on, we would value your feedback in the light of experience on the value of this role description, to you and your committee, and any suggestions you have for its improvement.

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Should you wish to let the Business Committee have your views on these decisions, or any aspect of the committee system, I would welcome that.

  
**Rosemary Butler AM, Presiding Officer**

**Annexes**

Paper to Business Committee – Review of Committee Structure (June 2012)

Business Committee Report: Committee Responsibilities in the 4th Assembly (June 2011)



David Melding AC  
Cadeirydd, Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Cynulliad Cenedlaethol Cymru  
Bae Caerdydd  
CF99 1NA

20 Gorffennaf 2012

*Amryl David*

### **Y Pwyllgor Busnes - Adolygiad o Strwythur ac Amserlen Pwyllgorau**

Byddwch yn ymwybodol, pan gytunodd y Pwyllgor Busnes ar strwythur y pwyllgorau ym mis Mehefin 2011, cytunwyd hefyd i gynnal adolygiad ar ôl tua 12 mis i weld pa mor dda oedd y strwythur yn gweithio. Bu'r Pwyllgor yn trafod y papur atodedig yn ei gyfarfod ar 26 Mehefin (Atodiad 1) ac mae'r llythyr hwn yn rhoi crynodeb o'r drafodaeth yn ogystal â thrafodaethau pellach am yr amserlen ym mis Gorffennaf.

Un o nodweddion strwythur pwyllgorau'r Pedwerydd Cynulliad yw bod pwyllgorau sy'n ymwneud â phynciau penodol yn **craftu ar ddeddfwriaeth a pholisiau**. Roedd y system a roddwyd ar waith yn caniatáu i Aelodau ymgymryd â gwaith mewn grwpiau llai, os oedd y pwyllgorau o'r farn y byddai hynny'n briodol ac yn angenrheidiol, i gydbwyso'r cyfrifoldebau hyn. Roedd y model yn anelu, hefyd, at ddefnyddio arbenigedd Aelodau i graffu ar ddeddfwriaeth. Rydym o'r farn nad yw'r rôl o graffu ar ddeddfwriaeth a pholisiau wedi cael ei phrofi'n llawn hyd yma, ac felly'n teimlo nad oes angen gwneud unrhyw newid sylfaenol i'r strwythur ar hyn o bryd. Wrth i lefel y ddeddfwriaeth gynyddu, fodd bynnag, byddwn yn parhau i adolygu'r system.

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Trafodwyd y mater o **brif-ffrydio materion Ewropeaidd** ym mhob pwyllgor a chytunwyd bod hyn wedi gweithio'n dda gan roi proffil uwch i faterion Ewropeaidd a bod y gwaith o graffu arnynt wedi bod yn fanylach.

Trafodwyd, hefyd, y problemau sydd wedi codi ynglŷn ag **amserlen y pwyllgorau** ac yn benodol y problemau y mae'r Pwyllgor Cyfrifon Cyhoeddus a'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol wedi'u cael. Y Pwyllgor Cyfrifon Cyhoeddus yw'r unig bwyllgor yn ein system sy'n ofynnol yn ôl Deddf Llywodraeth Cymru 2006 ac mae'n cyflawni rôl hanfodol yn ei waith o graffu ar wariant y Llywodraeth. Dros y misoedd nesaf, bydd y Pwyllgor yn gwneud gwaith craffu deddfwriaethol ar Fil Archwilio Cyhoeddus (Cymru). Mae'r Pwyllgor wedi cael anawsterau mawr wrth gyflawni ei rôl o fewn yr amser mwy cyfyngedig sydd wedi'i neilltuo ar ei gyfer ar fore dydd Mawrth. Mae'r Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn cwrdd ar brynhawn dydd Llun ac mae hyn wedi peri anawsterau i rai Aelodau.

Ar y cyfan, rydym o'r farn bod yr amserlen yn gweithio'n dda, ar wahân i'r ddau fater hyn, sy'n caniatáu i'r pwyllgorau weithio'n effeithiol o fewn y cyfyngiadau sy'n ein hwynebu fel deddfwrfa fach. Cytunwyd y byddai amser ar gael ar brynhawn dydd Llun i'r Pwyllgor Cyfrifon Cyhoeddus gwrdd, yn ogystal â'r amser sydd ar gael ar ddydd Mawrth, ac mae'r Pwyllgor gaiff benderfynu pa amser mae am ei ddefnyddio. Rydym hefyd yn cydnabod y bydd angen sicrhau hyblygrwydd o ran cyfarfodydd y grwpiau plaid ar fore dydd Mawrth, a hynny er mwyn caniatáu amser ar gyfer cyfarfodydd hwy yn ôl yr angen. Cytunwyd hefyd y dylid parhau i gynnal cyfarfod y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yn yr amser a neilltuwyd iddo ar ddydd Llun. Byddwn yn trafod defnyddio'r amser ar ddydd Llun fel rhan rheolaidd o amserlen y pwyllgorau yn ystod tymor yr hydref.

Yn ein hadroddiad gwreiddiol i'r Cynulliad, sy'n diffinio cylch gwaith pwyllgorau, nodwyd hefyd **y rôl y mae'n rhaid i gadeiryddion pwyllgorau ei chyflawni ar ran y Cynulliad** i gyflawni ei amcanion strategol (gweler Atodiad 2). Gan fod blwyddyn wedi mynd heibio, byddem yn gwerthfawrogi adborth ar werth y disgrifiad hwn i chi a'ch pwyllgor, ac unrhyw awgrymiadau sydd gennych ar sut i'w wella.

Os hoffech rannu eich barn am y penderfyniadau hyn â'r Pwyllgor Busnes, neu unrhyw agwedd ar y system bwyllgorau, byddem yn croesawu hynny.

**Rosemary Butler AC, Llywydd**

#### **Atodiadau**

Papur y Pwyllgor Busnes - Adolygiad o Strwythur Pwyllgorau (Mehefin 2012)  
Adroddiad y Pwyllgor Busnes: Portffolios a Categoriadau'r Pwyllgorau yn y Pedwerydd Cynulliad (Mehefin 2011)

**To:** Business Committee  
**From:** Business Committee Secretariat  
**Date:** June 2012

## **Review of committee structure**

### **Purpose**

1. Business Managers are invited to consider the information provided on experience of the committee structure during the first year of the fourth Assembly.

### **Action**

2. The Business Committee is asked to consider the recommendations in paragraphs 23, 31 and 40 and to agree its approach to timetabling the Public Accounts Committee and Committee for the Scrutiny of the First Minister.

### **Background**

3. On 21 June 2012, the Business Committee agreed on the titles, remit and sizes of committees for the Fourth Assembly. They agreed that the subject areas which fall within the remits of committees would be issued in a report to give clarity about the lead committee(s) responsible for any given area. It would also set out guidance / any conventions relating to the role of the committees. The Business Committee's report also contained a role description for committee chairs, setting out its expectations for how they would operate.
4. The Business Committee agreed to review how well the structure is working after around 12 months, and that the impact of the decision to mainstream European matters would be an important part of the review.

### **The model selected - Dual legislative and scrutiny committees with the capacity to undertake both functions simultaneously**

5. A relatively small number of subject-based committees have been established with sufficiently large memberships to allow them to undertake work in smaller groups so as to allow policy and legislative work to take place simultaneously.

Committee	Membership
Public Accounts	8
Finance	8
Constitutional and Legislative Affairs	4+Chair (DPO)
Petitions	4
Standards of Conduct	4
Children and Young People	10
Communities, Equality and Local Government	10
Enterprise and Business	10
Environment and Sustainability	10
Health and Social Care	10
Committee for the Scrutiny of the First Minister * (established Spring 2012)	4+Chair (DPO)
Total	84

6. An important aim was to benefit from the development of subject specialism amongst Members that would be brought to bear on the scrutiny of both legislation and policy. The model maintains separate committees for some of the specialist functions required by the Standing Orders and requires fewer committee places in total, compared with the third Assembly.
7. It was also hoped that the simpler structure would make it easier for external stakeholders to engage with committees on relevant legislation and policy.
8. In order to accommodate the workload generated by broad portfolios and legislative/policy scrutiny responsibilities, the weekly timetable provides significant blocks of time for the use of each committee (for example, 1½ days every fortnight for each of the 5 subject committees to schedule their activity). The model also requires committees to self-manage a demanding and varied programme of work and to make greater use of formal sub-committees, informal groups and rapporteurs etc. as well as continued operation in full committee.
9. It was anticipated that the risks associated with the agreed model would be:
  - less certainty for Members around the demands on their time, with advance notice of committee meetings being less certain and a

need to keep significant periods of time free for potential workload.

- legislation not being spread uniformly between subject areas so some committees having a heavier workload, either delaying legislation or crowding out scrutiny.
- being unable to respond quickly to legislative scrutiny, impacting on legislative timetables

10. Critical too would be prior notice of legislative demands so that committee time and resources were not over-committed to other work.

### **Experience of the system in operation**

11. There have been 4 Bills introduced so far in this Assembly: The Local Government Byelaws, and Official Languages Bills were both remitted to the Communities, Equality and Local Government Committee; the School Standards and Organisation Bill, to the Children and Young People Committee, and the Food Hygiene Bill to the Health and Social Care Committee.
12. Eighteen committee inquiries have already been completed, with a further twenty two currently underway. Although we are only one year into a five year Assembly, these already cover a broad cross section of subject matter. Commission staff have received some anecdotal feedback received from external organisations commenting on perceived 'gaps' in some significant areas though these relate more to the choice of particular inquiry topics in the first year rather than to the fundamental remits of committees.
13. Committees have also increased the amount of external expertise they have drawn on, with more expert advisers being appointed in 2012 than in any previous year. These advisors are drawn from a range of fields, including academia and specialist organisations.

### **Handling legislative work**

14. As yet only one Bill has completed committee scrutiny stages, and as such it is possibly a little premature to base any decisions about the committee structure or timetable on our experience so far, but there are a few observations to make.

15. The Communities, Equality and Local Government Committee have had a heavy legislative workload this year. Since November last year they have considered two Government Bills, two LCMs and are about to have technical briefings on three Government White Papers. At the same time the Committee has completed four inquiries, with another still in progress. The Committee has used Task and Finish groups for some of this work, but not for the Bills it has considered. The Committee has not utilised all of its meeting slots and the evidence suggests that they have managed the balance between their legislative and policy scrutiny.
16. The Health and Social Care Committee faces a similarly challenging period from the Autumn onwards. They are currently considering the Food Hygiene Rating (Wales) Bill and are expecting three further Bills in the Autumn/Spring terms which will overlap (Human Transplantation, Social Services, and Mick Antoniw's Bill on Asbestos (Recovery of Costs))
17. Two of these Bills (Human Transplantation and Social Services) are likely to require Stage 1 consideration at about the same time. Alongside these the Committee is likely to want to continue with some policy scrutiny work, and consideration of the budget will fall during the Autumn term.
18. In the case of both CELG and HSC it is clear that continuing to carry out policy scrutiny and legislative scrutiny is challenging. The Committees are receiving earlier notice of the timing of Bills but have little opportunity to influence this and must adjust their work programmes as the timetables for Bills becomes clearer – usually only once the Business Committee has agreed the timetable proposed by the Business Committee.
19. In future years similar problems are likely to occur for other committees given the Government's future legislative programme. For example, there are still a number of potential Bills that fall within the CELG remit, and complex Bills on Sustainable Development, the Environment and Planning are planned for years three and four of the Government's legislative programme – all within the remit of the Environment and Sustainability Committee.

## Other legislation

20. While committees receive some forewarning on the introduction of Bills the same is not the case for Legislative Consent Motions (LCMs), or other subordinate legislation referred by the Constitutional and Legislative Affairs Committee such as those arising from the Public Bodies Bill. On LCMs, in particular, the timetables to date have been extremely short, with Committees generally having only a few weeks to consider them. The Government has recognised this and has indicated that they hope to be able to provide more time for committee consideration of LCMs arising from the UK Government's latest legislative programme. The current Business Committee Consideration of Standing Orders 29 & 30 and the arrangements for tabling LCMs and related motions should go some way to improving this situation.
21. The committees considering Bills so far have agreed to carry out their work in full Committee and there appears to be little appetite for using sub-groups for consideration of Bills given the procedural nature of the process.
22. When agreeing the remits for committees the Business Committee considered the financial scrutiny of Bills and agreed that the Finance Committee should be selective, focusing its scrutiny on Bills of greatest financial significance, and take a strategic overview of financial matters relating to legislation.
23. In practice, the intention of the Business Committee a year ago seems to be being reflected in practice. The subject committees have taken a holistic view, including financial scrutiny in their work at Stage 1. The Finance Committee makes decisions on its involvement in Bills on a case by case basis.

## Recommendation 1

**Given that the key feature of the committee system – the dual legislative and policy scrutiny role – has yet to be tested in earnest, it is recommended that the Business Committee keeps it under review but does not make fundamental change at this point.**

## European issues

24. As part of the fourth Assembly committee structure a decision was taken to mainstream European affairs across the work of all committees rather than having a dedicated European/ External Affairs Committee. This represented significant change with the past.
25. In practical terms this means the five thematic policy/legislation committees lead on European issues falling within their remit, with an appreciation that the highest level of activity would be likely to fall within the scope of two Committees:
- Enterprise and Business Committee
  - Environment and Sustainability Committee
- In addition to this, the Constitutional and Legislative Affairs Committee is responsible for subsidiarity monitoring checks.
26. Six inquiries on key European policy and funding issues to Wales have already been undertaken:
- Future EU Structural funds (Enterprise & Business Committee)
  - Reform of Common Agricultural Policy (Environment & Sustainability Committee)
  - Reform of Common Fisheries Policy (Environment & Sustainability Committee)
  - Public Procurement Directives (Enterprise & Business)
  - Horizon 2020: EU Research and Innovation Framework Programme (Enterprise & Business Committee)
  - Effectiveness of current EU Structural Funds in Wales (Finance Committee)
- A 'European dimension' has or is likely to feature in a number of others inquiries.
27. The first subsidiarity challenge by the Constitutional & Legislative Affairs Committee under the 'early warning mechanism' introduced by the Treaty of Lisbon, and consequently the first test of how the relationship with the UK Parliament would work in this process, has taken place.
28. In order to ensure a co-ordinated and joined up approach informal meetings have been introduced between the Presiding Officer and committee Chairs, sometimes involving others, such as Welsh MEPs or the UK Ambassador from the country holding the EU Presidency. At the

level of officials, the Assembly's EU Office is providing a 'co-ordinating' role, working with the committee clerks, lawyers and researchers, and liaising with committee Chairs, to ensure that the committees are aware of all key strategic issues relevant to Wales. Dedicated EU update sessions are provided to committees by the EU Office.

29. This approach to engaging with EU affairs has given the Assembly a high visibility in Brussels (in particular in comparison with other 'regional parliaments'), and has been highlighted by the European Commission, the Committee of the Regions and MEPs as an effective and distinctive way for regional parliaments to engage in the EU legislative process. Northern Ireland Assembly in particular has looked to the Assembly as a model of best practice, to learn from in reviewing its support for participation in EU affairs.
30. Despite some initial scepticism about mainstreaming EU affairs, the approach has been praised by the Welsh MEPs (as was clear at the informal meeting on 2 May and in various media articles e.g. Twitter and Western Mail), and there has been positive feedback by Welsh stakeholders.
31. There are three areas that used to form part of the routine work of the European and External Affairs Committee that have not become practice in this Assembly. All relate to updates and general awareness rather than to specific scrutiny of Welsh Government activity and could, in any case, be undertaken within the current structure if Members wished:
  - Updates on the broader activities of the Welsh Government in engaging in EU and international affairs;
  - Formal updates on the broader activities of the Welsh representatives in European and international bodies: the Welsh MEPs, the Committee of the Regions representatives, the Council of Europe, the British Irish Parliamentary Assembly, the Commonwealth Parliamentary Assembly, and the European Economic and Social Committee);
  - Information from the European Commission's Office in Wales on its work on the ground.

## Recommendation 2

**Given the recognised success in mainstreaming European issues, it is recommended that the Business Committee does not make fundamental change at this point.**

### Committee Chairs

32. At the start of the Assembly, the Business Committee's recognised the significant role that committee chairs play in the delivery of the Assembly's strategic scrutiny and legislative functions by setting out the specific responsibilities that they carry. In so doing, the Business Committee took a step not yet attempted by the other parliaments of the UK.
33. At least one committee chair has indicated that they would welcome feedback from their committee members on their performance in delivering the objectives set by the Business Committee.
34. It is suggested that the Business Committee invites feedback from chairs and Members on the value of the role description so that it can consider if any changes are desirable. The Committee may also wish to consider encouraging other Chairs to use the role description as the basis for private discussion and feedback with committee Members.

### Committee workloads and the timetable

35. During the first year of the Fourth Assembly (to the beginning of June 2012) committees have met for slightly more time than committees in the equivalent period of the Third Assembly. This is whilst having fewer committees, and with very little legislative work having been undertaken to date. During the Third Assembly, Legislation Committees would meet only when they had a specific piece of legislation to consider. Legislation Committee meetings accounted for about a quarter of committee business in the first year.
36. The emerging pattern suggests that Fourth Assembly committees are seeking to be active, and to make the most of time available to them. Approximately 75% of time available to committees is already being used for formal business, with informal meetings and visits taking place in addition to that.

37. Use of formal sub-committees has increased in comparison with the Third Assembly. They have taken the form of Task and Finish Groups allocated specific work. However, as yet there are no examples of these being used to enable small groups of Members from one committee to be undertaking different pieces of work simultaneously.
38. The basic committee timetable in the Fourth Assembly has been designed to minimise clashes of membership whilst providing opportunities for:
- 1 ½ days meeting days per fortnight of the five subject committees
  - weekly meetings of Business Committee, Constitutional and Legislative Affairs and Public Accounts Committee (increased from fortnightly in April);
  - fortnightly meetings of: the Finance and Petitions committees, with additional slots available for budget consideration;
  - meetings of the Standards of Conduct Committee as necessary; and
  - Assembly Commission meetings

#### **Additional demands**

39. In addition to the meetings already programmed we are aware of a number of additional pressures that need to be accommodated:
- Public Accounts Committee - the Committee is still experiencing difficulties with the logistic constraints of its current Tuesday morning timeslot. Although additional time was provided by increasing meeting slots to weekly, committee Members consider that this continues to limit their capacity to carry forward the Committee's responsibilities. In particular, greater flexibility is necessary for the appearance of key witnesses for inquiries, such as the Welsh Government's principal accounting officer (who normally attends cabinet meetings from 9:00-10:30 on Tuesday mornings). In addition to routine work, during the autumn term the committee will be considering the Wales Audit Office's draft estimates for the 2013-2014 financial year, and potentially will have responsibility for considering the Welsh Government's audit bill.
  - Committee for the Scrutiny of the First Minister - established April 2012, with an expectation of meeting once per term at most. Able to meet on a Thursday alongside CYP/CELG/E&S without generating membership clashes.

- Constitutional and Legislative Affairs Committee – some Members of the Committee have expressed a preference not to meet on Monday. Monday meetings place restrictions on the potential membership of the Committee and also impact on their constituency and wider responsibilities. Substitution of membership is therefore commonplace and semi-formalised in some cases. The need to accommodate Member’s travelling arrangements also means that meetings start later than is desirable which delays the amount of time available to complete their work.

40. The level of take-up of allocated timetable slots does not suggest that committees are over provided with time. Options available to provide for the needs set out above would include continuing to conduct meetings on Monday afternoons, after plenary on Tuesday/Wednesday or during plenary in non-Government time.

### Recommendation 3

**Fundamentally the timetable works well, providing committees with the time they need. The Business Committee has been asked by the Public Accounts Committee to provide it with a regular, and longer, slot within the timetable. The Business Committee also needs to build in time for the Committee for Scrutiny of the First Minister and, though no formal request for a change of slot has been received, consider the challenges faced by the Constitutional and Legislative Affairs Committee. Options are provided below.**

### Current timetable

Week 1

Monday pm	Constitutional and Legislative Affairs
Tuesday am	Business Committee Public Accounts Petitions
Wednesday am	Children and Young People Communities, Equality and Local Government Environment and Sustainability
Thursday – full day for committee business	Enterprise and Business Health and Social Care <i>Assembly Commission</i>

Week 2

Monday pm	Constitutional and Legislative Affairs
Tuesday am	Business Committee Standards of Conduct (when needed)
Wednesday am	Finance Enterprise and Business Health and Social Care
Thursday – full day for committee business	Children and Young People Communities, Equality and Local Government Environment and Sustainability

**Public Accounts Committee**

Current	every Tuesday morning
Option 1	Week 1 Thursday morning* Week 2 Tuesday morning
Option 2	Week 1 Monday afternoon Week 2 Tuesday morning
Option 3	every Monday afternoon

\* creates clashes for D Miller and L Whittle with HSC Committee. These would need to be resolved through membership changes. Alternatively other committees could be re-timetabled, but this would require membership changes for at least five Members on a number of other committees.

There is not an option simply to add the PAC to timetable slots that already house three large committees as the Labour Group has insufficient Members available for the number of seats that would need to be filled.

**Committee for Scrutiny of the First Minister**

Current	not scheduled (new committee)
Option	on a Thursday alongside CYP/CELG/E&S



## Committee Portfolios and Responsibilities in the 4th Assembly

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### Introduction

1. On 22 June, the Assembly approved motions to establish its committee system.
2. The Standing Orders require all areas of government responsibility to be open to scrutiny by the Assembly's committee system. Hence, no areas of ministerial responsibility should be out of bounds for examination by at least one Assembly committee. At the same time, the Business Committee intends the system to allow for cross-cutting examination of all areas of government responsibility. So, whilst this report indicates the lead committee for each broad area of ministerial responsibility, all committees are free to examine any issue from their particular perspective.
3. The core roles of the Assembly's committee system can be summarised as follows:
  - scrutinising Bills and other Assembly, UK and EU legislative proposals, reporting to the Assembly with recommendations for their improvement, and considering and making amendments to Bills;
  - examining the finance and performance of relevant parts of the Welsh Government, associated public bodies and others of relevance to Wales; and

- examining and reporting on the implementation of Welsh Government policy, legislation and other commitments, including identifying and scrutinising areas of existing or emerging Welsh Government policy, or areas where existing policy is deficient, and making proposals for improvements.

4. This report sets out in more detail the remits of the various committees.

### **Children and Young People Committee**

5. The Children and Young People Committee's role is to consider expenditure, administration, policy and legislative matters within its remit. The main areas of ministerial responsibility falling within the committee's remit are listed below.

The rights and entitlements of children and young people  
 Child Poverty  
 Social care for children  
 Child health  
 Adoption and fostering services  
 Play  
 Parenting and Families  
 Childcare  
 Children's Commissioner for Wales;  
 The Children and Family Court Advisory Support Service (CAFCASS)  
 Safeguarding children  
 Schools, including teaching standards, curriculum, governance and effectiveness  
 Welsh medium and bilingual education  
 Additional learning needs  
 Inclusion in schools  
 Pupil attendance and behaviour  
 Early years education  
 14-19 learning  
 Youth work  
 Relevant EU policy matters

## **Environment and Sustainability Committee**

6. The Environment and Sustainability Committee's role is to consider expenditure, administration, policy and legislative matters within its remit. The main areas of ministerial responsibility falling within the committee's remit are listed below.

Agriculture, Fisheries and Food Water resources, control and quality (including the marine environment) Wildlife, biodiversity and nature conservation National Parks Countryside and open spaces Forestry Waste management Energy policy and fuel poverty (including steel and coal) Animal health and welfare Planning and Building Regulations Climate change Sustainable Development Common Agricultural Policy Relevant EU policy matters
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## **Health and Social Care Committee**

7. The Health and Social Care Committee's role is to consider expenditure, administration, policy and legislative matters within its remit. The main areas of ministerial responsibility falling within the committee's remit are listed below.

National Health Service Social care Mental health services Public health and health protection Health improvement Carers Social services activities of local authorities Regulation of residential, domiciliary, adult placements Aids, adaptations and support at home Independent living Care in the community
--

The Older People's Commissioner for Wales  
Food safety  
Research and development in health and social care  
Prison Service health service  
Relevant EU policy matters

### **Communities, Equality and Local Government Committee**

8. The Communities, Equality and Local Government Committee's role is to consider expenditure, administration, policy and legislative matters within its remit. The main areas of ministerial responsibility falling within the committee's remit are listed below.

Housing and housing-related activities  
Homelessness and housing advice  
Affordable housing (including quality)  
Local Government and Communities  
Public Service Ombudsman Wales  
Public service improvement  
Equal opportunities  
Domestic violence  
Asylum, immigration and migrant workers  
Community cohesion  
Community Safety  
Gypsies and travellers  
Culture  
Welsh language  
Welsh heritage and the historic environment and buildings  
Museums, public libraries and archives  
Arts  
Tourism  
Sport, physical activity and active recreation  
Fire and Rescue Services  
Civil Contingencies  
Broadcasting  
Relevant EU policy matters

## **Enterprise and Business Committee**

9. The Enterprise and Business Committee's role is to consider expenditure, administration, policy and legislative matters within its remit. The main areas of ministerial responsibility falling within the committee's remit are listed below.

Business and enterprise, including inward investment / exports
Research, development and innovation
Higher education
Technology and Science
Strategic, physical and legacy regeneration
Employment
Workforce development
Skills
Vocational qualifications
NEETS
Adult community learning and work based learning
Employability and careers advice
Welfare reform
ICT Infrastructure
Transport
Social Enterprise
EU structural funds programmes
Relevant EU policy matters

## **Finance Committee**

10. The Finance Committee's role is to carry out the functions of the responsible committee set out in Standing Order 19. This includes consideration of the use of resources by the Assembly Commission or Welsh Ministers and in particular reporting during the annual budget round. The Committee may also consider any other matter relating to expenditure out of the Welsh Consolidated Fund.

11. In respect of the examination of the financial implications of Bills the Business Committee considers that the Committee should be selective, focusing its scrutiny on Bills of greatest financial significance, and take a strategic overview of financial matters relating to legislation.

## **Public Accounts Committee**

12. The Public Accounts Committee's role is to carry out the functions of the responsible committee set out in Standing Order 18. The Committee will consider reports prepared by the Auditor General for Wales on the accounts of the Welsh Government and other public bodies, and on the economy, efficiency and effectiveness with which resources were employed in the discharge of public functions. Its remit also includes specific statutory powers under the Government of Wales Act 2006 relating to the appointment of the Auditor General, his or her budget and the auditors of that office.

## **Constitutional and Legislative Affairs Committee**

13. The Constitutional and Legislative Affairs Committee's role is to carry out the specific functions of the responsible committee in Standing Order 21 and to consider any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers. This includes the consideration of statutory instruments, draft statutory instruments, any other subordinate legislation laid before the Assembly, Assembly and UK Bills as well as a wider remit to consider the subsidiarity implications of draft European Union legislation and other constitutional matters. In particular they also have an overview of the First Minister's functions as they relate to constitutional or overarching governmental matters.

## **Petitions Committee**

14. The Petitions Committee's role is to consider all admissible petitions which are submitted by the public. Its specific functions are set out in Standing Order 23

## **Standards Committee**

15. The Standards committee's role is to carry out the functions set out in Standing Order 22. These include the investigation of complaints referred to it by the Standards Commissioner, consideration of any matters of principle relating to the conduct of Members, establishing the procedures for the investigation of complaints and the arrangements for the Register of Members' interests and other relevant public records determined by Standing Orders.

## **European and External Affairs**

16. The Business Committee agreed to mainstream European policy matters across committees rather than have a single, dedicated committee. The Constitutional and Legislative Affairs Committee will be responsible for subsidiarity monitoring checks as well as considering any other constitutional or governmental matter within or relating to the competence of the Assembly or Welsh Ministers.

## **Review**

17. The Business Committee has agreed that it will review the operation of the committee system in 2012. As part of that review, it will consider the impact of the decision to mainstream European matters.

## **The role of committee chairs**

18. Committee chairs play a vital role in the delivery of the strategic objectives of the Assembly. Given this, and the fact that each Chair is elected by the Assembly as whole, we feel it is appropriate to set out in more detail the role that committee chairs must fulfil on behalf of the Assembly.

19. The key responsibilities of committee chairs are to:

- set the strategic direction of the committee and ensure the transparent prioritisation of its activity so as to deliver a balanced, comprehensive and effective programme of legislative, policy and financial scrutiny;
- maximise the relevance and influence of the committee whilst maintaining its clear independence from the Welsh Government;
- act impartially at all times, decisively, fairly and in a manner that maintains the confidence of the committee;
- command the confidence of Members, witnesses and the public at large through knowledge of the subject matter of the committee's remit; demonstration of effective legislative, policy and financial scrutiny techniques; maintenance of order; and the application of all relevant legal and procedural requirements on the committee;

- secure the commitment and engagement of all committee members and build cross-party consensus wherever possible;
- build the culture and skills mix within the committee required to maximise its effectiveness as a scrutiny body;
- ensure that the committee receives the expert advice, information and other support it requires to fulfil its objectives effectively;
- drive the delivery of all aspects of the committee's work with pace and quality;
- represent the committee publicly, in the media and in formal Assembly business; and
- ensure critical analysis and evaluation of the committee's work and drive innovation in its operation so as to increase effectiveness, public engagement and impact.



## Portffolios a Chyfrifoldebau'r Pwyllgorau yn y 4ydd Cynulliad

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### Rhagymadrodd

1. Ar 22 Mehefin, cymeradwyodd y Cynulliad gynigion i sefydlu ei system o bwyllgorau.
2. Mae'r Rheolau Sefydlog yn ei gwneud yn ofynnol i holl feysydd cyfrifoldeb y llywodraeth fod yn agored ar gyfer gwaith craffu o dan system bwyllgorau'r Cynulliad. Gan hynny, ni ddylai maes cyfrifoldeb yr un Gweinidog fod y tu allan i gyrraedd o leiaf un o bwyllgorau'r Cynulliad i gael ei archwilio. Ar yr un pryd, mae'r Pwyllgor Busnes yn bwriadu caniatáu ar gyfer archwiliadau trawsbynciol yn holl feysydd cyfrifoldeb y llywodraeth. Felly, er bod yr adroddiad hwn yn nodi'r prif bwyllgor ym mhob un o feysydd bras cyfrifoldebau'r Gweinidogion, mae pob pwyllgor yn rhydd i ystyried unrhyw fater o'u safbwynt penodol nhw.
3. Gellir crynhoi rolau craidd system bwyllgorau'r Cynulliad fel a ganlyn:
  - craffu ar Filiau ac ar gynigion deddfwriaethol eraill y Cynulliad, y Deyrnas Unedig a'r Undeb Ewropeaidd, gan gyflwyno adroddiadau i'r Cynulliad gydag argymhellion ynghylch gwella'r rhain, ac ystyried a gwneud gwelliannau i Filiau;
  - edrych ar gyllid a pherfformiad rhannau perthnasol o Lywodraeth Cymru, y cyrff cyhoeddus perthynol a chyrrff eraill sy'n berthnasol i Gymru; ac

- ystyried a chyflwyno adroddiadau ar weithredu polisiâu, deddfau ac ymrwymadau eraill Llywodraeth Cymru, gan gynnwys nodi a chraffu ar feysydd polisi presennol neu newydd Llywodraeth Cymru, neu feysydd lle mae'r polisi presennol yn ddiffygiol, a gwneud cynigion ar gyfer gwelliannau.

4. Mae'r adroddiad hwn yn nodi cylchoedd gorchwyl y gwahanol bwyllgorau'n fanylach.

### **Y Pwyllgor Plant a Phobl Ifanc**

5. Rôl y Pwyllgor Plant a Phobl Ifanc yw ystyried y materion gwariant, gweinyddiaeth, polisi a deddfwriaeth yn eu cylch gorchwyl. Mae prif feysydd cyfrifoldeb y gweinidogion sy'n dod o dan gylch gorchwyl y pwyllgor wedi'u rhestru isod.

Hawliau a hawlogaethau plant a phobl ifanc  
 Tlodi plant  
 Gofal cymdeithasol i blant  
 Iechyd plant  
 Gwasanaethau mabwysiadu a maethu  
 Chwarae  
 Rhieni a theuluoedd  
 Gofal plant  
 Comisiynydd Plant Cymru  
 Gwasanaeth Cyngori a Chynorthwyo Llys i Blant a Theuluoedd (CAFCASS)  
 Amddiffyn plant  
 Ysgolion, gan gynnwys safonau addysgu, cwricwlwm, llywodraethiant ac effeithiolrwydd  
 Addysg cyfrwng Cymraeg a dwyieithog  
 Anghenion dysgu ychwanegol  
 Cynhwysiant mewn ysgolion  
 Presenoldeb ac ymddygiad plant  
 Addysg y blynyddoedd cynnar  
 Dysgu 14-19  
 Gwaith ieuenctid  
 Materion polisi perthnasol yr UE

## **Pwyllgor yr Amgylchedd a Chynaliadwyedd**

6. Rôl Pwyllgor yr Amgylchedd a Chynaliadwyedd yw ystyried y materion gwariant, gweinyddiaeth, polisi a deddfwriaeth yn eu cylch gorchwyl. Mae prif feysydd cyfrifoldeb y gweinidogion sy'n dod o dan gylch gorchwyl y pwyllgor wedi'u rhestru isod.

Amaethyddiaeth, pysgodfeydd a bwyd Adnoddau, rheolaeth ac ansawdd dŵr (gan gynnwys yr amgylchedd morol) Bywyd gwyllt, bioamrywiaeth a chadwraeth natur Y Parciau Cenedlaethol Cefn gwlad a mannau agored Coedwigaeth Rheoli gwastraff Y polisi egni a thlodi tanwydd (gan gynnwys dur a glo) Iechyd a lles anifeiliaid Cynllunio a Rheoliadau Adeiladu Newid yn yr hinsawdd Datblygu cynaliadwy Y Polisi Amaethyddol Cyffredin Materion polisi perthnasol yr UE
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## **Y Pwyllgor Iechyd a Gofal Cymdeithasol**

7. Rôl y Pwyllgor Iechyd a Gofal Cymdeithasol yw ystyried y materion gwariant, gweinyddiaeth, polisi a deddfwriaeth yn eu cylch gorchwyl. Mae prif feysydd cyfrifoldeb y gweinidogion sy'n dod o dan gylch gorchwyl y pwyllgor wedi'u rhestru isod.

Y Gwasanaeth Iechyd Gwladol Gofal cymdeithasol Gwasanaethau iechyd meddwl Iechyd y cyhoedd a diogelu iechyd Gwella iechyd Gofalwyr Gweithgareddau'r awdurdodau lleol ym maes gwasanaethau cymdeithasol Rheoleiddio lleoliadau preswyl, lleoliadau mewn cartrefi a lleoliadau i oedolion Cynorthwyon, addasiadau a chymorth yn y cartref
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Byw yn annibynnol  
Gofal yn y gymuned  
Comisiynydd Pobl Hŷn Cymru  
Diogelwch bwyd  
Ymchwilio a datblygu mewn iechyd a gofal cymdeithasol  
Gwasanaeth iechyd y gwasanaeth carchardai  
Materion polisi perthnasol yr UE

## Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol

8. Rôl y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol yw ystyried y materion gwariant, gweinyddiaeth, polisi a deddfwriaeth yn eu cylch gorchwyl. Mae prif feysydd cyfrifoldeb y gweinidogion sy'n dod o dan gylch gorchwyl y pwyllgor wedi'u rhestru isod.

Tai a gweithgareddau sy'n gysylltiedig â thai  
Digartrefedd a chyingor ar dai  
Tai fforddiadwy (gan gynnwys eu hansawdd)  
Llywodraeth Leol a Chymunedau  
Ombwdsmon Gwasanaethau Cyhoeddus Cymru  
Gwella'r gwasanaethau cyhoeddus  
Cyfle cyfartal  
Trais domestig  
Lloches, mewnfudo a gweithwyr mudol  
Cydlynedd cymunedau  
Diogelwch cymunedau  
Sipsiwn a theithwyr  
Diwylliant  
Y Gymraeg  
Treftadaeth Cymru a'r amgylchedd hanesyddol ac adeiladau  
Amgueddfeydd, llyfrgelloedd cyhoeddus ac archifau  
Y celfyddydau  
Twristiaeth  
Chwaraeon, gweithgarwch corfforol a hamdden weithredol  
Gwasanaethau Tân ac Achub  
Argyfyngau Sifil  
Darlledu  
Materion polisi perthnasol yr UE

## Y Pwyllgor Menter a Busnes

9. Rôl y Pwyllgor Menter a Busnes yw ystyried y materion gwariant, gweinyddiaeth, polisi a deddfwriaeth yn eu cylch gorchwyl. Mae prif feysydd cyfrifoldeb y gweinidogion sy'n dod o dan gylch gorchwyl y pwyllgor wedi'u rhestru isod.

Busnes a menter, gan gynnwys buddsoddi o'r tu allan / allforio
Ymchwilio, datblygu ac arloesi
Addysg uwch
Technoleg a gwyddoniaeth
Adfywio strategol, adfywio ffisegol ac adfywio'r gwaddol
Cyflogaeth
Datblygu'r gweithlu
Sgiliau
Cymwysterau galwedigaethol
NEETS
Dysgu cymunedol i oedolion a dysgu yn y gwaith
Cyflogadwyedd a chynghor gyrfaedd
Diwygio lles
Seilwaith TGCh
Cludiant
Menter gymdeithasol
Rhaglenni cronfeydd strwythurol yr UE
Materion polisi perthnasol yr UE

## Y Pwyllgor Cyllid

10. Rôl y Pwyllgor Cyllid yw cyflawni swyddogaethau'r pwyllgor cyfrifol a nodir yn Rheol Sefydlog 19. Mae hyn yn cynnwys ystyried sut mae Comisiwn y Cynulliad neu Weinidogion Cymru'n defnyddio adnoddau ac yn benodol cyflwyno adroddiadau yn ystod cylch y gyllideb flynyddol. Mae'r Pwyllgor hefyd yn cael ystyried unrhyw fater arall sy'n ymwneud â gwariant o Gronfa Gyfunol Cymru.

11. O ran archwilio goblygiadau ariannol Biliau, mae'r Pwyllgor Busnes o'r farn y dylai'r Pwyllgor ddewis a dethol, gan hoelio sylw ar graffu ar y Biliau sydd â'r arwyddocâd ariannol mwyaf, a chymryd trosolwg strategol ar faterion ariannol sy'n ymwneud â deddfwriaeth.

## **Y Pwyllgor Cyfrifon Cyhoeddus**

12. Rôl y Pwyllgor Cyfrifon Cyhoeddus yw cyflawni swyddogaethau'r pwyllgor cyfrifol a nodir yn Rheol Sefydlog 18. Bydd y Pwyllgor yn ystyried adroddiadau a baratoir gan Archwilydd Cyffredinol Cymru ynghylch cyfrifon Llywodraeth Cymru a chyrff cyhoeddus eraill, ac ynghylch darbodaeth, effeithlonrwydd ac effeithiolrwydd wrth ddefnyddio adnoddau i gyflawni swyddogaethau cyhoeddus. Mae cylch gorchwyl y Pwyllgor hefyd yn cynnwys pwerau statudol penodol o dan Ddeddf Llywodraeth Cymru 2006 ynglŷn â phenodi'r Archwilydd Cyffredinol, cyllideb yr Archwilydd Cyffredinol ac archwilwyr y swydd honno.

## **Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol**

13. Rôl y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol yw cyflawni swyddogaethau penodol y pwyllgor cyfrifol yn Rheol Sefydlog 21 ac ystyried unrhyw fater cyfansoddiadol neu lywodraethol o fewn cymhwysedd y Cynulliad neu Weinidogion Cymru neu ynglŷn â'r cymhwysedd hwnnw. Mae hyn yn cynnwys ystyried offerynnau statudol, offerynnau statudol drafft, unrhyw is-ddeddfwriaeth arall a gyflwynir gerbron y Cynulliad, Biliau'r Cynulliad a'r Deyrnas Unedig yn ogystal â chylch gorchwyl ehangach i ystyried goblygiadau deddfwriaeth ddrafft yr Undeb Ewropeaidd ar gyfer sybsidiaredd a materion cyfansoddiadol eraill. Yn benodol, mae gan y Pwyllgor drosolwg hefyd ar swyddogaethau Prif Weinidog Cymru fel y mae'r rheiny'n ymwneud â materion cyfansoddiadol neu faterion cyffredinol y llywodraeth.

## **Y Pwyllgor Deisebau**

14. Rôl y Pwyllgor Deisebau yw pwysu a mesur yr holl ddeisebau derbyniadwy a gyflwynir gan y cyhoedd. Mae swyddogaethau penodol y Pwyllgor wedi'u nodi yn Rheol Sefydlog 23.

## **Y Pwyllgor Safonau**

15. Rôl y Pwyllgor Safonau yw cyflawni'r swyddogaethau a nodir yn Rheol Sefydlog 22. Mae'r rhain yn cynnwys ymchwilio i gwynion a gyfeirir ato gan y Comisiynydd Safonau, ystyried unrhyw faterion o egwyddor ynglŷn ag ymddygiad Aelodau, sefydlu'r gweithdrefnau at ymchwilio i gwynion a'r trefniadau ar gyfer y Gofrestr o Fuddiannau'r

Aelodau a chofnodion cyhoeddus eraill a bennir gan y Rheolau Sefydlog.

### **Materion Ewropeaidd ac Allanol**

16. Cytunodd y Pwyllgor Busnes i brif-ffrydio materion polisi Ewropeaidd ar draws y pwyllgorau yn hytrach na chael un pwyllgor dynodedig. Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol fydd yn gyfrifol am wiriadau i fonitro sybsidiaredd yn ogystal ag ystyried unrhyw fater deddfwriaethol neu lywodraethol arall o fewn cymhwysedd y Cynulliad neu Weinidogion Cymru neu ynglŷn â'r cymhwysedd hwnnw.

### **Adolygu**

17. Mae'r Pwyllgor Busnes wedi cytuno i adolygu sut mae'r system bwyllgorau'n gweithio yn 2012. Fel rhan o'r adolygiad, bydd yn ystyried effaith y penderfyniad i brif-ffrydio materion Ewropeaidd.

### **Rôl cadeiryddion y pwyllgorau**

18. Mae cadeiryddion y pwyllgorau'n chwarae rhan hanfodol i wireddu amcanion strategol y Cynulliad. O gofio hynny, a'r ffaith bod pob Cadeirydd yn cael ei ethol gan y Cynulliad cyfan, rydyn ni o'r farn ei bod yn briodol nodi'n fanylach y rôl y mae'n rhaid i gadeiryddion y pwyllgorau ei chyflawni ar ran y Cynulliad.

19. Cyfrifoldebau allweddol cadeiryddion y pwyllgorau yw:

- pennu cyfeiriad strategol y pwyllgor a sicrhau bod yna flaenoriaethau tryloyw i'w weithgareddau er mwyn gwireddu rhaglen gytbwys, gynhwysfawr ac effeithiol o waith craffu ar ddeddfau, polisiau a chyllid;
- codi perthnasedd a dylanwad y pwyllgor i'r eithaf gan gadw ei annibyniaeth bendant oddi wrth Lywodraeth Cymru;
- gweithredu'n ddiduedd bob amser, yn bendant, yn deg ac mewn modd sy'n ennyn hyder y pwyllgor;
- ennyn hyder Aelodau, tystion a'r cyhoedd yn gyffredinol drwy feistroli'r pwnc sydd o dan sylw yng nghylch gwaith y pwyllgor; dangos technegau effeithiol mewn gwaith craffu ar ddeddfau,

polisiau a chyllid; cadw trefn; a chymhwyso'r holl ofynion cyfreithiol a gweithdrefnol sy'n berthnasol i'r pwyllgor;

- sicrhau ymroddiad ac ymrwymiad pob aelod o'r pwyllgor ac adeiladau consensws ar draws y pleidiau pryd bynnag y bo modd;
- adeiladu'r cymysgedd o ddiwylliant a medrau yn y pwyllgor sy'n angenrheidiol i'w wneud mor effeithiol â phosibl fel corff sy'n gwneud gwaith craffu;
- sicrhau bod y pwyllgor yn cael y cyngor arbenigol, yr wybodaeth a'r cymorth arall y mae arno ei angen i gyflawni ei amcanion yn effeithiol;
- rhoi hwb i gyflawni pob agwedd ar waith y pwyllgor gyda chyflymder ac ansawdd;
- cynrychioli'r pwyllgor yn gyhoeddus, yn y cyfryngau ac ym musnes ffurfiol y Cynulliad; a
- sicrhau bod gwaith y pwyllgor yn cael ei ddadansoddi a'i gloriannu'n feirniadol gan sbarduno arloesed yn ei waith er mwyn cynyddu ei effeithiolrwydd, ei ymgysylltiad cyhoeddus a'i effaith.

# Agenda Item 7

-----Original Message-----

> From: Karolina Boronska [mailto:karolina.boronska@uni.wroc.pl]

> Sent: 18 June 2012 10:49

> To: Europe comm; Melding, David (AM, Deputy Presiding Officer)

> Cc: Mewies, Sandy (Assembly Member)

> Subject: International research project on the control of the EU

> legislative process: Early Warning System

> Importance: High

>

> Dear Sirs,

>

> I carry out an international research project at the European

> University Institute in Florence on multilevel governance and the role

> of national and regional parliaments in the subsidiarity control under

> the Early Warning System introduced by the Lisbon Treaty.

>

> For the purpose of my research I conduct surveys among regional

> parliaments with legislative powers of 8 Member States (Germany,

> Belgium, Austria, Italy, Spain, Portugal, Finland (Åland Islands) and

> the UK (Scotland, Northern Ireland and Wales).

>

> I would like to obtain information from the Welsh National Assembly

> regarding its hitherto experience in the EWS. For this reason I have

> attached a questionnaire which I would like to be completed by your

> Parliament. I would appreciate if you could direct me to the right

> person, dealing with the EU affairs and subsidiarity who could respond

> to the questionnaire.

>

>

> I will appreciate any confirmation when you receive my email.

>

> Thank you in advance for your cooperation.

>

> Faithfully Yours,

>

> --

> Karolina Boronska-Hryniewiecka, Ph.D.

> University of Wroclaw

> Institute of Political Science

> EU Jean Monnet Fellow 2012/2013

> Coordinator of the panel "Regions and local authorities in the EU

> decision-making processes" at the Summer School on "Parliamentary

> Democracy in Europe", LUISS School of Government, Rome 16-20, 2012.

> e-mail: [karolina.boronska@uni.wroc.pl](mailto:karolina.boronska@uni.wroc.pl)

> mobile: PL (48) 502674801, IT (39) 3315018839

**Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol  
Constitutional and Legislative Affairs Committee**

Karolina Boronska-Hryniewiecka PhD  
University of Wroclaw  
Institute of Political Science  
Wroclaw  
Poland

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



**By e-mail to:**

karolina.boronska@uni.wroc.pl

1 August 2012

Dear Karolina

**Questionnaire on the Role of Regional Parliaments in the Early Warning System**

I refer to your e-mail enclosing a questionnaire about the National Assembly for Wales's experience so far in relation to the "Early Warning System" (EWS) mechanism introduced by the Treaty of Lisbon.

Responsibility for European Union matters within the Assembly is now a mainstream responsibility of all Assembly Committees, in relation to their particular remits. However, the Constitutional and Legislative Affairs Committee, which I chair has particular responsibility for considering questions of subsidiarity within the EWS.

I attach a factual narrative response to the questionnaire, which I hope you find helpful.

You also asked if I could suggest contacts in the UK who deal with subsidiarity analyses. I assume by this you mean in the UK Parliament and devolved legislatures. The following contacts may be able to help you or be able to direct you to others who can:

- Scottish Parliament - Jenny Goldsmith  
(email [Jenny.Goldsmith@scottish.parliament.uk](mailto:Jenny.Goldsmith@scottish.parliament.uk) )
- UK Parliament - Dominique Garcia  
(email [dominique.gracia@parliament.uk](mailto:dominique.gracia@parliament.uk) )

Bae Caerdydd  
Caerdydd  
CF99 1NA

Cardiff Bay  
Cardiff  
CF99 1NA

Ffôn / Tel: 029 8920 8242  
E-bost / Email: [David.Melding@wales.gov.uk](mailto:David.Melding@wales.gov.uk)

- Northern Ireland Assembly - Hugh Farren  
(email [hugh.farren@niassembly.gov.uk](mailto:hugh.farren@niassembly.gov.uk) )

Our own European Officer Gregg Jones may also be able to give you more detailed information. Gregg can be contacted by e-mail at [gregg.jones@wales.gov.uk](mailto:gregg.jones@wales.gov.uk) or by telephone (in Brussels) on 0032 2226 6692.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail on the final letter.

**David Melding AM**  
**Chair**

## Questionnaire: The role of regional parliaments in the Early Warning System

Included below is a narrative response by the Assembly's Constitutional and Legislative Affairs Committee to the International Research Project on subsidiarity control in the EU's questionnaire on "the role of regional parliaments in the Early Warning System". This information is correct as of July 2012.

### Institutional changes

#### *Procedures for monitoring the subsidiarity principle in the Assembly*

During the first three Assemblies (1999-2011) there was a dedicated European and External Affairs Committee which was the focal point for EU policy matters, including subsidiarity monitoring in line with the new "early warning mechanism" ("EWS") introduced by the Treaty of Lisbon.<sup>1</sup>

Under the new committee structure for the fourth Assembly, agreed in June 2011, there is no longer a dedicated European committee, with a decision taken to mainstream EU and other international affairs into the policy/legislative committees. Each committee is required to take responsibility for European issues falling within its remit. The Assembly's Standing Orders also enable an Assembly Committee to consider draft EU legislation in order to consider whether it complies with the principle of subsidiarity - including participation in the EWS - providing that the draft legislation in question relates either to the legislative powers of the Assembly or the executive functions of Welsh Ministers. Following the May 2011 Assembly elections, this responsibility has been given to the [Constitutional and Legislative Affairs Committee](#).

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in the Assembly's Standing Orders, Assembly officials (from the Assembly's Brussels Office<sup>2</sup> and Legal and Research Services) monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. Fulfilling this role has been achieved within the Assembly's existing institutional structures and has not involved the hiring of new staff.

The way in which Assembly officials monitor draft EU legislative proposals is outlined below for information:

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<sup>1</sup> Click [here](#) for more information on the work of the European and External Affairs Committee during the Third Assembly (2007-2011).

<sup>2</sup> In order to support the Assembly's work in relation to the EU and to provide a flow of regular intelligence from Brussels, the Assembly has dedicated EU Office in the European capital. The EU Office has established a network of contacts in Brussels on key issues of relevance to the work of the Assembly. These include contacts with the EU institutions, EU networks, Brussels-based representatives of the three German Landtags (Bayern, Baden Württemberg and Hessen), representatives from other European regional parliaments, the UK Parliament (House of Commons and House of Lords) and representatives from the European Parliament.

- The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are also sent to the Assembly via the Research Service.
- The Research Service filters the EMs received to check whether the proposal they relate to are “legislative” or “non-legislative”<sup>3</sup> and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both “legislative” and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a “reasoned opinion” on the proposal or not.
- Those proposals which are “legislative” and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September-December], Spring [January-April] and Summer [May – August]). A copy of the first such report, covering the period January to April 2012 is attached as an annexe to this response for information.

### *Cooperation between the UK Parliament and the Assembly in relation to EWS*

No formal mechanism for cooperation between the UK Parliament and the Welsh Assembly in relation to the EWS currently exists, rather the devolved legislatures (Welsh Assembly, Northern Ireland Assembly and the Scottish Parliament) are given discretion to establish its own processes and procedures in order to express views on legislative proposals and to notify both Houses of the UK Parliament about those concerns.<sup>4</sup> As the UK’s parliamentary body, the UK Parliament is under no formal obligation to accept views expressed by the devolved legislatures in relation to draft EU legislative proposals.

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<sup>3</sup> Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

<sup>4</sup> For more information, see paragraphs 46 and 47 of the House of Commons’ European Scrutiny Report, [\*Subsidiarity, National Parliaments and the Lisbon Treaty\*](#), 8 October 2008

## The Assembly's EWS experience so far

The Assembly has raised subsidiarity concerns in relation to a draft EU legislative proposal only once since its establishment in 1999. This was happened earlier this year (2012) in relation to the *Proposal for a Directive of the European Parliament and of the Council on **Public Procurement*** (COM(2011)896). A timeline of the processes involved in raising such concerns have been included below for information. This example may be typical of the way in which the Assembly would raise similar subsidiarity concerns in the future:

- **20 December 2011:** The European Commission publishes [proposals on public procurement](#) ("the draft proposal") (COM(2011)896).
- **7 February 2012:** The Assembly's Enterprise and Business Committee (following an investigation undertaken by the Assembly's [Procurement Task and Finish Group](#)) writes to the Welsh Minister for Finance and Leader of the House to raise concerns about two aspects of the European Commission's draft proposal for a directive on public procurement and to ascertain the views of the Welsh Government on the issue.
- **20 February 2012:** A possible subsidiarity issue on the draft proposal is considered by the Assembly's Constitutional and Legislative Affairs Committee. The Committee agrees to make a written representation, on behalf of the Assembly under Standing Order 21, to the relevant committees of the House of Commons and the House of Lords. The Committee also agrees to send an informal letter to the European Commission directly to make them aware of the Assembly's views.
- **23 February 2012:** The Chair of the Constitutional and Legislative Affairs Committee sends a formal letter along with a copy of the Committee's report to the Chairs of the European scrutiny Committees in the House of Lords (Lord Roper) and the House of Commons (William Cash MP). Copies as a matter of courtesy are also sent to the Presiding Officer, the Chairs of other relevant committees in the Assembly and the UK Parliament, in addition to the Welsh Minister for Business, Enterprise, Technology and Science. The letter is also copied in to all of the relevant parliamentary staff at the UK Parliament, the Scottish Parliament and the Northern Ireland Assembly.
- **29 February 2012:** The Chair of the Commons European Scrutiny Committee, William Cash MP, sends a letter in response to the Chair of the Constitutional and Legislative Affairs Committee stating that the Committee's report on the draft proposal will recommend that the House of Commons should issue a "reasoned opinion".
- **29 February 2012:** The Assembly's Brussels Office contacts the Subsidiarity Monitoring Network of the Committee of the Regions informing them of the Assembly's position on the draft proposal.
- **1 March 2012:** A copy of the Constitutional and Legislative Affairs Committee's report on the draft proposal is published on the Committee of the Regions' Subsidiarity Monitoring Network's Inter-parliamentary Exchange website ([REGPEX](#)).

- **1 March 2012:** An informal letter and a copy of the subsidiarity report is sent from the Chair of the Constitutional and Legislative Affairs Committee to Mr Maroš Šefčovič, the Vice-President of the European Commission responsible for Inter-Institutional Relations and Administration, to make them aware of the Assembly's position.
- **6 March 2012:** The House of Commons [considers and agrees](#) to issue a "reasoned opinion" (which includes a copy of the Constitutional and Legislative Affairs Committee's written representation) in relation to the draft proposal. Copies of the "reasoned opinion" are published on the Parliaments Exchange website ([IPEX](#)).
- **8 March 2012:** the end of the "eight week" consultation phase under the "early warning mechanism" for submission of "reasoned opinions" by Parliaments in the EU in relation to the proposal on public procurement.

### Inter-institutional cooperation

#### *Cooperation with other devolved legislatures in the UK*

No formal mechanisms exist at present to coordinate the subsidiarity monitoring work of the UK's devolved legislatures. Information is however regularly shared informally between officials in Wales, Scotland and Northern Ireland in relation to proposals which may raise subsidiarity concerns. General discussions between the devolved and UK parliaments and assemblies in relation to European issues also take place in the [European Affairs Committee](#) of the [British-Irish Parliamentary Assembly](#).

#### *Collaboration with other regional parliaments and the Committee of the Regions*

The Assembly currently participates in the Subsidiarity Monitoring Network ("SMN") of the Committee of the Regions. In particular, Assembly officials use the SMN and the REGPEX website to exchange information with other regional parliaments and as a useful source of information to generally assist with the monitoring of EU legislative proposals. Assembly officials also inform the SMN of subsidiarity concerns raised within the Assembly (e.g. in relation to the draft public procurement directives – details included above).



## ANNEXE

# Constitutional and Legislative Affairs Committee

Subsidiarity monitoring report (January 2012 – April 2012)

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Date of paper:

June 2012

This briefing has been produced by the Research Service for use by the Constitutional and Legislative Affairs Committee.

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Research  
Service



## Contents

<u>1.</u>	<u>Introduction</u> .....	3
<u>2.</u>	<u>The monitoring process</u> .....	4
<u>3.</u>	<u>Overview of draft EU legislative proposals received (January 2012 - April 2012)</u> .....	5
<u>3.1.</u>	<u>EU legislative proposals identified as raising subsidiarity concerns</u> .....	5
<u>3.2.</u>	<u>EU legislative proposals that did not raise any subsidiarity concerns</u> .....	6

## ■ Introduction

Under Standing Order 21, a “responsible committee” in the Assembly (currently the Constitutional and Legislative Affairs Committee) is empowered to consider draft EU legislation that relates to matters within the legislative competence of the Assembly or to the functions of the Welsh Ministers and of the Counsel General, to identify whether it complies with the principle of subsidiarity.

The principle of subsidiarity is enshrined in Article 5 of the Treaty on European Union:

1. The limits of Union competences are governed by the principle of conferral. The use of Union competences is governed by the principles of subsidiarity and proportionality.
2. Under the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States.
3. Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality. National Parliaments ensure compliance with the principle of subsidiarity in accordance with the procedure set out in that Protocol.

4. Under the principle of proportionality, the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties.

The institutions of the Union shall apply the principle of proportionality as laid down in the Protocol on the application of the principles of subsidiarity and proportionality.<sup>5</sup>

In addition, the application of the principle is governed by the Protocol on the Application of the Principles of Subsidiarity and Proportionality. The relevant part in relation to the work of the Assembly is included in the first paragraph of Article 6:

Any national Parliament or any chamber of a national Parliament may, within eight weeks from the date of transmission of a draft legislative act, in the official languages of the Union, send to the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity. **It will be for each national Parliament or each chamber of a national Parliament to consult, where appropriate, regional parliaments with legislative powers.** *[RS emphasis]*<sup>6</sup>

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<sup>5</sup> Official Journal of the European Union, [\*Consolidated version of the Treaty on European Union\*](#), C83/204, 30 March 2010

<sup>6</sup> Official Journal of the European Union, [\*Protocol on the Application of the Principles of Subsidiarity and Proportionality\*](#), C310/207, 16 December 2004

## ■ The monitoring process

In order to ensure that the Constitutional and Legislative Affairs Committee fulfils its subsidiarity monitoring function effectively as set out in Standing Orders, Assembly officials monitor all draft EU legislative proposals that apply to Wales on a systematic basis to check whether they raise any subsidiarity concerns. The way in which Assembly officials monitor these proposals is outlined below for information:

The Assembly in the first instance is notified of all proposals published by the European Commission for consideration through a list (known as the “batch list”) which is sent by the Foreign and Commonwealth Office on behalf of the UK Government to the Research Service for information.

The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are also sent to the Assembly via the Research Service.

The Research Service filters the EMs received to check whether the proposal they relate to are “legislative” or “non-legislative”<sup>7</sup> and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).

Those EMs that relate to proposals that are both “legislative” and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.

If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a “reasoned opinion” on the proposal or not.

Those proposals which are “legislative” and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September-December], Spring [January-April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between January and April 2012, and provides further information about those proposals that were identified by Assembly officials as being both “legislative” in nature and relating to devolved matters.

Please note however that this report only monitors “legislative” proposals, **it does not contain details of any “non-legislative proposals” that may be relevant to the work of the Assembly.** These are monitored on a separate basis by the Research Service.

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<sup>7</sup> Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

■ **Overview of draft EU legislative proposals received (January 2012 – April 2012)**

A total of 147 UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 January 2012 and 31 April 2012. Of these, 29 EMs were identified by Assembly officials as being both "legislative" in nature and of interest to the Assembly. Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, these were subsequently filtered as follows:

1 proposal was identified as raising subsidiarity concerns and was the subject of a "written representation" by the Constitutional and Legislative Affairs Committee to the relevant committees in the House of Commons and House of Lords.

28 proposals did not raise any subsidiarity concerns.

Additional details about these filtered proposals are included below.

*EU legislative proposals identified as raising subsidiarity concerns*

**Date EM  
emailed**

**Title, description and timeline**

*Proposal for a Directive of the European Parliament and of the Council on **Public Procurement** (COM(2011)896).*

17 January  
2012

Concerns relating to this proposal were raised by the Assembly's Enterprise and Business Committee in February 2012. It was subsequently considered by the Constitutional and Legislative Affairs Committee on 20 February 2012 where Members agreed to make a written representation under Standing Order 21 to the House of Commons' European Scrutiny Committee and the House of Lords' European Union Committee.

The Committee's concerns were then incorporated into a "reasoned opinion" issued by the House of Commons in relation to the draft proposal on 6 March 2012.

This was the first time that an Assembly Committee had utilised the powers available under Standing Order 21 to raise subsidiarity concerns in relation to an EU legislative proposal.

*EU legislative proposals that did not raise any subsidiarity concerns*

**Date EM  
emailed**

**Title and description**

5 January  
2012

*Proposal for a Regulation of the European Parliament and the Council **establishing Horizon 2020 - The Framework Programme for Research and Innovation (2014 - 2020)** (COM(2011)809).*

This proposal is part of a range of documents (detailed below) which establishes the Commission's proposals for the EU's next framework programme for research and innovation – Horizon 2010.

5 January  
2012

*Proposal for a Council Decision establishing the **Specific Programme Implementing Horizon 2020 - The Framework Programme for Research and Innovation (2014 - 2020)** (COM(2011)811).*

See COM(2011)809.

5 January  
2012

***Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 - The Framework Programme for Research and Innovation, a Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 - The Framework Programme for Research and Innovation (2014 - 2020), a Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 - The Framework Programme for Research and Innovation (2014 - 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 - 2018) complementing the Horizon 2020 - The Framework Programme for Research and Innovation - Impact Assessment*** (SEC(2011)1427).

See COM(2011)809.

5 January  
2012

***Commission Staff Working Paper accompanying the Communication from the Commission on Horizon 2020 - The Framework Programme for Research and Innovation, Proposal for a Regulation of the European Parliament and of the Council establishing Horizon 2020 - The framework Programme for Research and Innovation (2014 - 2020), Proposal for a Council Decision establishing the Specific Programme implementing Horizon 2020 - The Framework Programme for Research and Innovation (2014 - 2020) and a Proposal for a Council Regulation on the Research and Training Programme of the European Atomic Energy Community (2014 -***

2018) complementing the Horizon 2020 - The Framework Programme for Research and Innovation - **Executive Summary of the Impact Assessment** (SEC(2011)1428).

See COM(2011)809.

5 January  
2012

*Proposal for Regulation of the European Parliament and of the Council **laying down the rules for the participation and dissemination in Horizon 2020** - The Framework Programme for Research and Innovation (2014 - 2020)* (COM(2011)810).

The proposal sets out the single set of rules intended for governing the application, evaluation, participation and dissemination processes for Horizon 2020.

5 January  
2012

*Proposal for a Council Regulation on the **Research and Training Programme of the European Atomic Energy Community (2014 - 2020)** complementing the Horizon 2020 - The Framework programme for Research and Innovation* (COM(2011)812).

This proposal sets out the Euratom-related elements of the Horizon 2020 programme.

6 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No.294/2008 **establishing the European Institute of Innovation and Technology (EIT)*** (COM(2011)817).

This proposal amends the EIT regulation for its operation from 2014-2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

6 January  
2012

*Proposal for a Decision of the European Parliament and of the Council on the **Strategic Innovation Agenda of the European Institute of Innovation and Technology (EIT): The contribution of the EIT to a more innovative Europe*** (COM(2011)822).

This proposal (along with COM(2011)817) amends the EIT regulation for its operation from 2014-2020 based on the experiences and lessons learnt during the initial period of setting up the EIT.

10 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council establishing a **Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (2014 - 2020)** (COM(2011)834).*

The proposal aims to establish a “Programme for the Competitiveness of Enterprises and SMEs” which is designed to support the Europe 2020 strategy to ensure that SMEs are able to take full advantage of the Single Market’s potential.

10 January  
2012

*Proposal for a Decision of the European Parliament and of the Council on **serious cross-border threats to health** (COM(2011)866).*

The proposal intends to strengthen current capacities and structures on health security to protect EU citizens from serious cross border threats that might affect public health.

12 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council on **the European Maritime and Fisheries Fund** [repealing Council Regulation (EC) No.1198/2006 and Council Regulation(EC) No.861/2006 and Council Regulation No.XXX/2011 on integrated maritime policy (COM(2011)804).*

The proposal establishes the European Maritime Fisheries Fund to replace the European Fisheries Fund from 1 January 2014 and will run until the end of December 2020.

12 January  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/98/EC on **re-use of public sector information** (COM(2011)877).*

This proposal amends the “Re-Use Directive” in order to bring about a further degree of harmonisation of the legal rules governing the re-use of public sector information at the European level.

17 January  
2012

*Proposal for a Directive of the European Parliament and of the Council on the award of **concession contracts** (COM(2011)897).*

The proposal aims to extend and expand the European rules governing the award of “concession” contracts by public authorities and utilities, in parallel with proposals to modernise the public and utilities procurement rules.

17 January  
2012

*Proposal for a Directive of the European Parliament and of the Council on **procurement by entities operating in the water, energy, transport and postal services sectors** (COM(2011)895).*

The proposal replaces the “Utilities Directive” and the “Public Sector Directive” which contain detailed procedural rules that apply to public procurements above certain thresholds.

18 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council on the **establishment of a Programme for the Environment and Climate Action (LIFE)** (COM(2011)874).*

The proposal provides for the continuation of the LIFE programme for 2014-2020 to support EU environment and climate objectives.

18 January  
2012

*Proposal for a Regulation of the European Parliament and of the Council on certain measures in relation to countries allowing non-sustainable fishing for the purpose of **the conservation of fish stocks** (COM(2011)888).*

The proposal establishes a framework of trade measures that could be implemented against countries that are judged to be allowing non-sustainable fishing on stocks in which the EU has a common interest in their management.

27 January  
2012

*Proposal for a Council Regulation establishing for the period 2014-2020 the programme **"Europe for Citizens"** (COM(2011)884).*

The proposal builds on the existing programme which ends in December 2013. It aims to enhance capacity for civic participation at the Union level.

30 January  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2005/36/EC on the **recognition of professional qualifications** and Regulation on administrative cooperation through the Internal Market Information System (COM(2011)883).*

The proposal updates the Recognition of Professional Qualifications Directive and introduces a number of new processes which aim to facilitate free movement in the regulated professions throughout the EU.

2 February  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2004/40/EC on **minimum health and safety requirements regarding the exposure of workers to the risks arising from physical agents (electromagnetic fields)** (eighteenth individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (COM(2012)15).*

The proposal will further delay the transposition of Directive 2004/40/EC from 30 April 2012 to 30 April 2014.

20 February  
2012

*Report from the Commission to the European Parliament and the Council on the **outcome of the review of Annex X to Directive 2000/60/EC of the European Parliament and of the Council on priority substances in the field of water policy** (COM(2011)875).*

This proposal relates to proposal COM(2011)876 which will aim to review the list of substances which are identified as priority hazardous substances in water.

20 February  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/60/EC and 2008/105/EC as regards **priority substances in the field of water policy** (COM(2011)876)*

This proposal will aim to review the list of substances which are identified as priority hazardous substances in water.

20 February  
2012

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No.1342/2008 of 18 December 2008 **establishing a long-term plan for cod stocks and the fisheries exploiting those stocks** (COM(2012)21).*

The proposal aims to delegate powers to the Commission allowing the modification of parts of the "cod recovery plan" without the need to pass through the co-decision process.

22 February  
2012

*Proposal for a Council Decision establishing the position to be adopted on behalf of the European Union with regard to the **proposals for amending Annexes II and III to the Protocol concerning Specially Protected Areas***

**and Biological Diversity in the Mediterranean of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean at the seventeenth meeting of the Contracting Parties** (COM(2012)47).

The provides for an EU position at the “Barcelona Convention” to secure EU support to place 6 species of shark on Annex II (list of threatened and endangered species) to the Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean.

19 March  
2012

*Proposal for a Regulation of the European Parliament and of the Council on the **non-commercial movement of pet animals*** (COM(2012)89).

The proposal clarifies the animal health requirements that apply to the non-commercial movement of pets following the expiry of the transitional regime (Regulation 288/2003).

19 March  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Council Directive 92/65/EEC as regards the **animal health requirements governing intra-Union trade in and imports into the Union of dogs, cats and ferrets*** (COM(2012)90).

The proposal amends an existing Directive relating to animal health rules for trade between Member States of the EU and import from third countries of non-livestock species.

19 April  
2012

*Proposal for Council Directive amending Annex I to European Parliament and Council Directive 94/62/EC on **packaging and packaging waste*** (COM(2012)141).

The proposal adds new illustrative examples of packaging and non-packaging the “Packaging and Waste Directive”.

19 April  
2012

*Proposal for a Council Directive laying down requirements for the **protection of the health of the general public with regard to radioactive substances in water intended for human consumption*** (COM(2012)122).

The proposal sets out similar standards as those included in “the Drinking Water Directive” in relation to radioactivity in water intended for human consumption but specifies one new standard for Radon and new



monitoring frequencies and additional analytical requirements.

26 April  
2012

*Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators as regards **the placing on the market of portable batteries and accumulators containing cadmium intended for use in cordless power tools** (SWD(12)65).*

The proposal amends the “Batteries Directive” by amending the exemption that allows cadmium to be used in batteries for cordless power tools so that the exemption ceases to have effect from 1 January 2016.

# Agenda Item 8

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



## **Constitutional and Legislative Affairs Committee**

**Report: CLA(4)-18-12 : 16 July 2012**

**The Committee reports to the Assembly as follows:**

**Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

**CLA167 – The Food Hygiene (Wales) (Amendment) (No. 2) Regulations 2012**

**Procedure:** Negative.

**Date made:** 4 July 2012.

**Date laid:** 6 July 2012.

**Coming in to force date:** 30 July 2012

**CLA168 – The Education (Middle Schools) (Wales) Regulations 2012**

**Procedure:** Negative.

**Date made:** 6 July 2012.

**Date laid:** 10 July 2012.

**Coming in to force date:** 1 September 2012

### **Affirmative Resolution Instruments**

None

**Instruments that raise reporting issues under Standing Order 21.2 or 21.3**

### **Negative Resolution Instruments**

**CLA166 – The Local Safeguarding Children Boards (Wales) (Amendment) Regulations 2012**

**Procedure:** Negative.

**Date made:** 30 June 2012.

**Date laid:** 3 July 2012.

**Coming in to force date:** 1 January 2012

The Committee agreed the report under Standing Order 21.3 on this statutory instrument, which is attached as Annexe 1.

### **Affirmative Resolution Instruments**

None

### **Other Business**

### **Committee Correspondence**

None

### **Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction**

The Committee took oral evidence from Theodore Huckle QC, Counsel General, Welsh Government.

### **Resolution to Meet in Private**

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction, and to consider the Committee's draft report on the School Standards and Organisation (Wales) Bill.

### **David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**16 July 2012**

## **Annexe 1**

### **Constitutional and Legislative Affairs Committee Report – CLA166**

#### **The Local Safeguarding Children Boards (Wales) (Amendment) Regulations 2012**

These Regulations amend the Local Safeguarding Children Board (Wales) Regulations 2006 which provide for functions of Welsh Local Safeguarding Children Boards in relation to the objective set for them by section 32 of the Children Act 2004. These Regulations introduce child practice reviews which replace serious case reviews in Wales which were provided for in regulation 4 of the Local Safeguarding Children Board (Wales) Regulations 2006.

#### **Procedure: Negative**

#### **Technical Scrutiny**

No points are identified for reporting under Standing Order 21.2 in respect of this instrument at this stage.

#### **Merits Scrutiny**

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

- These regulations revoke the requirement that Local Safeguarding Children Boards undertake a Serious Case Review, where abuse or neglect is known or suspected in the death or serious harm of a child, in order to identify steps to prevent similar harm occurring.
- The regulations replace the Serious Case Review procedure with a new Child Practice Review framework (which is described in the Explanatory Memorandum accompanying the Regulations).
- The policy intention behind the Regulations does not appear to have been considered in any recent depth by Assembly Members either in Committee or in Plenary.

The Committee agreed:

- that the decision to revoke the requirement for Serious Case Reviews is a significant matter of public policy; and

- to report to the Assembly under Standing Order 21.3(iii) that the regulations gives rise to a matter of public policy likely to be of interest to the Assembly.”

Constitutional and Legislative Affairs Committee  
**July 2012**

## **Response to the Merits Report from the Welsh Government**

### Explanation

1. The Explanatory Memorandum accompanying the Regulations sets out the context of the public consultation on the Child Practice Review framework – *Protecting Children in Wales, Arrangements for Multi-Agency Child Practice Reviews* – the workshops to engage key stakeholders and the considerable practitioner based involvement in both developing the framework and in testing it in pilot projects. The results of this public engagement will feed into the preparation of the final guidance.
2. Work on the operational detail of the new Child Practice Review framework started following the publication in October 2009 of the Care and Social Services Inspectorate Wales (CSSIW) report *Improving Practice to Protect Children in Wales: An Examination of the Role of Serious Case Reviews*. On **20 October 2009**, in her oral statement to the Assembly, the Deputy Minister for Children and Social Services welcomed the report and its recommendations, and two others published by CSSIW and the Healthcare Inspectorate Wales on safeguarding children. The Deputy Minister announced that she had asked for specific proposals to be developed to implement the ideas in the report and that she would give Assembly Members a further opportunity to debate the reports on 17 November 2009.
3. A number of Assembly Members contributed to the debate on **17 November** – *Safeguarding and Protecting Children in Wales* – and the Deputy Minister reaffirmed that she had commissioned further work, which would determine how the future framework could be delivered in practice, and set out a timetable for the completion of that work.
4. On **1 February 2011**, the Deputy Minister made an oral statement to the Assembly – *Future Framework for Learning from Serious Case Reviews* - in which she set out progress in the work and the Welsh Government’s plans to implement a new national programme for reviewing and learning to help improve child protection arrangements. The Deputy Minister set out the main planks of operational detail on which the framework was to be built and said

that, supported by practitioners, the Welsh Government was preparing detailed practice guidelines to support the new framework. This work would help determine the quality of future reviews, and would be subject to public consultation later. The approach being proposed by the Deputy Minister was welcomed by all parties in the discussion that followed this statement.

5. The Deputy Minister also set out her intention to ensure that the new arrangements were evaluated fully a year or so after implementation. While some matters of operational practice, and terminology, have changed, the policy and detail of the arrangements which were consulted upon in early 2012 were set out by the Deputy Minister during the debate.

6. On **17 February 2011**, the Welsh Government published *Sustainable Social Services for Wales: A Framework for Action* which set out the programme of change for social care services in Wales. The development of the new Child Practice Review framework was one of the key actions outlined in the document and an oral statement was made by the Deputy Minister on **1 March 2011**.

7. On **18 October 2011**, the Deputy Minister made a written statement to the Assembly setting out her broader arrangements for safeguarding and protection – *Safeguarding and Protection of People at Risk* – to be taken forward in the Social Services (Wales) Bill. The development and implementation of the new Child Practice Review framework is fundamental to those arrangements.

By virtue of paragraph(s) vi of Standing Order 17.42

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