

## Constitutional and Legislative Affairs Committee

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Meeting Venue:  
**Committee Room 2 – Senedd**

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Meeting date:  
**22 October 2012**

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Meeting time:  
**14:30**

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Cynulliad  
Cenedlaethol  
Cymru

National  
Assembly for  
Wales



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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

**CLA180 – The Local Government (Performance Indicators) (Wales) Order 2012**  
Negative Procedure. Date made 2 October 2012. Date laid 8 October 2012. Coming into force date in accordance with article 1(3)

**CLA182 – The National Health Service (Primary Dental Services) (Amendments Related to Units of Dental Activity) (Wales) Regulations**  
Negative Procedure. Date made 9 October 2012. Date laid 11 October 2012. Coming into force date 1 November 2012

**CLA183 – The Sea Fish (Specified Sea Areas) (Prohibition of Fishing Method) (Wales) Order 2012**  
Negative Procedure. Date made 10 October 2012. Date laid 11 October 2012. Coming into force date 1 November 2012

### Affirmative Resolution Instruments

None

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

#### Negative Resolution Instruments

**CLA181 – The Play Sufficiency Assessment (Wales) Regulations 2012** (Pages 1 – 12)

Negative Procedure. Date made 6 October 2012. Date laid 8 October 2012. Coming into force date 2 November 2012

### Affirmative Resolution Instruments

None

### **4. Public Service Pensions Bill: Legislative Consent Memorandum**

(Pages 13 – 21)

#### **Papers:**

**CLA(4)-21-12(p1)** – Legislative Consent Memorandum

Public Service Pensions Bill – Clauses Relating To Restrictions To Be Applied To New Schemes

**CLA(4)-21-12(p2)** – Legal Advisers Report

### **5. Item 5: Committee Correspondence**

**Item 5.1: CLA169 – The National Health Service (Dental Charges) (Wales) (Amendment) Regulations 2012**

(Pages 22 – 25)

#### **Papers:**

**CLA(4)-21-12(p3)** – Letter from the Chair to the Minister dated 26 September 2012

**CLA(4)-21-11(p4)** – The Minister's response dated 3 October 2012

**Item 5.2: CLA171 – The Waste (England and Wales) (Amendment) Regulations 2012** (Pages 26 – 30)

#### **Papers:**

**CLA(4)-21-12(p5)** – Letter from the Chair to the Minister dated 27 September 2012

**CLA(4)-21-11(p6)** – The Minister's response dated 3 October 2012

**CLA(4)-21-11(p7)** – CLA171 – Report

### **6. Papers to Note**

## **Subsidiarity monitoring report (May 2012 – August 2012) (Pages 31 – 38)**

### **Papers:**

**CLA(4)-21-12(p8)** – Summer 2012 subsidiarity monitoring report (May 2012 – August 2012)

## **Subordinate legislation made by Welsh Ministers under Assembly Measures (Pages 39 – 120)**

### **Papers:**

**CLA(4)-21-12(p9)** – Subordinate legislation made by Welsh Ministers under Assembly Measures

## **7. Date of next Meeting**

5 November 2012

### **Paper to Note**

**CLA(4)-20-12** – Report of the Meeting 8 October 2012

### **Transcript**

View the [meeting transcript](#).

# Agenda Item 3.1

## Constitutional and Legislative Affairs Committee

CLA181

## Constitutional and Legislative Affairs Committee Report

**Title: The Play Sufficiency Assessment (Wales) Regulations 2012**

**Procedure: Negative**

These Regulations which are made under section 11(1) of the Children and Families (Wales) Measure 2010:-

- set out the required content of a local authority's assessment of the sufficiency of play opportunities in its area;
- set out the individuals and groups that a local authority must consult;
- require an action plan to be prepared as part of the assessment by each local authority;
- provide for the frequency of the assessments, and the manner in which the results of the assessments must be published.

### Technical Scrutiny

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

### 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**

- In November 2010, the Children and Young People Committee of the third Assembly published the report of its Inquiry *into 'safe places to play and hang out'*. In the report's first recommendation, the Committee urged the Welsh Government:

*"...to complete its review of the standards and guidance for play at the earliest opportunity.... The guidance should include a clear definition of 'play' that includes **both structured and free play**.... [Our emphasis]."*

- The Welsh Government subsequently accepted the Committee's recommendation and made clear that:

*"Greater clarification will be provided on the meaning of 'play' and the term will be sufficiently broad to include both 'structured' and 'free play'."*

- Paragraph 8.2 of the Explanatory Memorandum (EM) refers to the Welsh Government consultation on the draft regulations and indicates that a significant proportion (as many as 56%) of those responding may want greater clarity in the regulations, and were *“primarily concerned about the relation between freely chosen play and adult led recreational activities.”*
- The EM states that *‘the summary report responds to this concern in more detail’*, that *“the Regulations and the Statutory Guidance have been amended accordingly”* and that *“A summary of the amendments...has been made available on the Welsh Government’s web site.”*
- Unfortunately, as of 18 October 2012, we have been unable to source the summary report on the Welsh Government website. It is, therefore, not clear whether the Welsh Government has fully addressed the recommendation in the Children and Young People’s Report or the concerns raised by respondents to the consultation on the draft regulations.

## **Constitutional and Legislative Affairs Committee**

**October 2012**

**2012 No. 2555 (W. 279)**

**CHILDREN AND YOUNG  
PERSONS, WALES**

**The Play Sufficiency Assessment  
(Wales) Regulations 2012**

**EXPLANATORY NOTE**

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

These Regulations which are made under section 11(1) of the Children and Families (Wales) Measure 2010 (local authority duties in respect of play opportunities for children) set out the required content of a local authority's assessment of the sufficiency of play opportunities in its area (regulation 3). The Regulations set out the individuals and groups that a local authority must consult (regulation 4). There is also a requirement for an action plan to be prepared as part of the assessment by each local authority (regulation 5). The Regulations provide for the frequency of the assessments (regulation 6), and the manner in which the results of the assessments must be published (regulations 7 and 8).

**2012 No. 2555 (W. 279)**

**CHILDREN AND YOUNG  
PERSONS, WALES**

**The Play Sufficiency Assessment  
(Wales) Regulations 2012**

*Made* 6 October 2012

*Laid before the National Assembly  
for Wales* 9 October 2012

*Coming into force* 2 November 2012

The Welsh Ministers in exercise of the powers conferred on them by section 11(1) of the Children and Families (Wales) Measure 2010<sup>(1)</sup> make the following Regulations.

**Title, commencement and application**

1.—(1) The title of these Regulations is the Play Sufficiency Assessment (Wales) Regulations 2012 and they come into force on 2 November 2012.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Measure” (“*y Mesur*”) means the Children and Families (Wales) Measure 2010;

“assessment” (“*asesiad*”) means the assessment carried out by a local authority under section 11(1) of the Measure;

“local authority area” (“*ardal awdurdod lleol*”) means that geographical area for which a local authority has responsibility;

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(1) 2010 nawm 1.

“open space” (“*man agored*”) means any land laid out as a public garden, or used for the purposes of public recreation;

“play” (“*chwarae*”) is defined in section 11(6) of the Measure;

“play event” (“*digwyddiad chwarae*”) means any event held in public for the purpose of promoting play;

“sufficient” (“*digonol*”) is defined in section 11(6) of the Measure.

(2) In these Regulations, the age ranges are—

- (a) ages 3 and under;
- (b) ages 4 – 7;
- (c) ages 8 – 12;
- (d) ages 13 – 15;
- (e) ages 16 – 17.

### **Matters to be contained in the assessment**

3. A local authority must take the following matters into account when assessing the sufficiency of play opportunities within its local authority area—

- (a) the number of children in respect of each age range within its area;
- (b) the needs of children from different cultures and backgrounds within its area;
- (c) the space where children can play, including—
  - (i) open space,
  - (ii) and any other space;
- (d) supervised play provision, including—
  - (i) leisure centres,
  - (ii) adventure playgrounds,
  - (iii) holiday play schemes,
  - (iv) clubs and youth groups,
  - (v) mobile provision, and
  - (vi) any other supervised play provision;
- (e) whether there is a charge for play provision and where there is a charge, the amount of any such charge;
- (f) the measures that are used to promote access to play, including—
  - (i) traffic calming and safe street schemes,
  - (ii) pedestrian routes,
  - (iii) cycle routes,
  - (iv) public transport,
  - (v) parking,

- (vi) opening hours of play provision,
- (vii) advertisement of play provision,
- (viii) any play events;
- (g) the play work force—
  - (i) play workers,
  - (ii) play volunteers,
  - (iii) training opportunities for the play work force,
  - (iv) qualification levels of the play work force;
- (h) the level of community engagement and participation including—
  - (i) youth groups,
  - (ii) school councils,
  - (iii) school governing bodies,
  - (iv) community groups;
- (i) the extent to which other policies of a local authority take into account the need to enhance play opportunities for children.

### **Consultation**

**4.** In preparing the assessment, a local authority must consult such—

- (a) children,
- (b) parents,
- (c) individuals and organisations with an interest in play,

as the local authority considers appropriate.

### **Action Plan**

**5.—(1)** Each assessment prepared by a local authority must include an action plan.

- (2) Where an assessment identifies—
  - (a) an insufficiency in play opportunities for children in the local authority area, the action plan must set out what steps need to be taken to improve the opportunities for children to play within that local authority area, or
  - (b) that opportunities for children to play in the local authority area are sufficient, the action plan must set out what steps need to be taken to maintain opportunities for children to play within that local authority area.

### **Timing of the Assessment**

**6.—(1)** A local authority must complete its first assessment within 4 months of the coming into force of these Regulations.

(2) Following a first assessment a local authority must complete an assessment every 3 years.

(3) The 3 years referred to in paragraph (2) runs from the date on which the first assessment must be completed.

(4) A local authority must send a copy of the assessment to the Welsh Ministers.

### **Publication**

7. A local authority must publish a summary of the results of the assessment on its website.

8. A local authority must deposit a summary of the results of the assessment in such public libraries, leisure centres, schools and other places as it considers appropriate.

*Gwenda Thomas*

Deputy Minister for Children and Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers.

6 October 2012

## **Explanatory Memorandum to the Play Sufficiency Assessment (Wales) Regulations 2012**

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children 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 Play Sufficiency Assessment (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

**Gwenda Thomas**

Deputy Minister for Children and Social Services  
06 October 2012

## **1. Description**

1.1. These Regulations place a duty on Local Authorities to assess for sufficient play opportunities in their area.

1.2. These Regulations have been developed under Section 11 of the Children and Families (Wales) Measure with exception of subsection (3) and (4).

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

2.1. There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

## **3. Legislative background**

3.1. Section 11 of the Children and Families (Wales) Measure provides that the Welsh Ministers may place a duty on Local Authorities in Wales to assess for and secure sufficient play opportunities for children in their areas. Section 11 states:

- 11(1) that a Local Authority must assess the sufficiency of play opportunities in its area for children in accordance with regulations.
- 11 (2) what the regulations may include.

*Not yet in force*

- *11 (3) that a Local Authority must secure sufficient play opportunities in its area for children, so far as reasonably practicable, having regard to its assessment under subsection (1).*

*Not yet in force*

- *11 (4) that the Local Authority must publish information about play opportunities in the authority's area for children, and keep the information published up to date.*
- *11 (5) that in performing its duties under this section, a Local Authority must have regard (among other things) to the needs of children who are disabled persons (within the meaning of section 1 of the Disability Discrimination Act 1995 [c. 50]) and to the needs of children of different ages.*
- *11 (6) that "play" includes any recreational activity and "sufficient", in relation to play opportunities, means sufficient having regard to quantity and quality.*

3.2. *Subsections 11 (3) and 11(4) have not yet been commenced.*

3.3. *These Regulations follow the negative resolution procedure.*

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

4.1. The purpose of the Regulations and the statutory Guidance that will give detail to this duty is to firstly set out what the Welsh Government wants to achieve in creating a play friendly environment for children in Wales and secondly what Local Authorities need to do in complying with this duty. They set out the detail for conducting the Play Sufficiency Assessments and the matters that need to be taken into account.

4.2. These recognise that the factors that affect play cover a wide range of policy areas including planning; traffic; management of open space and community safety and therefore need to be considered in so far as they contribute to children's play opportunities. Play also contributes to a wide range of agendas that seek to benefit children including health and well-being; and education, particularly the Foundation Phase, so it is necessary to consider how play is effectively embedded in these policy/service delivery areas.

4.3. The overall purpose of the regulations is to develop an accurate picture of play opportunities for children throughout Wales; a well evidenced assessment of the sufficiency of play in each Local Authority; and the development of action plans with associated costs which each Local Authority will use to achieve the second part of the duty, to secure sufficient play opportunities for children in their areas once it is commenced.

4.4. The benefits for children from having access to sufficient play opportunities are enhanced health; physical, personal and social skills and creativity. Play can also help mitigate the negative effects of poverty on children's lives.

4.5. Increased play and recreational activities for children also benefit the family and wider community. It is intended that the duty will result in environments that are safe and attractive for all and communities that value all members and work collectively to meet their needs.

4.6. Wales is the first country in the world to establish such a duty within its legislative framework. We will continue to work with all stakeholders to make this legislation fit for the purpose of creating a play friendly Wales with all the benefits that this will offer to our children.

#### **5. Consultation**

5.1. The details of the consultation undertaken are included in the Regulatory Impact Assessment (RIA) below.

## **6. Regulatory Impact Assessment**

### **6.1. Option 1 – Do Nothing**

If we were to do nothing, we would not be supporting the Government's commitment to improve opportunities for all children and young people to play in safety and, in particular, to support improved access to play for children with disabilities.

#### **Option 1 – Cost**

There would be no new cost implications from this option.

#### **Option 1 – Benefits**

There would be no benefits from this option.

### **6.2. Option 2 – Make the Legislation**

By making the regulations Local Authorities will have clear responsibilities and duties to ensure that they undertake a play sufficiency assessment.

#### **Option 2 – Cost**

£484,000 has been allocated from the Children, Young People and Families budget for the financial year 2012-13 to support Local Authorities in conducting the first Play Sufficiency Assessment. These will be completed by March 2013.

#### **Option 2 – Benefits**

The benefits will be two fold: well evidenced play sufficiency assessments and action plans with associated costs to enable Local Authorities to increase play opportunities for all children in the future.

## **7. Guidance**

7.1. Statutory Guidance will be issued alongside the Regulations and will support Local Authorities in fulfilling their duties under this section of the Measure. There will also be a non-statutory toolkit and pro-forma for completion, which will be developed in conjunction with Play Wales. This has been designed to assist Local Authorities in completing the initial assessment and action plan.

## **8. Consultation**

8.1. A formal 12 week consultation was launched on 2 April 2012 which engaged with Local Authority Officers and Members, together with third sector organisations and other interested stakeholders. The consultation asked for views on the draft Regulations and the draft Statutory Guidance.

8.2. The 12 week consultation closed on 25 June 2012. There were a total number of 81 respondents. Thirty two (44%) of the respondents indicated agreement that the regulations and statutory guidance clearly set out the matters to be considered. The respondents who wanted greater clarity were primarily concerned about the relation between freely chosen play and adult led recreational activities. The Play Sufficiency

Duty is underpinned by the Children and Families (Wales) Measure 2010. In Section 11(6) of the Measure Play is defined for as including “any recreational activity”. The summary report responds to this concern in more detail.

8.3. In response to the comments and suggestions put forward during the consultation period the Regulations and the Statutory Guidance have been amended accordingly. A summary of the amendments can be viewed in the Summary Report, which has been made available on the Welsh Governments web site.

## **9. Competition Assessment**

9.1. There are no market implications associated with the making of these Regulations. It has no impact on business, charities or the voluntary sector.

## **10. Summary**

10.1. The making of these Regulations is necessary to ensure that children have the opportunity to play, and support children’s right as set out in article 31 of the UNCRC. The commencement of this duty may also help mitigate the negative effects of poverty on children’s lives and help to build their resilience.

# Agenda Item 4

## LEGISLATIVE CONSENT MEMORANDUM

### PUBLIC SERVICE PENSIONS BILL – CLAUSES RELATING TO RESTRICTIONS TO BE APPLIED TO NEW SCHEMES

#### Legislative Consent Motion

1. “To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Public Service Pensions Bill as introduced into the House of Commons on 13 September 2012 relating to the restrictions to be applied to new pension schemes for public bodies, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament.”

#### Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Jane Hutt AM, Minister for Finance and Leader of the House, under Standing Order 29.6 of the Standing Orders (SO) of the National Assembly for Wales (the National Assembly). This Legislative Consent Memorandum is laid under SO29.2. SO 29 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales for a purpose that falls within the legislative competence of the National Assembly.

3. The Public Service Pensions Bill (the Bill) was introduced into Parliament on 13 September 2012. The Bill can be found at <http://services.parliament.uk/bills/2012-13/publicservicepensions/documents.html>

#### Summary of the Bill and its Policy Objectives

4. The Bill sets out the new arrangements for the creation of schemes for the payment of pensions and other benefits. It provides powers to Ministers to create such schemes according to a common framework of requirements. The Bill also provides powers to HM Treasury to set specific technical details of certain requirements and gives powers to The Pensions Regulator to operate a system of independent oversight over the operation of these schemes.

5. It is intended that the powers in the Bill will supersede powers, including those contained in the following legislation, to create schemes for the payment of pensions and other benefits:

- Superannuation Act 1972 , for civil servants, people employed in local government service, teachers and persons engaged in health services;
- Fire and Rescue Services Act 2004 ;
- Armed Forces (Pensions and Compensation) Act 2004 ;
- Police Pensions Act 1976 ;

- Judicial Pensions and Retirement Act 1993 ; and
- Superannuation (Northern Ireland) Order 1972 .

6. The Bill protects the benefits already earned by members of existing public service pension schemes and allows continued membership of those schemes for certain categories of person who are closest to retirement.

7. The stated aims of the Bill are to:

- Ensure a good level of retirement income for public service workers, with a reasonable degree of certainty;
- Be affordable and sustainable – with cost risk managed and shared effectively;
- Provide a fair balance of cost and benefits between public service workers and other taxpayers;
- Protect those closest to retirement;
- Have a clear legal framework and governance structure – and be widely understood by workers;
- Stand the test of time – have no more reform for at least 25 years.

8. More specifically, the Bill will:

- Allow for the creation of new Career Average pension schemes
- Ensure new schemes have Normal Pension Ages linked to the State Pension Age for all but the armed forces, police and fire service;
- Provide for a cap on the taxpayer's liability;
- Include transitional protection for those less than ten years from their Normal Pension Age on 1 April 2012;
- Introduce a very high barrier to changes to specific elements of these pension designs;
- Ensure that all new pension schemes have a Board and a regulator so their members can have confidence that they are being run effectively.

### **Provisions in the Bill for which consent is sought**

9. The National Assembly for Wales has competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities. Clause 27 of the Bill does two things -

- (a) it imposes constraints on the design of new pension schemes that may be created under the power in clause 28(4) for those bodies and offices whose pension schemes are closed by clause 28(2) and whose members cannot join one of the schemes established under clause 1; and

(b) it also governs the design of pension schemes that are set up in the future or established under future legislation for public bodies (unless future legislation makes specific, different provision).

10. It is the latter provision which impacts on areas within the Assembly's legislative competence for this reason. Should the Assembly wish to create specific new pension schemes for Assembly Members or local government councillors, after the Bill has been enacted and this clause comes into force, those new schemes would be caught by the provisions relating to the creation of new public body pensions in clause 27

11. The Bill extends to England, Wales, Scotland and Northern Ireland. Wales, Scotland and Northern Ireland are being asked for consent in relation to provisions within the Bill to make new schemes for pensions and other benefits where there is devolved competence.

12. Although the Bill impacts on the Assembly's competence to create new pension schemes for Assembly Members or local government councillors it does not impact on the current or future use of the existing National Assembly for Wales Members' Pension Scheme or existing arrangement for Welsh local councillors which are provided for by Local Government Pension Schemes already covered within the Bill.

### **Advantages of utilising this Bill**

13. It is the Welsh Government's view that it is fair and appropriate for the legislation on pension reforms to apply to all public bodies in Wales. It will ensure there will be a consistent approach to pension arrangement across Wales that aligns with wider changes across the UK public sector.

14. Dealing with this legislation in a UK Bill represents the most appropriate legislative vehicle to ensure a consistent approach for (a) the revision of certain existing schemes and (b) the creation of new pension schemes according to a common framework of requirements.

### **Financial Implications**

15. There are no financial implications associated with this Bill. Under the Bill, Wales will contribute towards new pension schemes delivering a projected 10% saving in the longer term; generating UK wide savings of around £65bn by 2061/62. In addition the total UK wide pension reform package (which includes the switch in indexation from RPI to CPI and increased employee contributions) will deliver more than £430bn savings, in current GDP terms, over the next 50 years.

**Jane Hutt AM**  
**Minister for Finance and Leader of the House**  
**September 2012**

Paratowyd y ddogfen hon gan gyfreithwyr Cynulliad Cenedlaethol Cymru er mwyn rhoi gwybodaeth a chyngor i Aelodau'r Cynulliad a'u cynorthwywyr ynghylch materion dan ystyriaeth gan y Cynulliad a'i bwyllgorau ac nid at unrhyw ddiben arall. Gwnaed pob ymdrech i sicrhau bod y wybodaeth a'r cyngor a gynhwysir ynddi yn gywir, ond ni dderbynnir cyfrifoldeb am unrhyw ddibyniaeth a roddir arnynt gan drydydd partion.

This document has been prepared by National Assembly for Wales lawyers in order to provide information and advice to Assembly Members and their staff in relation to matters under consideration by the Assembly and its committees and for no other purpose. Every effort has been made to ensure that the information and advice contained in it are accurate, but no responsibility is accepted for any reliance placed on them by third parties

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

### **Legal Advice Note**

#### **LEGISLATIVE CONSENT MEMORANDUM – PUBLIC SERVICE PENSIONS BILL**

##### Background

1. On the 2<sup>nd</sup> October 2012, the Minister for Finance and Leader of the House gave notice of a motion in the following terms –  
“To propose that the National Assembly for Wales, in accordance with Standing Order 29.6, agrees that provisions of the Public Service Pensions Bill as introduced into the House of Commons on 13 September 2012 relating to the restrictions to be applied to new pension schemes for public bodies, in so far as they fall within the legislative competence of the National Assembly for Wales, should be considered by the UK Parliament .”
2. The Legislative Consent Memorandum (“LCM”) was considered on the 9th October 2012 by the Business Committee, who agreed, in accordance with Standing Order 29.4, agreed to refer it to the Constitutional and Legislative Affairs Committee for scrutiny. The Business Committee agreed that the Committee should report on the LCM by 15 November 2012 to allow the motion to be debated in plenary on 20 November 2012. This Note is intended to inform that consideration.

##### The Bill

3. The Public Service Pensions Bill was introduced into the House of Commons on 13 September 2012 by the Chancellor of the Exchequer. The Second Reading debate is scheduled for the 22<sup>nd</sup> October. The detailed background to the Bill can be found in paragraphs 3–11 of the Explanatory Notes to the Bill at  
<http://www.publications.parliament.uk/pa/bills/cbill/2012-2013/0070/en/2013070en.htm>
4. The Bill would change the law in all parts of the United Kingdom, and legislative consent will be sought from each of the devolved legislatures.

This is explained in the Explanatory Notes that accompanied it on introduction in the Commons as follows –

### ***TERRITORIAL EXTENT***

*12. This Bill extends to England and Wales, Scotland and Northern Ireland.*

*13. The Northern Ireland Assembly's consent will be sought in relation to the provisions of this Bill to make schemes for pensions and other benefits that are within the competence of that Assembly.*

*14. This Bill contains provisions that trigger the Sewel Convention in Scotland. The provisions relate to the pensions of certain members of the Scottish judiciary and a power to require the closure and reform of pension schemes in public bodies for which the Scottish Parliament has competence. The Sewel Convention provides that Westminster will not normally legislate with regard to devolved matters in Scotland without the consent of the Scottish Parliament. We have sought "in principle" agreement from Scottish Ministers to seek a Legislative Consent Motion for these provisions. If there are amendments relating to such matters which trigger the Convention, the consent of the Scottish Parliament will also be sought for them.*

*15. The consent of the National Assembly for Wales will be sought in relation to provisions in this Bill which apply to new pension schemes for public bodies and" statutory office holders; the National Assembly for Wales has competence in relation to pension schemes for Assembly Members, Welsh Ministers and members of local authorities."*

These Explanatory Notes were prepared by the Treasury to assist consideration of the Bill.

5. The purpose of the Bill is generally to set out the new arrangements for the creation of schemes for the payment of pensions and other benefits. It provides powers to Ministers to create such schemes according to a common framework of requirements. The Bill also provides powers for the Treasury to set specific technical details of certain requirements and gives powers to the Pensions Regulator to operate a system of independent oversight over the operation of these schemes..

6. The Explanatory Notes explain further that:

*"It is intended that the powers in the Bill will supersede powers, including those contained in the following legislation, to create schemes for the payment of pensions and other benefits:*

- Superannuation Act 1972, for civil servants, people employed in local government service, teachers and persons engaged in health services;*
- Fire and Rescue Services Act 2004;*

- *Armed Forces (Pensions and Compensation) Act 2004;*
- *Police Pensions Act 1976;*
- *Judicial Pensions and Retirement Act 1993; and*
- *Superannuation (Northern Ireland) Order 1972.*

*The Bill protects the benefits already earned by members of existing public service pension schemes and allows continued membership of those schemes for certain categories of person who are closest to retirement.”*

### Legislative Competence

7. The provisions to which the LCM refers come within the National Assembly’s legislative competence under Subjects 4 (Economic Development) and 13 (National Assembly for Wales) of Schedule 7 to the Government of Wales Act 2006.

8. The wording under heading 4 (Economic Development) was amended by the National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2007 (SI 2007/2143) to include a specific exception in relation to occupational and personal pension schemes. This in turn was amended by the National Assembly for Wales (Legislative Competence) (Amendment of Schedule 7 to the Government of Wales Act 2006) Order 2010. In consequence the exception to the Assembly’s legislative competence in relation to pensions contains a carve out for matters referred to in the LCM and reads as follows:

*“Occupational and personal pension schemes (including schemes which make provision for compensation for loss of office or employment, compensation for loss or diminution of emoluments, or benefits in respect of death or incapacity resulting from injury or disease), apart from schemes for or in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General or Deputy Welsh Ministers and schemes for or in respect of members of local authorities.”*

9. Heading 13 (National Assembly for Wales) contains the following specific reference to pensions: *Salaries, allowances, pensions and gratuities for and in respect of Assembly members, the First Minister, Welsh Ministers appointed under section 48, the Counsel General and Deputy Welsh Ministers.* Thus, when the exception for pensions was inserted by the 2007 order, it was necessary to include a carve out so that the exception did not contradict the competence granted under heading 13. The further carve out members of local authorities was made by the 2010 order.

### The Consent Memorandum

10. The Legislative Consent Memorandum identifies clause 27 as the one that relates to the Assembly's legislative competence. Clause 27 identifies the requirements in the Bill that will apply to new public body pension schemes, which would include those for Assembly Members, the First Minister, Welsh Ministers, the Counsel General or Deputy Welsh Ministers and for or in respect of members of local authorities.

11. There is a further issue in relation to competence. Clause 16 requires that no benefits are to be provided under an existing scheme listed in Schedule 5. These include "A scheme constituted by paragraph 6(3) of Schedule 11 to the Welsh Language (Wales) Measure 2011 (nawm 1)". Paragraph 6(3) reads as follows:

*"(3) The Welsh Ministers may pay—  
(a) pensions to, or in respect of, persons who have been members of the Tribunal, and  
(b) amounts for or towards provision of pensions to, or in respect of, persons who have been members of the Tribunal."*

12. The Assembly's legislative competence in relation to the Welsh language under Schedule 7 is much broader than it was under Schedule 5 to the Government of Wales Act 2006. If this provision was within the Assembly's legislative competence in 2011, it remains so now. It is therefore unclear why the Welsh Government has not made reference to this in the LCM.

13. There are other specific Welsh references in the Bill. Clause 1 excepts scheme regulations made by Welsh Ministers relating to fire and rescue workers from those for which the consent of the Treasury is required. Welsh Ministers have a power to make schemes in relation to the fire and rescue services, but the National Assembly has no power to make primary legislation on the subject because of the exception of occupational and personal pension schemes from its legislative competence. Clause 20(5) contains a requirement to consult the National Assembly if certain changes are proposed to such schemes.

14. This Bill will make no changes to the legislative competence of the National Assembly. Accordingly, it will remain within the Assembly's competence to make provision in Acts of the Assembly that are not consistent with the requirements of the current Bill.

## **Conclusion**

**15. The Bill will make significant changes to legislation for public sector pension schemes. It includes specific provisions relating to pension ages for Members of parliament and Members of the European Parliament as well as many public sector workers. The issue for Assembly Members to consider is whether they are content to be**

**included (with the Counsel General and members of Welsh local authorities) in the legislation, whilst retaining the competence to legislate differently at a later date in those limited cases if they see fit.**

Legal Services

October 2012

# Agenda Item 5.1

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

Lesley Griffiths AM  
Minister for Health and Social Services  
Welsh Government  
5th Floor, Tŷ Hywel  
Cardiff Bay  
CF99 1NA

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



26 September 2012

Dear Lesley

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

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 24 September 2012.

The Committee was content that there was no need for the Assembly to pay special attention to the Regulations on any of the grounds set out in Standing Order 21.2.

The Regulations increase patient charges for certain dental services. Although the increases are relatively small, and are the first since 2006, the Committee would have expected the reasons for the increases and the basis for deciding their scale to have been fully and accurately explained in the Explanatory Memorandum. It is important that Explanatory Memorandums for all Statutory Instrument are as complete and accurate as possible, but this is particularly important when instruments impact directly on the public as in this case.

However, the basis for the calculation of these increases was not completely clear. In particular, there was a lack of clarity about the extent to which increases were decided by a formula or by Ministerial discretion. From this perspective, we believe there are good grounds to question whether the statement in the first part of section 6 that "*the Regulations simply increase a statutory fee by a predetermined formula*" is wholly accurate. We understand that there is currently no such formula.

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The Committee considered whether to issue a “merits” report under Standing Order 21.3 in relation to the accuracy of the Explanatory Memorandum. The Committee does not believe that there was any intention to mislead in this case and agreed instead that I should write to you setting out our concerns and inviting you to respond to them.

I look forward to your response.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

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



Ein cyf/Our ref: SF/LG/3135/12

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

3

October 2012

*Dear David,*

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

Thank you for your letter dated 26 September about the Explanatory Memorandum with regard to the above Statutory Instrument. I am sorry the Explanatory Memorandum was not as clear as it might have been.

Dental patient charges represent an important contribution to the overall cost of dental services. The amount raised will be dependent upon the level and type of primary care dental services provided by LHBs, the proportion for fee paying patients who access NHS dental services and the complexity of the treatment they receive.

There is a Programme for Government commitment to ensure that dental charges remain affordable and in doing so help to tackle oral health inequalities.

Patient charges are kept under annual review with consideration given to the provision of services, affordability and a number of factors including the Consumer Price Index, the Rate of Inflation and the total level of charge income likely to be raised. Account is also taken of the impact on charge payers, and also the views of Local Health Boards and the British Dental Association.

The decision to increase the Band 1 dental charge from £12.00 to £12.40 and the Band 2 charge from £39.00 to £40.20 from 1 September was made after considering and balancing the above factors. It is not considered practicable to undergo this process each year by way of public consultation.

While I am pleased the Committee recognises there is no intention to mislead the National Assembly for Wales in this case, I accept the detail of the actual increase, including the means by which they were calculated should have featured more clearly in the EM. I would like to thank the Committee for bringing this matter to my attention.

Regards

Lesley

**Lesley Griffiths AC / AM**

Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol  
Minister for Health and Social Services

# Agenda Item 5.2

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

John Griffiths AM  
Minister for Environment and Sustainable Development  
5th Floor  
Tŷ Hywel  
Cardiff Bay  
CF99 1NA

Cynulliad  
Cenedlaethol  
Cymru  
National  
Assembly for  
Wales



27 September 2012

Dear Minister

### CLA171 - The Waste (England and Wales) (Amendment) Regulations 2012

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 24 September 2012 and agreed that I should bring to your attention the Committee's report made under Standing Order 21.3 on the merits of the Instrument.

The Committee agreed to invite the Assembly to pay special attention to this Instrument on the grounds "that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly" (Standing Order 21.3(ii)).

The Committee's report was laid in the Table Office on 27 September 2012 and is attached for information. I would be grateful if you could consider the report and let the Committee have your response in due course.

I am copying this report to the First Minister for information and have also arranged for the report and this letter to be drawn to the attention of Assembly Members.

Yours sincerely

**David Melding AM**  
Chair

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John Griffiths AC /AM  
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy  
Minister for Environment and Sustainable Development



Llywodraeth Cymru  
Welsh Government

Ein cyf/Our ref SF-JG-3121-12  
David Melding AM  
Chair  
Constitutional and Legislative  
Affairs Committee  
National Assembly for Wales  
Cardiff Bay  
Cardiff  
CF99 1NA

3 October 2012

*Dear David,*

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

Thank you for your letter of 27 September enclosing the Committee's report on the above-mentioned Regulations and confirming that it has been laid on the same day. You asked me to consider the report.

I confirm that I am content with the answers I previously provided, which are included in the Report, and have no further comments.

*Best wishes,*

**John Griffiths AC / AM**  
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy  
Minister for Environment and Sustainable Development

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*Wedi'i argraffu ar bapur wedi'i ailgylchu (100%)*

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*Printed on 100% recycled paper*

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.

## Constitutional and Legislative Affairs Committee

Summer 2012 subsidiarity monitoring report (May 2012 – August 2012)

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Date of paper:

September 2012

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

For further information, contact Owain Roberts in the Research Service  
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Research  
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## 1. 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, in order 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>1</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>2</sup>

## 2. The monitoring process

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<sup>1</sup> Official Journal of the European Union, [\*Consolidated version of the Treaty on European Union\*](#), C83/204, 30 March 2010

<sup>2</sup> Official Journal of the European Union, [\*Protocol on the Application of the Principles of Subsidiarity and Proportionality\*](#), C310/207, 16 December 2004

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>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]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between May and August 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>3</sup> Subsidiarity concerns can only be raised in relation to draft “legislative” proposals.

### 3. Overview of draft EU legislative proposals received (May 2012 – August 2012)

A total of **263** UK Government EMs relating to EU proposals were received by the Assembly's Research Service between 1 May 2012 and 31 August 2012. Of these, **10** EMs were identified by Assembly officials as being both "legislative" in nature and of interest to the Assembly. Following further analysis, officials in the Assembly's Legal Service, Brussels Office and Research Service, found that none of these proposals raised subsidiarity concerns. Additional details about these relevant proposals are included below.

#### 3.1. EU legislative proposals that did not raise any subsidiarity concerns

<u>Date EM emailed</u>	<u>Title and description</u>
2 May 2012	<p><i>An amended proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1760/2000 as regards <b><u>electronic identification of bovine animals and deleting the provisions on voluntary beef labelling</u></b> (COM(2012)162).</i></p> <p>This proposal is a modified version of Regulation (EC) No 1760/2000 as regards electronic identification of bovine animals and deleting the provisions of voluntary beef labelling, which was in itself a regulation which amended a previous proposal. This modified proposal amends only the Article in the initial regulations dealing with the administration of sanctions where there is non-compliance. It is therefore an enabling proposal that will eventually allow for the electronic identification of cattle; abolition of cattle passports for domestic trade; electronic herd registers; and the removal of provisions relating to the voluntary labelling of beef.</p>
22 June 2012	<p><i>Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 2371/2002 on the <b><u>conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy</u></b> (COM (2012) 277)</i></p> <p>This proposal proposes an extension of the access restriction regime provided under Article 17 (2) of the Common Fisheries Policy (Regulation 2371/2002) which is otherwise due to expire in December 2012 for a further two years.</p>
27 June 2012	<p><i>Proposal for a Council Decision on the conclusion of the Nagoya-Kuala Lumpur <b><u>Supplementary Protocol on Liability and Redress to the Cartagena Protocol on Biosafety ("the Supplementary Protocol")</u></b> (COM(2012)236)</i></p>

This proposal makes provision for conclusion of the Supplementary Protocol, which sets out rules governing liability and redress should the trans boundary movement of Genetically Modified Organisms have a significant adverse effect on the conservation and sustainable use of biological diversity – by the European Union. The UK signed the Supplementary Protocol in February 2012.

9 July 2012

*Amending Annexes I and IV to Regulation (EC) No 999/2001 of the European Parliament and of the Council laying down **rules for the prevention, control and eradication of certain transmissible spongiform encephalopathies to allow pig and poultry processed animal protein (PAP) to be incorporated into farmed fish feed** (SANCO 10843/2011)*

This proposal allows pig and poultry processed animal protein (PAP) to be incorporated into farmed fish only. The European Commission's longer term objective is to continue working with the EU Reference Laboratory for Animal Proteins in Feed regarding the development of a validated diagnostic method which is able to detect the presence of porcine or poultry material in food.

11 July 2012

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1005/2008 **establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing** (COM(2012)332).*

This proposal empowers the Commission to adopt delegated acts for the following: the notification of information by fishing vessels and notification periods; the establishment of benchmarks for inspections of landings and transshipment operations by third country fishing vessels; the establishment of lists of products excluded from catch certificate obligations including their deadlines; rules around the establishment of approved economic operators; and the establishment of Union criteria for verifications in the context of risk management.

13 July 2012

*Draft Instrument for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning **the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms** and repealing Council Regulation (EC) No 1288/2009 (COM(2012)298).*

This proposal extends a set of transitional arrangements relating to

fisheries technical conservation measures which will have to be agreed by the end of 2012 to prevent the measures lapsing.

14 August 2012	<p><i>Proposal for a regulation of the European Parliament and of the Council on <b><u>clinical trials on medicinal products for human use</u></b>, and repealing Directive 2001/20/EC (COM(2012)369).</i></p> <p>The proposal aims to simplify the rules for conducting clinical trials to ensure that they are identical throughout the EU. Such simplification will facilitate the conduct of multistate trials. The Regulation will replace the Clinical Trials Directive 2001/20/EC which was widely acknowledged to have reduced the attractiveness of the EU as a place to conduct clinical trials on medicines.</p>
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15 August 2012	<p><i>Draft Instrument for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 850/98 concerning <b><u>the conservation of fishery resources through technical measures for the protection of juveniles of marine organisms</u></b> (COM(2012)432)</i></p> <p>This proposal aims to align the European Commission's existing powers relating to technical conservation rules for fishery resources in line with requirements set out in the Lisbon Treaty. These existing powers relate to: measuring nets and engine power; square mesh netting and twine thickness; construction of netting material; attachments which may obstruct or diminish mesh openings in nets; means of reporting on beam trawls; Member State restrictions on fishing effort in ICES Area IXa; and emergency measures for conservation of marine resources.</p>
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15 August 2012	<p><i>Draft Instrument for a Regulation of the European Parliament and of the Council <b><u>establishing specific conditions for deep-sea stocks in the North-East Atlantic and provisions for fishing in international waters of the North-East Atlantic</u></b> and repealing Regulation (EC) No 2347/2002 (COM(2012)371).</i></p> <p>This proposal relates to specific management measures for the EU's deep sea fisheries. In particular it seeks to update and replace the current deep sea access regime (as currently set out in Regulation 2347/2002) with the aim of addressing four key problems with managing deep sea stocks.</p>
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30 August	<i>Draft Instrument for a Regulation of the European Parliament and of the</i>
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2012

*Council amending Council Regulation (EC) No 812/2004 **laying down measures concerning incidental catches of cetaceans in fisheries** and amending Regulation (EC) No 88/98 (COM(2012)447).*

This proposal aims to align the European Commission's existing powers in order to adapt conditions and technical specifications for the use of acoustic deterrent devices to reduce the incidental by-catch of cetaceans in specified fisheries (currently contained in Annex II of Regulation 812/2004); and to adapt the procedure and format for reporting obligations for Member States.

## National Assembly for Wales

### Subordinate legislation made by Welsh Ministers under Assembly Measures October 2012

This paper provides a list of the powers conferred on Welsh Ministers by Assembly laws since 2007 and an overview of the way in which those powers have been implemented and exercised.

The information in this paper is correct as of October 2012.

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The National Assembly for Wales is the democratically elected body that represents the interests of Wales and its people, makes laws for Wales and holds the Welsh Government to account.

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## **National Assembly for Wales**

Subordinate legislation made by Welsh  
Ministers under Assembly Measures  
October 2012

Owain Roberts and Alys Thomas

Paper number: 12 / 045



Research  
Service

## **Summary**

This paper provides a list of the powers conferred on Welsh Ministers by Assembly laws since 2007 and an overview of the way in which those powers have been implemented and exercised. The information in this paper is correct as of October 2012.

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# Subordinate legislation made by Welsh Ministers under Assembly Measures and Acts

## 1. Introduction

Subordinate legislation is legislation that is made by a person or body under powers conferred by primary legislation such as an Act of the UK Parliament, an Assembly Measure or an Assembly Act. Subordinate legislation supplements Assembly Measures, Assembly Acts and Acts of the UK Parliament and usually takes the form of Statutory Instruments and can encompass codes of practice, reports, orders, regulations, rules, schemes or guidance. A Welsh Statutory Instrument is a type of subordinate legislation which applies specifically to Wales and which is made under the authority contained either in Acts of the UK Parliament relevant to Wales or in Assembly Measures and Acts.<sup>1</sup>

Since the Assembly first received limited legislative powers under Part 3 of the *Government of Wales Act 2006* to pass its own primary laws, a significant number of Assembly Measures have been passed.<sup>2</sup> Most of these Measures confer numerous powers on Welsh Ministers to make subordinate legislation in a number of devolved areas.

This paper provides a list of the powers conferred on Welsh Ministers by Assembly laws since 2007 and an overview of the way in which those powers have been implemented and exercised. Please note, however, that as the information included only relates to subordinate legislation made by Welsh Ministers, it does not include information about the provisions contained on the face of Measures and Acts that do not require subordinate legislation to be made before they are able to take effect.

**The information in this paper is correct as of October 2012.**

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<sup>1</sup> Further information about subordinate legislation in the Assembly and the various scrutiny procedures they are subject to is contained in the [Quick Guide: Subordinate Legislation](#).

<sup>2</sup> Primary laws made under Part 3 of the 2006 Act were known as “Measures”. Following the referendum and the move to Part 4 of the 2006 Act, primary laws are now called “Assembly Bills” in their proposed version and “Assembly Acts” once passed.

## 2. Assembly Measures passed in the third Assembly (2007-2011)

Between 2007 and 2011, the Assembly passed a total of 22 Measures. Of these, 17 were introduced by Welsh Ministers and a further three Measures were introduced by backbench Assembly Members.<sup>3</sup> All of these Measures conferred powers, to varying degrees, on Welsh Ministers to make regulations and orders through subordinate legislation. Details about the powers conferred on Welsh Ministers by each Measure and information about the exercise of those powers to date (as at September 2012) are included below.

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<sup>3</sup> The remaining two Measures were introduced by the Assembly Commission and the Assembly's Standards of Conduct Committee which did not confer any powers on Welsh Ministers. These were the *National Assembly for Wales Commissioner for Standards Measure 2009*, which placed the position of the Assembly's Commission for Standards on a statutory basis, and the *National Assembly for Wales (Remuneration) Measure 2010* which established a National Assembly for Wales Remuneration Board.

### 2.1. NHS Redress (Wales) Measure 2008 - Royal Approval granted on 9 July 2008

*The NHS Redress (Wales) Measure 2008* enables Welsh Ministers to make Regulations for NHS redress arrangements that will provide for settlement without recourse to court where a qualifying liability in tort has been identified.

Section 1 includes the Welsh bodies and persons, the services to which the Measure applies, and explains the liabilities under tort which qualify. The section also provides for **liability incurred elsewhere** as part of the health service in Wales.

Bodies and persons are described as:

- Welsh NHS Trusts and Local Health Boards;
- Special Health Authorities;
- Welsh Ministers;
- Any body or person providing or arranging for the provision of services in Wales as a result of an arrangement with any of the above bodies. This means that general practitioners, i.e. dentists,

Since its commencement on 2 February 2011,<sup>4</sup> the Welsh Ministers have used the powers conferred on them by the Measure to make one set of regulations and a subsequent amending regulation.

*The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*<sup>5</sup> were made<sup>6</sup> by Welsh Ministers on 8 March 2011 and came into force<sup>7</sup> on 1 April 2011 (apart from Part 7 of the regulations which came into force on 1 April 2012 – see below). They are made under the powers conferred on Welsh Ministers by **Sections 1 to 7, 9, 11 and 12** of the Measure.

The main objective of these regulations is to place a duty on the NHS and primary care providers in Wales to make arrangements for the handling and investigation of concerns. The regulations also places a duty on NHS and primary care providers in Wales to determine whether or not to make an offer of redress to the patient if an

<sup>4</sup> See *The NHS Redress (Wales) Measure 2008 (Commencement) Order 2011*, SI 2011/211 (W.42)

<sup>5</sup> *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011* (SI 2009/704) (W.108)

<sup>6</sup> A Statutory Instrument is “made” when it is formally signed off by a Welsh Minister.

<sup>7</sup> A Statutory Instrument formally becomes law on the day that it “comes into force”.

## Powers for making Regulations in the Measure

pharmacist and ophthalmologists providing NHS care or independent hospitals commissioned to provide care as part of the NHS may incur liability.

Under the Measure, Ministers have powers to specify in Regulations any **other body or person** that could be deemed liable.

## Regulations made or under consultation

investigation reveals that a “qualifying liability” exists or may exist.

These regulations were subsequently amended by *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011*<sup>8</sup> which delayed Part 7 of those regulations from coming in to force from 1 October 2011 to 1 April 2012. Part 7 of the initial regulations deals with how redress is to be provided where Welsh NHS bodies enter into arrangements with NHS providers outside of Wales for the provision of services.<sup>9</sup>

Section 1(4) explains the qualifying liability in tort:

Personal injury or loss arising out of, or in connection with, breach of a duty of care owed to any person in connection of a diagnosis of illness or in the care or treatment of any patient.

The qualifying liability must arise in connection with qualifying services. Qualifying services are to be set out in Regulations.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

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<sup>8</sup> *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011* (SI 2011/1706) (W.192)

<sup>9</sup> Welsh Government, *Explanatory Memorandum to the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011*, 11 July 2011, paragraph 1

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 2 sets out in detail the type of provision that Ministers may or must make in respect of redress arrangements **as they think fit**. 2(2), 2(3) and 2(6)(b) contain the provisions that **must** be made in Regulations. Provisions that **may** be included in Regulations are contained in 2(4) and 2(5).

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Section 3 gives powers to Ministers to make such provision as they think fit in relation to access to redress including circumstances in which redress **may not** be accessed.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Section 4 gives powers to Ministers to make provision to consider the potential application of redress arrangements.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Section 5 covers the method of delivering redress. 5(2) relates to items where Ministers may make provisions; 5(3) 5(5) and 5(6) to those where Ministers must make provision. Under subsection (4) Regulations may be made to provide for circumstances under which no copy of an investigation report needs to be provided.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Under Section 6 Regulations must be made so that the time limitation period is suspended for any liability under investigation. Regulations may also define when liability is the subject of an application under redress.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 7 enables Ministers to make provision for individuals to receive free legal advice and the services of medical experts.

Section 7(4) states that effectively, if the advice of a medical expert is to be commissioned, this would be done jointly by the NHS body and the individual seeking redress.

Section 8 imposes a duty on Ministers to arrange representation for individuals seeking redress under the Regulations. This differs from the legal representation above and might include, for example, advocacy.

Section 9 provides that Regulations may make provision for any person or body within the health service to have functions with regard to the operation of redress arrangements.

Section 10 amends the *Health and Social Care (Community Health and Standards) Act* to give people the right to complain about the administration of redress arrangements.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 11 deals with the manner in which orders and Regulations will be made under the *2008 Measure*.

Section 11(6) makes provision for the affirmative procedure to be used when the first set of Regulations are made under section 1(1), 2, 4, 6, 7, or 9 or when any Regulations are made under section 1(4)(b), 1(5), 3 or 5 or on each occasion that Regulations are made under Section 12(2).

Under Section 12 Ministers are allowed to make any other related provisions to give effect to the *2008 Measure*. In particular, 12(2) allows for Ministers to amend or repeal any Act of Parliament and statutory instruments consequential on changes required as a result of the Regulations. The scope of these powers is limited by the extent of the Measure making power to amendments which are related to NHS Redress.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

Powers used to make *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011*.

## 2.2. *Learner Travel (Wales) Measure 2008 - Royal Approval granted on 10 December 2008*

The *Learner Travel (Wales) Measure 2008* makes provision about the travel of pupils receiving primary, secondary or further education or training to and from schools or other places where they receive it. This Measure was subsequently amended by the *Safety on Learner Travel (Wales) Measure 2011* to include additional provisions relating to learner travel.

Section 2(1) (c) enables Welsh Ministers to make regulations about prescribing other learners to be included in assessment of travel needs.

Section 3(9) provides Welsh Ministers with an enabling power that will permit Welsh Ministers to make Regulations for children's entitlement to travel.

Powers under Section 7 enables Welsh Ministers to make regulations about travel arrangements for young people in post-16 learning.

The provisions of the Measure which are currently in force were commenced at different stages between 10 February 2009 and 4 January 2010.<sup>10</sup>

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<sup>10</sup> See *The Learner Travel (Wales) Measure 2008 (Commencement No. 1) Order 2009* (SI 2009/371) (W.39); *The Learner Travel (Wales) Measure 2008 (Commencement No. 2) Order 2009* (SI 2009/2819) (W.245)

## Powers for making Regulations in the Measure

Section 8 provided Welsh Ministers with powers to make regulations about travel arrangements for children in nursery education.

Section 12 requires Welsh Ministers to make a Travel Behaviour Code.

Section 12(3)(c) also enables Welsh Ministers to make regulations about other learners to whom the travel behaviour code will apply

Section 16 enables Welsh Ministers to make regulations about the publication of information about assessments, travel arrangements and the travel behaviour code

## Regulations made or under consultation

A statutory [Travel Behaviour Code](#) was published by the Welsh Government on 30 October 2009. It came into force in January 2010. The Code covers all modes of transport, including bus, train, walking and cycling for all learners aged 5 to 19.

*The Learner Travel Information (Wales) Regulations 2009* set out the information local authorities are required to publish about home to school travel arrangements in their area. These initial requirements were subsequently amended by *The Learner Travel Information (Wales) (Amendment) Regulations 2010* (SI 2010/192) which added an additional requirement for local authorities to publish the travel behaviour code made under Section 12 of the Measure. These regulations were made by the Welsh Ministers on 9 March 2009 and came into force on 1 April 2009.

## **Powers for making Regulations in the Measure**

Section 21 enables Welsh Ministers to make regulations about the procedures to be followed when a local authority uses its powers to change school start and finish times.

Section 27(2), (3) and (4) provide Welsh Ministers with the power to make incidental, supplementary, transitional, saving or consequential provision including amendments to other legislation

## **Regulations made or under consultation**

*The Changing of School Session Times (Wales)*

*Regulations 2009* set out the procedures local authorities must follow to change the start and finish times of school session times. These regulations were made by the Welsh Ministers on 9 March 2009 and came into force on 1 April 2009.

### 2.3. *Learning and Skills (Wales) Measure 2009 - Royal Approval granted 13 May 2009*

The *Learning and Skills (Wales) Measure 2009* aims to ensure that learners aged between 14 and 19 can choose from a wide range of vocational and general courses to reach their potential.

The provisions of the Measure which are currently in force were commenced at different stages between 7 December 2009 and 14 February 2011.<sup>11</sup>

No regulations have yet made under powers conferred by the Measure to date. The Welsh Government did however undertake take a [Consultation on the Policy Informing Proposed Regulations under the Learning and Skills \(Wales\) Measure 2009](#) (under the powers contained in Sections 7, 9, 11, 25, 26 and 28) which closed on 14 July 2009.

A list of Consultation responses is published on the Welsh Government website: [Consultation responses](#).

Post legislative scrutiny of the Measure was also undertaken by the Assembly's Children and Young People Committee during the fourth Assembly. Their [Committee Report](#) was published in May 2012. This was the first piece of Welsh legislation to be examined by a Committee to assess how successful its implementation has been to date.

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<sup>11</sup> See *Learning and Skills (Wales) Measure 2009 (Commencement No 1 and Transitional Provision) Order 2009* (SI 2009/3174) (W.276) and *Learning and Skills (Wales) Measure 2009 (Commencement No 2) Order 2011* (SI 2011/97) (W.20)

Section 4(5) enables Welsh Ministers to make regulations outlining the formation of a local curriculum. This may include setting the minimum number of courses to be offered within the local curriculum or within a particular learning domain in a local curriculum; setting the minimum proportion of these courses that must be vocational; and preventing during a specified period any alteration to the contents of a local curriculum.

Regulations made by Welsh Ministers under Sections 7(2) and 26(3) may make provision for the election of local curriculum courses by learners. Such regulations may specify the maximum number of study courses of a particular type that a pupil has the right to elect to follow; identifying points to be allotted to courses of study and specifying an aggregated points maximum; and the period during which elections can be made.

Sections 9(3) and 28(3) enables Ministers to make regulations on the relevant timescales for head teachers' or principals' decisions in circumstances where a pupil cannot follow a course, and on the procedures for making these decisions and the appeals procedures and timescales.

Similar provisions to those outlined above are provided under Sections 11(5) and 30(3) which enable Ministers, by

Order, to amend, add or omit any of the specified grounds on which head teachers or principals may decide that a pupil is not entitled to follow a course or is no longer entitled to follow a course.

Under Section 15 Welsh Ministers may, by Order, amend the “learning domains”. These are currently defined in Section 4(3) the Measure as mathematics, science and technology; business, administration and law; services for people; arts, media, culture and languages; humanities, social sciences and preparation for life and work.

Section 16 enables Welsh Ministers to make regulations applying the provisions of the Measure to children of compulsory school age who are not registered as pupils of a maintained school but are receiving education within the further education sector in Wales.

Section 17 enables Welsh Ministers to make regulations applying the provisions of the Measure to children of compulsory school age who are registered as pupils of a maintained special school and to children over compulsory school age who are students at institutions which provide education wholly or mainly for persons with a learning difficulty.

Section 25 enables Welsh Ministers to make regulations regarding the determination of a pupil's lead learning "relevant school or institution" and the making of pupil's requests and head teachers' or principals' decisions, including in particular provision as to the date or time by which a request or decision is to be made.

#### 2.4. *Local Government (Wales) Measure 2009 - Royal Approval granted 10 June 2009*

The *Local Government (Wales) Measure 2009* intends to make Welsh local authorities more effective by placing new statutory duties on them in relation to service improvement and strategic planning.

The provisions of the Measure which are currently in force were commenced at different stages between 17 July 2009 and 1 April 2011.<sup>12</sup>

Since the commencement of its relevant provisions, Welsh Ministers have issued six regulations under powers conferred on them by the Measure. In addition to these, an Order<sup>13</sup> making consequential amendments to the *Government of Wales Act 2006* was made by the Welsh Ministers on 3 February 2010 and came into force on 1 April 2010.

Section 8 provides Welsh Ministers with a power to set performance indicators against which a “Welsh improvement authority’s” (i.e. a county council, a county borough council, a National Park Authority and a Welsh Fire and Rescue Authority) performance will be measured. The Measure also gives Welsh Ministers by order the discretion to specify different performance indicators and standards for different authorities or types of authorities.

The *Local Government (Performance Indicators and Standards) (Wales) Order 2010*<sup>14</sup> was made by Welsh Ministers on 24 February 2010 and came into force on 1 March 2010. The Order specified the indicators to which the performance of county councils and county borough councils in Wales will be measured. These indicators covered the following functions: Social Services; Housing; Education; Waste Management; Transport/Highways;

<sup>12</sup> See *Local Government (Wales) Measure 2009 (Commencement No 1) Order 2009* (SI 2009/1796) (W.163); *Local Government (Wales) Measure 2009 (Commencement No 2, Transitional Provisions and Savings) Order 2009* (SI 2009/3272) (W.288); *Local Government (Wales) Measure 2009 (Commencement No 2, Transitional Provisions and Savings) (Amendment) Order 2010* (SI 2010/2237) (W.196)

<sup>13</sup> *The Local Government (Wales) Measure 2009 (Consequential Modifications) Order 2010* (SI 2010/212)

<sup>14</sup> *Local Government (Performance Indicators and Standards) (Wales) Order 2010* (SI 2010/482) (W.51)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Culture and Sport; Energy Efficiency; Housing Benefit and Council Tax Benefit.

Two of the performance indicators specified in the 2010 Order relating to Housing Benefit and Council Tax Benefit have been subsequently removed by the *Local Government (Performance Indicators) (Wales) Order 2012*<sup>15</sup> which was made by Welsh Ministers on 2 October 2012 and will come into force on 1 April 2013.

The *Fire and Rescue Authorities (Performance Indicators) (Wales) Order 2011*<sup>16</sup> was made by Welsh Ministers on 21 February 2011 and came into force on 1 April 2011. The Order specifies the indicators to which the performance of Welsh Fire and Rescue Authorities will be measured.

Section 15 (7) (b) places an obligation on Welsh improvement authorities to prepare and publish specified information (namely improvement plans and assessment reports) by specified dates. The Welsh Ministers have the power to amend these dates.

The *Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2010*<sup>17</sup> was made by Welsh Ministers on 24 February 2010 and came into force on 1 April 2010. It was subsequently revoked and replaced by *The Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2012*<sup>18</sup> which requires the improvement plans of Welsh fire and rescue authorities from 1 April 2013 to be published by 31 December prior to the financial year to

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<sup>15</sup> *Local Government (Performance Indicators) (Wales) Order 2012* (SI 2012/2539) (W.378)

<sup>16</sup> *Fire and Rescue Authorities (Performance Indicators) (Wales) Order 2011* (SI 2011/558) (W.80)

<sup>17</sup> *Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2010* (SI 2010/481) (W.50)

<sup>18</sup> *The Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2012* (SI 2012/1143) (W.137)

which the improvement plan relates.

The Measure makes several provisions about the audit, regulation and inspection of local authorities, and about the roles of the various bodies which carry out such work. In particular, it includes provisions requiring them to co-ordinate their activities in each local authority and to assist the Auditor General for Wales in reaching overall conclusions about how far a local authority has improved and might continue to do so. Welsh Ministers have powers to make Regulations to add to the list in [Section 16](#) in response to “changing circumstances”. Welsh Ministers however are **not permitted** to make such an Order unless they have consulted the regulatory bodies affected, Welsh improvement authorities and the Auditor General for Wales.

[Section 19](#) enables Welsh Ministers, by Order, to specify another date for the furnishing of audit and assessment reports by the Auditor General for Wales. Such an Order would merely change an administrative deadline.

The *Audit and Assessment Reports (Wales) Order 2010*<sup>19</sup> was made by Welsh Ministers on 29 November 2010 and came into force on the next day. It was subsequently amended by *The Audit and Assessment Reports (Wales) (Amendment) Order 2011*<sup>20</sup> which came into force on 22 November 2011. The order requires the Auditor General for Wales to send copies of any audit and assessment

<sup>19</sup> *The Audit and Assessment Reports (Wales) Order 2010* (SI 2010/2853) (W.235)

<sup>20</sup> *The Audit and Assessment Reports (Wales) (Amendment) Order 2011* (SI 2011/2602) (W.280)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

reports issued under Section 19(2) of the Measure to the Welsh Ministers and the Welsh improvement authority concerned by 31 January 2011 during each financial year.

The Measure also provides Welsh Ministers with a power (by Order) to make provision to modify or exclude the application of enactments which apply to Welsh improvement authorities.

The Welsh Ministers also have a power to confer upon a Welsh improvement authority any additional power they consider necessary in order to facilitate compliance with Part 1 of the Measure.

Powers in sections 31 and 32 are wide-ranging and could allow the amendment of a number of primary laws by Order. Orders under these provisions should thus be subject to the super-affirmative procedure.

### 2.5. *Healthy Eating in Schools (Wales) Measure 2009 - Royal Approval granted 15th October 2009*

The Measure imposes a duty on schools and local education authorities to promote healthy eating and drinking and provides Welsh Ministers with numerous regulation making powers to set in detail the content of food served in schools, including powers to specify maximum levels of fat, saturated fat, salt and sugar in food provided for pupils. These powers are summarised by section below.

No regulations have yet been made under powers conferred on Welsh Ministers by this Measure. The Minister for Education and Skills, Leighton Andrews AM, however issued a [written cabinet statement](#) on 6 August 2012 in which he stated that it was the Welsh Government's intention to bring forward draft regulations before the Assembly in early 2013. A consultation on the draft regulations will be launched in due course before that date.

The Minister also confirmed that the duties contained in Sections 1, 2, 5, 6, and 7 of the Measure for local authorities to promote healthy eating and drinking will come into force at a later date.

Section 1 provides Welsh Ministers with powers to issue guidance on what constitutes healthy eating and drinking; what action would be appropriate and how the principles of sustainable development should apply to healthy eating and drinking.

Section 4 provides a power for Welsh Ministers to make regulations in relation to the food and drink provided on school premises. The regulations made under this section may specify nutritional standards or other nutritional

requirements and specify maximum amounts of fat, saturated fat, salt and sugar.

Section 5 requires local authorities to have regard to any guidance issued by Welsh Ministers on drinking water in schools.

Section 7 requires local authorities and governing bodies to have regard to guidance issued by Welsh Ministers in relation to the protection of the identity of pupils receiving free school lunches or milk.

### 2.6. *Education (Wales) Measure 2009 - Royal Approval granted 15th October 2009*

The *Education (Wales) Measure 2009* provides children in Wales with rights to make special educational needs appeals and claims of disability discrimination to the Special Educational Needs Tribunal for Wales. It also gives children with special educational needs an independent right to appeal decisions made about their education support needs.

The provisions of the Measure which are currently in force were commenced at different stages between 15 October 2009 and 6 March 2012.<sup>21</sup> Welsh Ministers made consequential amendments to the Measure following the passing of the *Equality Act 2010* by making *The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011*<sup>22</sup> which came into force on 6 July 2011.

Sections 3 and 10 enables Welsh Ministers to make regulations that provide for a child or a disabled child to have a person (known as a “case friend”) to make representations on behalf of the child to avoid or resolve disputes with the Local Education Authority, or to exercise a child’s right of appeal on behalf of the child. The regulations may confer functions on the Special Educational Needs Tribunal for Wales; make provision about the appointment or removal of a case friend; specify circumstances in which a person may or may not act as a case friend; specify circumstances in which a child must have a case friend; and specify requirements in

<sup>21</sup> See *Education (Wales) Measure 2009 (Commencement No 1) Order 2011* (SI 2011/1468) (W.173); *Education (Wales) Measure 2009 (Commencement No 2) Order 2011* (SI 2011/1951) (W.215); *Education (Wales) Measure 2009 (Commencement No 3 and Transitional Provisions) Order 2012* (SI 2012/320) (W.51)

<sup>22</sup> *The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011* (SI 2011/1651) (W.187)

respect of a case friend's conduct.

Sections 4 and 11 enable Welsh Ministers to issue guidance that Local Education Authorities must have regard to when making arrangements to provide advice and information to children, their parents or case friends.

Sections 5 and 12 enable Welsh Ministers to issue guidance that Local Education Authorities must have regard to when making arrangements to provide dispute resolution services.

Sections 6 and 13 enable Welsh Ministers to issue guidance that Local Education Authorities must have regard to in relation to advocacy services arrangements.

Sections 7 and 14 enable Welsh Ministers to postpone proceedings in certain circumstances and to add or substitute parties in appeal proceedings.

Section 17 gives Welsh Ministers the power to pilot the rights given to a child under this Measure for a period of up to 40 months. The Section also enables Welsh Ministers to make provision through regulations for reports, or other information on the operation of the pilot.

The *Special Educational Needs Tribunal for Wales Regulations 2012*<sup>23</sup> were made by Welsh Ministers on 13 February 2012 and came into effect on 6 March 2012. These Regulations make provision to give effect to Section 17 of the measure which gives the Welsh

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<sup>23</sup> [The Special Educational Needs Tribunal for Wales Regulations 2012 \(SI 2012/322\) \(W.53\)](#)

Ministers the power to make regulations to pilot the rights of a child to appeal or make a claim to the Tribunal.

These regulations were accompanied by the *Education (Wales) Measure 2009 (Pilot) Regulations 2012*<sup>24</sup> which were made by Welsh Ministers and came into effect on the same dates. The regulations provide details of the Welsh Ministers proposal to pilot the new rights and duties given to children under Part 1 of the Measure in the areas of Carmarthenshire County Council and Wrexham County Borough Council.

Section 18 provides the Welsh Ministers with a power to make provision by order about the matters being piloted. This includes a power to add, remove or modify rights, and to make consequential amendments and repeals to provisions of those Acts. The purpose of the power is to enable the Welsh Ministers to make further provision about the rights of children to make appeals and claims in the light of information gathered during the pilot phase.

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<sup>24</sup> [\*The Education \(Wales\) Measure 2009 \(Pilot\) Regulations 2012\*](#) (SI 2012/321) (W.52)

### 2.7. *Children and Families (Wales) Measure 2010 - Royal Approval granted 10 February 2010*

The Children and Families (Wales) Measure 2010 includes numerous statutory provisions in order to provide greater support to families where children may be at risk. In particular, the Measure places a duty on Welsh Ministers to publish a child poverty strategy and requires local authorities to establish integrated family support teams.

Section 1 enables the Welsh Ministers to amend the broad aims of the Measure (as outlined in Section 1) by Order.

Section 2 provides Welsh Ministers with a power to make regulations to specify particular objectives for a Welsh authority over and above any objectives which the Welsh authority might choose for itself.

The provisions of the Measure which are currently in force were commenced at different stages between 1 September 2010 and 31 March 2012.<sup>25</sup>

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<sup>25</sup> See Children and Families (Wales) Measure 2010 (Commencement) Order 2010 (SI 2010/1699) (W.160); Children and Families (Wales) Measure 2010 (Commencement No 2, Savings and Transitional Provisions) (Amendment) and (Consequential Amendments) Order 2011 (SI 2011/577) (W.82); Children and Families (Wales) Measure 2010 (Commencement No 3 and Savings Provision) Order 2010 (SI 2010/2994) (W.248); Children and Families (Wales) Measure 2010 (Commencement No 4) Order 2012 (SI 2012/191) (W.30)

Section 3 sets out provisions about the making, publication and review of child poverty strategies prepared by Welsh Ministers under Section 1 of the Measure. This Section also requires the Welsh Ministers to publish a report in 2013 and in every third year subsequently, containing an assessment of the extent to which objectives have been met or not.

Section 5 enables Welsh Ministers to make regulations about the making, publication and review of strategies prepared by “other Welsh authorities”.

The *Child Poverty Strategy (Wales) Regulations 2011*<sup>26</sup> was made by Welsh Ministers on 7 March 2011 and came into force on 6 April 2011. These regulations make provisions about the statutory child poverty strategies. In particular they set out the duration of the strategies; consultation requirements; the timing of their publication; the completion dates and reviewing arrangements.

Section 6 enables Welsh Ministers to amend the list of Welsh authorities which are required to produce child poverty strategies.

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<sup>26</sup> [The Child Poverty Strategy \(Wales\) Regulations 2011](#) (SI 2011/675) (W.98)

Section 7 provides Welsh Ministers with a power to make provision in relation to the duty placed on local authorities under the Measure to provide free childcare for certain children who are not of compulsory school age. The regulations may make provision about the type of childcare that must be provided; the period for which it is available and the description of the child for whom the care is to be made available.

Section 10 empowers Welsh Ministers to make regulations that requires local authorities to secure the provision of parental support services free or charge.

Section 11 enables Welsh Ministers to make regulations relating to play opportunities for children which local authorities must take note of.

The *Play Sufficiency Assessment (Wales) Regulations 2012*<sup>27</sup> were made by Welsh Ministers on 6 October 2012 and will come into force on 2 November 2012. They place a duty on Local Authorities to assess for sufficient play opportunities in their area.

Section 13 empowers Welsh Ministers to make regulations to provide for local authorities' performance of the functions conferred by Sections 7 to 12 to be inspected and for the publication of inspection reports.

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<sup>27</sup> *Play Sufficiency Assessment (Wales) Regulations 2012* (SI 2012/2555) (W.279)

Section 17 requires Welsh authorities to have regard to guidance issued by Welsh Ministers when exercising their functions to promote the broad aims for contributing to the eradication of child poverty.

Section 18 provides Welsh Ministers with powers to direct a Welsh authority to take action or secure compliance with the duties set out in Sections 2, 7, 10, 11 or 12 where it is felt that the Welsh authority is failing or is likely to fail to comply with those duties.

Section 19 provides Welsh Ministers with a power to change the ages referred to in the definitions of “child minder” and “day care for children” and to specify circumstances which will amount to exceptions from the definitions.

Section 28 empowers the Welsh Ministers to set out in regulations the information which a certificate of registration for day care providers must contain.

The *Child Minding and Day Care (Wales) Regulations 2010*<sup>28</sup> was made by the Welsh Ministers on 20 October 2011 and came into effect on 1 April 2011. The regulations make numerous provisions relating to child minding and day care services operational in Wales. They apply to persons who act as child minders or who provide day care for children under the age of eight on premises situated in Wales.

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<sup>28</sup> [Child Minding and Day Care \(Wales\) Regulations 2010](#) (SI 2010/2574) (W.214)

The *Child Minding and Day Care Exceptions (Wales) Order 2010 (SI 2010/2839)*<sup>29</sup> was made by Welsh

Ministers on 25 November 2010 and came into force on 1 April 2011. The order sets out exceptions to what constitutes “child minding” or “day care for children”.

Section 30 empowers Welsh Ministers to make regulations setting out requirements about how registered persons carry out the activities of child minding or day care providers.

Section 31 enables Welsh Ministers to prescribe in regulations other circumstances in which the registration of a person may be cancelled.

Section 32 enables Welsh Ministers to make regulations to set circumstances when the registration of a child minder or day care provider may be temporarily suspended.

Section 35 allows the Welsh Ministers to vary or remove existing conditions, or add new conditions, to a person’s registration with immediate effect where they have reasonable cause to believe that there is a risk of significant harm to a child if they do not do so.

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<sup>29</sup> [The Child Minding and Day Care Exceptions \(Wales\) Order 2010 \(SI 2010/2839\)](#) (W.233)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 38 allows the Welsh Ministers to make regulations which set out circumstances under which a person is disqualified from registration.

The *Child Minding and Day Care (Disqualification) (Wales) Regulations 2010*<sup>30</sup> were made by Welsh Ministers on 28 June 2010 and came into effect on 30 July 2010. They set out the categories of persons who are disqualified from registration in Wales as child minders or providers of day care.

Section 40 gives the Welsh Ministers the power by regulations to provide for child minding and day care providers in Wales to be inspected and for the publication of inspection reports.

The arrangements relating to the inspection of those providing child minding and day care services were set out in the *Child Minding and Day Care (Inspection and Information for Local Authorities) (Wales) Regulations 2010*<sup>31</sup> which were made by Welsh Ministers on 20 October 2010 and came into force on 1 April 2011.

Section 45 provides for the Welsh Ministers to provide information to local authorities about those who are registered to provide child minding or day care.

Section 47 provides for the Welsh Ministers to impose fixed penalty notices on registered persons where they are satisfied that a person has committed a relevant offence. The Welsh Ministers have power to set out in regulations those offences which will be capable of being dealt with by a fixed penalty notice.

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<sup>30</sup> *The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010* (SI 2010/1703) (W.163)

<sup>31</sup> *Child Minding and Day Care (Inspection and Information for Local Authorities) (Wales) Regulations 2010* (SI 2010/2575) (W.215)

Section 52 empowers Welsh Ministers to make regulations to enable a local authority to secure provision of information or advice about child minding and day care and to secure the provision of training about the provision of child minding and day care.

Section 53 empowers Welsh Ministers to make regulations that require registered child minders or day care providers to pay fees to the Welsh Ministers, including the circumstances when such fees may be waived.

Section 58 provides Welsh Ministers with powers to make regulations that prescribe the functions of local authorities and Local Health Boards which will be relevant to the types of cases which will be dealt with by the Integrated Family Support Teams.

The *Integrated Family Support Teams (Family Support Functions) (Wales) Regulations 2012*<sup>32</sup> were made by Welsh Ministers on 30 January 2012 and came into force on 28 February 2012. These Regulations set out the “family support functions” of a local authority and a Local Health Board.

Section 60 provides Welsh Ministers with a power to determine the professional make-up of the Integrated Family Support Teams.

The *Integrated Family Support Teams (Composition of Teams and Board Functions) (Wales) Regulations 2012*<sup>33</sup> were made by Welsh Ministers on 30 January 2012 and came into force on 28 February 2012. These regulations make requirements about the professional categories from which the workers who are members of an

<sup>32</sup> *The Integrated Family Support Teams (Family Support Functions) (Wales) Regulations 2012* (SI 2012/204) (W.34)

<sup>33</sup> *The Integrated Family Support Teams (Composition of Teams and Board Functions) (Wales) Regulations 2012* (SI 2012/202) (W.33)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Integrated Family Support Team must be drawn. They also set out what an Integrated Family Support Board must do to meet the objectives conferred on it by section 62 of the Measure.

Section 62 empowers Welsh Ministers to make regulations specifying functions which would say how an Integrated Family Support Board must meet the objectives.

Section 63 gives Welsh Ministers the power to make regulations about various aspects of the functioning of the Integrated Family Support Teams and the Integrated Family Support Board.

Powers used to make the *Integrated Family Support Teams (Composition of Teams and Board Functions) (Wales) Regulations 2012* (see above).

The *Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2010*<sup>34</sup> were made by Welsh Ministers on 24 June 2010 and came into force on 1 September 2010. These regulations were subsequently revoked and replaced by the *Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2012*<sup>35</sup> that were made by Welsh Ministers on 30 January 2012 and came into force on 28 February 2012. The regulations establish requirements about how local authorities must review the cases of the families who are supported by Integrated Family Support teams.

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<sup>34</sup> *Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2010* (SI 2010/1700) (W.161)

<sup>35</sup> *Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2012* (SI 2012/205) (W.35)

Section 65 requires that a local authority, a Local Health Board, Integrated Family Support Teams and the Integrated Family Support Board have regard to any guidance issued by the Welsh Ministers.

### 2.8. *Social Care Charges (Wales) Measure 2010 Royal Approval granted 17 March 2010*

The *Social Care Charges (Wales) Measure 2010* is an enabling Measure which provides Welsh Ministers with powers to develop a more consistent framework for local authorities when charging individual service users for non-residential social care services.

Section 2 gives Welsh Ministers the power to make regulations controlling or limiting what will be a reasonable charge.

The provisions of the Measure which are currently in force were commenced at different stages between 17 May 2010 and 18 March 2011.<sup>36</sup>

The *Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011*<sup>37</sup> were made by Welsh Ministers on 24 March 2011 and came into effect on 11 April 11. The regulations set out provisions which a local authority must comply with in cases where it decides to impose a charge when it provides or makes arrangements for the provision of a chargeable service (which are a series of services defined under Section 13 of the Measure).

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<sup>36</sup> See *The Social Care Charges (Wales) Measure 2010 (Commencement) Order 2011* (SI 2011/849) (W.126)

<sup>37</sup> *The Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011* (SI 2011/962) (W.136)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

The *Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011*<sup>38</sup> were made by Welsh Ministers on 6 July 2011 and came into force on 2 August 2011. The regulations correct minor drafting and typographical errors in the Charges and Social Care Direct Payments regulations.

Section 3 enables the Welsh Ministers to make regulations excluding certain persons or chargeable services from the charging regime.

Powers used to make the *Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011* and the *Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011*. See above.

Section 4 gives the Welsh Ministers the power to set out in regulations the form and content of invitations to request mean assessments and the manner in which they are to be made.

Powers used to make the *Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011* and the *Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011*. See above.

Powers set out in Section 5 enable Welsh Ministers to make regulations as to how means assessments must be carried out.

Powers used to make the *Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011* and the *Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011*. See above.

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<sup>38</sup> [The Social Care Charges \(Miscellaneous Amendments\) \(Wales\) Regulations 2011](#) (SI 2011/1666) (W.190)

Powers for making Regulations in the Measure	Regulations made or under consultation
<p><u>Section 6</u> enables the Welsh Ministers to make provision in regulations as to who may make the request for a means assessment or provide any necessary financial information on behalf of a service user or prospective service user.</p>	<p>Powers used to make the <i>Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011</i>. See above.</p>
<p><u>Section 7</u> empowers Welsh Ministers to make regulations in relation to the way in which local authorities determine whether it is reasonably practicable for the service user to pay a standard charge.</p>	<p>Powers used to make the <i>Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011</i> and the <i>Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011</i>. See above.</p>
<p><u>Section 9</u> gives Welsh Ministers power to make regulations prescribing other conditions to the provisions set out in this Section relating to the replacement by authority of determinations as to ability to pay.</p>	<p>Powers used to make the <i>Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011</i>. See above.</p>
<p><u>Section 11</u> empowers the Welsh Ministers with a power to make regulations concerning the arrangements that local authorities must make for reviewing charging decisions.</p>	<p>The <i>Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011</i><sup>39</sup> were made by Welsh Ministers on 24 March 2011 and came into force on 11 April 2011. The regulations provide a right for a recipient of the service in relation to which a charge has been imposed under the Measure to review that decision.</p>

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<sup>39</sup> [The Social Care Charges \(Review of Charging Decisions\) \(Wales\) Regulations 2011](#) (SI 2011/964) (W.138)

## Powers for making Regulations in the Measure

Section 12 gives Welsh Ministers the power to make regulations about direct payments which make provision corresponding to the provision which may be made, under sections 1 to 11 of this Measure.

## Regulations made or under consultation

The *Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011*<sup>40</sup> were made by Welsh Ministers on 24 March 2011 and came into force on 11 April 2011. These regulations set out provisions which a local authority must comply with in cases where it requires an adult recipient of direct payments to make a payment towards the cost of securing a chargeable service.

Powers used to make the *Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011* and the *Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011*. See above.

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<sup>40</sup> [The Social Care Charges \(Direct Payments\) \(Means Assessment and Determination of Reimbursement or Contribution\) \(Wales\) Regulations 2011](#) (SI 2011/963) (W.137)

### 2.9. *Red Meat Industry (Wales) Measure 2010 - Royal Approval granted 11 May 2010*

The *Red Meat Industry (Wales) Measure 2010* removes the need for an Assembly Sponsored Public Body to be in place for the purposes of managing the development and promotion of the Welsh red meat industry, and makes Welsh Ministers directly accountable for that industry.

The provisions of the Measure which are currently in force were commenced at different stages between 11 July 2010 and 1 April 2012.<sup>41</sup> Schedule 2 of the Measure relating to payment amounts was amended by the *Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011*<sup>42</sup> which was made by Welsh Ministers on 6 December 2011 and came into force on 1 April 2012.

Section 3 provides Welsh Ministers with a power to amend the detail of the Measure by changing wordings, adding new descriptions or delete existing descriptions of the activities that can be undertaken to develop and promote the red meat industry.

Section 4 empowers Welsh Ministers to impose a levy on slaughterers, exporters and persons engaged in designated primary or secondary activities related to the red meat industry in Wales.

The *Red Meat Industry (Designation of Slaughterers and Exporters) (Wales) Order 2012*<sup>43</sup> was made by Welsh Ministers on 1 February 2012 and came into force on 1 April 2012. The order implements provisions contained in Section 4 of the Measure and designate slaughterers and exporters as being liable to pay the levy.

<sup>41</sup> See *The Red Meat Industry (Wales) Measure 2010 (Commencement, Transitional and Saving Provisions Order 2011)* (SI 2011/2802) (W.300)

<sup>42</sup> *The Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011* (SI 2011/2946) (W.319)

<sup>43</sup> *Red Meat Industry (Designation of Slaughterers and Exporters) (Wales) Order 2012* (SI 2012/247) (W.40)

Section 5 empowers Welsh Ministers to amend, omit or add provisions in Schedule 2 dealing with the operation of the levy and the maximum levy rates

Section 6 enables Welsh Ministers to make provision about levies imposed in respect of persons carrying out a designated primary or secondary activity.

Section 7 enables Welsh Ministers to delegate all, some or none of their responsibilities to third parties. This section makes it possible for Welsh Ministers to set up and enter into arrangements with bodies such as Hybu Cig Cymru – Meat Promotion Wales so that HCC may take on some or all of the responsibilities and deliver some or all of the functions.

### 2.10. *Carers Strategies (Wales) Measure 2010 - Royal Approval granted 10 November 2010*

The *Carers Strategies (Wales) Measure* creates a new statutory framework in order to place requirements on the NHS and local authorities in Wales to work in partnership to prepare, publish and implement a joint strategy in relation to carers.

The provisions of the Measure which are currently in force were commenced at different stages between 23 November 2011 and 1 January 2012.<sup>44</sup>

Section 2 enables the Welsh Ministers to make regulations requiring a “relevant authority” (i.e. Local Health Boards, NHS trusts and local authorities) or two or more “relevant authorities” to prepare and publish a strategy setting out how the authority will work or the authorities will work together to provide information and advice which is appropriate to carers, and also how they will work together to ensure that carers are consulted before they decide what services are to be provided to a carer or the person being cared for.

The *Carers Strategies (Wales) Regulations 2011*<sup>45</sup> was made by Welsh Ministers on 6 December 2011 and came into force on 1 January 2012. The regulations formally require each Local Health Board in Wales and the local authorities which fall within their area to work together in preparing and publishing a strategy setting out how they will work together to assist and include carers in the arrangements made for those they care for.

Section 3 empowers Welsh Ministers to make regulations specifying what is meant by “appropriate information and advice” for the purposes of Section 2.

<sup>44</sup> See *The Carers Strategies (Wales) Measure 2010 (Commencement) Order 2011* (SI 2011/2842) (W.306)

<sup>45</sup> *The Carers Strategies (Wales) Regulations 2011* (SI 2011/2939) (W.315)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 4 gives Welsh Ministers the power to make regulations specifying the steps which relevant authorities must or may take in satisfying their duty to consult carers under the Measure.

Section 5 empowers Welsh Ministers to make regulations containing further provisions as to how the relevant authority is or relevant authorities are to prepare and publish their strategies.

Section 6 confers on the Welsh Ministers the power to make regulations specifying in further detail how and when the provisions of Section 6 (relating to the submission of a draft strategy to Welsh Ministers) must be complied with.

The *Carers Strategies (Wales) (Amendment) Regulations 2012*<sup>46</sup> amended the initial 2011 regulations in order to correct an editing error. These were made by Welsh Ministers on 3 February 2012 and came into force on 29 February 2012.

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<sup>46</sup> [The Carers Strategies \(Wales\) \(Amendment\) Regulations 2012](#) (SI 2012/282) (W.46)

### 2.11. *Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010 - Royal Approval granted 15 December 2010*

The *Playing Fields (Community Involvement in Disposal Decisions) (Wales) Measure 2010* is an enabling Measure which provides Welsh Ministers with the power to make regulations that would allow the involvement of communities in decisions by local authorities about the way in which they dispose of playing fields.

Section 1 gives Welsh Ministers the power to make regulations which set out the involvement of communities in decisions by local authorities about disposals by them of land consisting or forming part of a playing field.

This Measure came into force on 15 December 2010. No regulations have been made by Welsh Ministers under powers conferred on them by the Measure to date.

### 2.12. *Waste (Wales) Measure 2010 - Royal Approval granted 15 December 2010*

Section 1 amends Schedule 6 to the *Climate Change Act 2008* (c. 27) (“the 2008 Act”). That Schedule empowers Welsh Ministers to make provision by regulations about charging by sellers of goods for the supply of single use carrier bags.

The 2008 Act did not empower the Welsh Ministers to impose duties on sellers of goods, or anyone else, in respect of the destination of proceeds from charges imposed under regulations. Section 1 of this Measure empowers the Welsh Ministers to do so by inserting new paragraphs 4A and 4B into Schedule 6 to the 2008 Act.

Section 3 requires local authorities to secure the recovery (by recycling, preparation for re-use or composting operations), of at least the target amount of its municipal waste in each target financial year. It also requires local authorities to meet the target amount in all subsequent financial years until the next target financial year is

Most of the Measure’s provisions came into force on 15 February 2011. The remaining provisions, which were included in Section 3 of the Measure, came into force on 4 March 2011.<sup>47</sup>

The *Single Use Carrier Bags Charge (Wales) Regulations 2010*<sup>48</sup> were made in November 2010 and came into force on 1 October 2011.<sup>49</sup> They were not made under the Measure itself but under the *Climate Change Act 2008*, which the Measure amended.

The *Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011*<sup>50</sup> was made by Welsh Ministers on 25 February 2011 and came into force on 30 March 2011.

The accompanying *Recycling, Preparation for Re-use and*

<sup>47</sup> See *Waste (Wales) Measure 2010 (Commencement) Order 2011* (SI 2011/476) (W.71)

<sup>48</sup> *Single Use Carrier Bags Charge (Wales) Regulations 2010* (SI 2010/2880) (W.238)

<sup>49</sup> Written Cabinet Statement by Jane Davidson AM, Minister for Environment, Sustainability and Housing, *Single Use Carrier Bag Charge (Wales) Regulations 2010*, 1 November 2010 [accessed 21 August 2012]

<sup>50</sup> *Recycling, Preparation for Re-use and Composting Targets (Definitions) (Wales) Order 2011* (SI 2011/551)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

reached, at which point a new target amount will apply. The table in subsection (3) specifies the targets years and the target amounts for each of them. Subsection (4) enables the Welsh Ministers to amend this table by order. Any such order is subject to an affirmative resolution procedure.

Section 4 enables the Welsh Ministers to make regulations to specify other waste targets, in addition to those set under section 3, relating to the prevention, reduction, collection, management, treatment or disposal of waste by local authorities. This section also enables the Welsh Ministers to make regulations to specify indicators to measure a local authority's performance in relation to these targets and to impose a financial penalty on local authorities if these waste targets are not met.

Section 5 enables the Welsh Ministers to make regulations about assessing, monitoring and auditing compliance in relation to targets for recycling, preparation for re-use and composting under section 3 or other waste targets under section 4.

*Composting Targets (Monitoring and Penalties) (Wales) Regulations 2011*<sup>51</sup> were made on 29 March 2011 and came into force the next day.

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<sup>51</sup> [\*The Recycling, Preparation for Re-use and Composting Targets \(Monitoring and Penalties\) \(Wales\) Regulations 2011 \(SI 2011/1014\)\*](#)

### 2.13. *Mental Health (Wales) Measure 2010 - Royal Approval granted 15 December 2010*

The *Mental Health (Wales) Measure 2010* includes a number of provisions aimed at providing mental health services at an earlier stage for individuals who are experiencing mental health problems to reduce the risk of further decline in their mental health. In particular, the Measure places a duty on Local Health Boards and local authorities to work in partnership to deliver local primary mental health support services; makes statutory provision for care and treatment planning for those receiving secondary mental health care; enables individuals discharged from secondary mental health services to refer themselves back to secondary services directly without needing to go to their GP for referral; and provides for a wider statutory scheme of independent advocacy which is currently provided by the *Mental Health Act 1983*.

Section 4 enables Welsh Ministers to determine the joint scheme for the provision of primary mental health support services in a local authority area if the mental health partners cannot agree one.

The provisions of the Measure which are currently in force were commenced at different stages between 15 February 2011 and 6 June 2012.<sup>52</sup>

The Welsh Government has also issued [good practice guidance](#) to Local Health Boards and local authorities in connection with the Measure and with the subordinate legislation made in connection with it. The guidance was published in March 2012.

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<sup>52</sup> See *The Mental Health (Wales) Measure 2010 (Commencement No. 1 and Transitional Provision) Order 2011* (SI 2011/3046) (W.321) and *The Mental Health (Wales) Measure 2010 (Commencement No.2) Order 2012* (SI1397) (W.169)

## Powers for making Regulations in the Measure

Section 7 gives Welsh Ministers the power to specify in regulations the categories of persons which a GP may refer where the individual concerned is not registered with them.

## Regulations made or under consultation

The *Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012*<sup>53</sup> were made by Welsh Ministers on 15 May 2012 and came into force on 1 October 2012. The regulations contain three parts which relate to Section 7 of the Measure. The regulations set out certain circumstances where a primary care provider may refer a person for a primary mental health assessment. The regulations also make provision about the eligibility requirements that a person must meet before a person may carry out a primary mental health assessment.

Section 15 empowers Welsh Ministers to specify in regulations a mechanism for identifying the relevant service provider in circumstances where both the LHB and the local authority are responsible for providing services.

The *Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011*<sup>54</sup> were made by Welsh Ministers on 6 December 2011 and came into force on 6 June 2012. These regulations contain provisions about care co-ordination and care and treatment planning for patients using secondary mental health services. The regulations also contain provision about the identification of relevant mental health service providers, and transitional provisions for patients who are already in secondary mental health services at the coming into force date of the regulations.

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<sup>53</sup> *The Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012* (SI 2012/1305) (W.166)

<sup>54</sup> *The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011* (SI 2011/2942) (W.318)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 18 empowers Welsh Ministers to set out the form and content of a care and treatment plan. These powers also enable Welsh Ministers to make provision for who must be consulted in developing the plan and who should receive a written copy of the plan.

Where suitable arrangements for the undertaking of assessments of former users of secondary mental health users cannot be agreed between local mental health partners Section 21 allows the Welsh Ministers to determine the arrangements for the local authority area.

The Measure states that assessments of former users of secondary mental health users is not open ended and that previous services users will only be able to exercise their entitlement to further assessment for a certain period of time following their discharge from secondary mental health services. Section 23 enables Welsh Ministers to specify the duration of this discharge period.

The Measure requires mental health service providers to provide a written report of any assessments made. Section 26 enables Welsh Ministers to specify the time period that reports must be made in.

Powers used to make the *Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011*.

The *Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011*<sup>55</sup> was made by Welsh Ministers on 18 October 2011 and came into force on 6 June 2012. These regulations set out provisions about mental health assessments for former users of secondary mental health services.

Powers used to make *The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011*.

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<sup>55</sup> [Mental Health \(Assessment of Former Users of Secondary Mental Health Services\) \(Wales\) Regulations 2011](#) (SI 2011/2500) (W.272)

## Powers for making Regulations in the Measure

The right to assessment for an adult under Part 3 (assessments of former users of secondary mental health services) of the Measure is a right to assessment by the local mental health partners of the local authority where he or she is usually resident. [Section 29](#) empowers Welsh Ministers to make regulations setting out arrangements on how decisions as to what constitutes “usual residence” are made in circumstances when it is unclear where the person in question is usually resident

[Section 31](#) places a duty on Welsh Ministers to make arrangements for help to be provided by independent mental health advocates. This section also empowers Welsh Ministers to make regulations setting out the standards and qualifications that will need to be met by an individual in order to be approved as an Independent Mental Health Advocate (“IMHAs”).

## Regulations made or under consultation

Powers used to make *The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011*.

*The Mental Health (Independent Mental Health*

*Advocates) (Wales) Regulations 2011*<sup>56</sup> were made by

Welsh Ministers on 18 October 2011 and its provisions came into force on 3 January 2012 and 2 April 2012.

These regulations contain provisions about arrangements for the appointment of IMHAs. In particular, they include provisions about who may be appointed to act as an IMHA, and persons who may be visited and interviewed by an IMHA for the purpose of providing help to a Welsh qualifying patient who has been admitted under section 4 of the *Mental Health Act 1983* (as amended by the Measure).

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<sup>56</sup> [The Mental Health \(Independent Mental Health Advocates\) \(Wales\) Regulations 2011](#) (SI 2011/2501) (W.273)

Section 34 empowers Welsh Ministers to set out in regulations other persons that IMHAs may visit and interview.

Section 39 applies the duty placed on Welsh Ministers by the Mental Health Act 1983 to prepare, publish and revise a Code of Practice for the guidance of those concerned with the admission, treatment, guardianship and supervised community treatment of mentally disordered patients. The Section also provides that the Code of Practice will also provide guidance to independent mental health advocates.

Section 44 enables Welsh Ministers to prepare and revise Codes of Practice and arrange for such Codes to be published. A Code must be consulted on before being made and must be laid before the Assembly. A Code which has been made may only be withdrawn by a direction of the Welsh Ministers, and any such direction must be laid before the Assembly.

The Welsh Government conducted a consultation on a draft Code of Practice for care and treatment planning between 18 October 2011 and 16 January 2012.

## Powers for making Regulations in the Measure

Section 45 provides that the Welsh Ministers may, by regulations, modify the operation of Part 1 (local primary mental health support services) so that joint schemes can be made for “regions” which are wider than a local authority area.

## Regulations made or under consultation

The *Mental Health (Regional Provision) (Wales) Regulations 2012*<sup>57</sup> were made by Welsh Ministers on 8 May 2012 and its provisions came into force at different times; on the 8 May 2012 and 6 June 2012. These regulations provide for regional provision for the purposes of Parts 1 (local primary mental health support services) and 3 (assessments of former users of secondary mental health services) of the Measure. In particular, the regulations create local authority areas or regions and assign to them local mental health partners.

Section 46 makes equivalent provision to Section 45 but in relation to Part 3 (assessments of former users of secondary mental health services) of the Measure.

Section 47 enables Welsh Ministers to set out the qualifications, skills, training or experience that professionals should possess in order to deliver primary care assessments or to coordinate care within secondary mental health services.

Powers used to make the *Mental Health (Regional Provision) (Wales) Regulations 2012*.

Powers used to make the *Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011* and the *Mental Health (Primary Care Referrals and Eligibility to Conduct Primary Mental Health Assessments) (Wales) Regulations 2012*.

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<sup>57</sup> The Mental Health (Regional Provision) (Wales) Regulations 2012 (SI 1244) (W.152)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 48 places a duty on Welsh Ministers to review the operation of the Measure and publish a report of such a review within four years of the commencement of the provisions contained in parts 1, 2, 3 and 4. A copy of the report must be laid before the Assembly.

Section 49 provides the meaning of “secondary mental health services” in relation to the Measure. The section also empowers Welsh Ministers to amend or expand this meaning by order.

The *Mental Health (Secondary Mental Health Services) (Wales) Order 2012*<sup>58</sup> was made by Welsh Ministers on 29 May 2012 and came into force on 6 June 2012. The order provides that the requirements surrounding coordination and care and treatment planning provided by Part 2 (coordination and care planning for secondary mental health users) of the Measure do not apply to an individual who is only in receipt of services or treatment which are made available as local primary mental health support services in the local authority area in which that individual is usually resident. Also, an individual who has received only such services will not be eligible for assessment under Part 3 (assessments of former users of secondary mental health services) of the Measure.

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<sup>58</sup> *The Mental Health (Secondary Mental Health Services) (Wales) Order 2012* (SI 2012/1428) (W.178)

## **Powers for making Regulations in the Measure**

### **Regulations made or under consultation**

The order also provides that services in England, Scotland or Northern Ireland which are the equivalent of secondary mental health services provided in Wales are to be regarded as secondary mental health services for certain purposes in Part 3 of the Measure.

### 2.14. *Welsh Language (Wales) Measure 2011 - Royal Approval granted 9 February 2011*

The *Welsh Language (Wales) Measure 2011* intends to modernise the existing legal framework regarding the use of the Welsh language in the delivery of public services. In particular, the Measure makes provisions about the official status of the Welsh language; established the office of the Welsh Language Commissioner (“the Commissioner”), which will replace the Welsh Language Board; allows for the development of language standards which will, over time, replace Welsh language schemes; gives the Commissioner the power to investigate complaints from Welsh speakers who believe that their freedom to use Welsh with one another has been interfered with; and creates a Welsh Language Tribunal.

Schedule 1 Paragraph 7 requires the Welsh Ministers to make provision about the appointment of the Welsh Language Commissioner by regulations.

The *Welsh Language Commissioner (Appointment)*

*Regulations 2011*<sup>60</sup> were approved by the Assembly on 28th June and came into force the following day. The regulations provide that the selection panel will include: an Assembly Member nominated by a relevant committee of the Assembly; a member of staff of the Welsh

<sup>59</sup> See *Welsh Language (Wales) Measure 2011 (Commencement No 1) Order 2011* (SI 2011/1586) (W.182); *Welsh Language (Wales) Measure 2011 (Commencement No 2) Order 2012* (SI 2012/46) (W.10); *Welsh Language (Wales) Measure 2011 (Commencement No 3) Order 2012* (SI 2012/223) (W.37); *Welsh Language (Wales) Measure 2011 (Commencement No 4) Order 2012* (SI 2012/969) (W.126); *The Welsh Language (Wales) Measure 2011 (Commencement No.5) Order 2012* (SI 2012/1096) (W.135); *The Welsh Language (Wales) Measure 2011 (Commencement No.6) Order 2012* (SI 2012/1423) (W.176)

<sup>60</sup> *Welsh Language Commissioner (Appointment) Regulations 2011 (SI 2011/1593)* [accessed 22 August 2012]

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Government; an independent appointments assessor; and a person with experience of promoting the use of Welsh and/or another language.

Meri Huws was appointed as Commissioner on 5 October 2011.<sup>61</sup>

Schedule 4 Paragraph 5 requires the Welsh Ministers to make provision about the appointment of members of the Advisory Panel by regulations.

The *Advisory Panel to the Welsh Language Commissioner (Appointment) Regulations 2012*<sup>62</sup> were made by Welsh Ministers on 11 January 2012 and came into force on 6 February 2012.

Section 26 allows the Welsh Ministers to specify one or more service delivery standards, policy making standards, operational standards, promotion standards or record keeping standards.

The consultation on draft Standards by the Commissioner closed on 11 August 2012. A summary of responses will be published in the autumn before the Commissioner submits the standards to the Minister.<sup>63</sup> It states “Over time, new powers enabling the setting and enforcement of Standards will come to force by way of subordinate legislation. Until that time the Welsh Language Commissioner will continue to monitor statutory Welsh language schemes having inherited powers under Section 2 of the Welsh Language Act 1993”.

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<sup>61</sup> National Assembly for Wales, *RoP: Plenary, 5 October 2011*

<sup>62</sup> *Advisory Panel to the Welsh Language Commissioner (Appointment) Regulations 2012 (SI 2012/59)* [accessed 22 August 2012]

<sup>63</sup> *Welsh Language Commissioner, Standards and the Welsh Language: What are your views, May 2012* [accessed 22 August 2012]

Section 27 allows the Welsh Ministers to specify a record keeping standard for complaints concerning the Welsh language other than complaints concerning a person's compliance with other standards in certain circumstances. It also permits the Welsh Ministers to make regulations specifying different standards of the kind referred to in section 26 in relation to different conduct.

Schedule 5 is introduced by Section 33 of the Measure.

The Welsh Ministers may make an order adding the persons or categories of persons listed in column (2) to the table in Schedule 6 (Public bodies etc: standards) so that those persons become capable of being required to comply with standards.

The Welsh Ministers may, by order, amend the monetary threshold referred to in entry (5) of the table (persons providing services to the public who receive public money) by replacing the relevant amount with any other amount that is not less than £400,000.

Section 34 defines when a person falls within Schedules 5, 6, 7 or 8. . The Welsh Ministers may make regulations stating which standards are to apply to which persons or bodies, and authorising the Commissioner to issue a compliance notice. Standards are imposed on a person or body when the Commissioner issues a compliance notice

(section 44) requiring the person or body listed in the tables in Schedule 6 or 8 to comply with the standard or standards as set out in the notice: the person or body then becomes under a duty to comply.

Section 39 states that a standard will apply to a person (“P”) if the Welsh Ministers provide in regulations that the standard applies to P, and authorise the Commissioner to give P a compliance notice requiring P to comply with the standard.

Section 138 provides that Welsh Ministers may make regulations specifying what interests are registrable interests and to make other provision for the purposes of this Chapter of Part 8 of the Measure.

The *Welsh Language Measure (Registrable Interests) Regulations 2012*<sup>64</sup> were made by Welsh Ministers on 7 March 2012 and came into force on 1 April 2012.

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<sup>64</sup> [Welsh Language Measure \(Registrable Interests\) Regulations 2012 \(SI 2012/753\)](#) [accessed 22 August 2012]

## Powers for making Regulations in the Measure

The Measure abolishes the Welsh Language Board and its functions under section 3 of the *Welsh Language Act 1993* are transferred to the Commissioner. The functions of the Board under section 3 of the Measure could be exercised by Welsh Ministers instead of or in addition to the functions being transferred to the Commissioner. This could be achieved by an order made under section 154 of this Measure.

## Regulations made or under consultation

The *Welsh Language Board (Transfer of Staff, Property, Rights and Liabilities) Order 2012*<sup>65</sup> was made by Welsh Ministers on 7 March 2012 and came into force on 1 April. The accompanying *Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012*<sup>66</sup> was made by Welsh Ministers on 29 March 2012 and came into force on 1 April 2012.

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<sup>65</sup> *Welsh Language Board (Transfer of Staff, Property, Rights and Liabilities) Order 2012 (SI 2012/752)* [accessed 22 August 2012]

<sup>66</sup> *Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012 (SI 2012/990)* [accessed 22 August 2012]

### 2.15. *Rights of Children and Young Persons (Wales) Measure 2011 - Royal Approval granted 9 February 2011*

The *Rights of Children and Young Persons (Wales) Measure* places a duty on Welsh Ministers to have due regard to the rights and obligations in the UN Convention of the Rights of the Child (UNCRC) when making decisions of a “strategic nature” which is defined in the Measure as a decision about any of the following—

- (a) provision proposed to be included in an enactment;
- (b) formulation of a new policy;
- (c) a review of or change to an existing policy.

The Measure also places a duty on Welsh Ministers to prepare and publish a Children’s Scheme and to promote knowledge and understanding of the UNCRC. It also places a duty on Welsh Ministers to consult on the possible application of the Measure to persons who have reached 18 but are not 25.

The Measure came into force on 9 April 2011. No regulations have been made by Welsh Ministers users powers conferred on them by this Measure to date.

## Powers for making Regulations in the Measure

Section 2 requires Welsh Ministers to make a Children's Scheme which must set out the arrangements that the Welsh Ministers have made, or propose to make, in order to ensure that they and the First Minister comply with the "due regard" duty set out in Section 1. Details of relating to the Scheme's preparation and publication arrangements (including consultation requirements) are included in Section 3.

Section 4 requires Welsh Ministers to publish reports about how they have complied with the "due regard" duty set out in Section 1.

Section 6 sets out the circumstances in which Welsh Ministers may make amendments to legislation or prerogative instruments which they consider to be appropriate in the light of a report which they will have published under section 4. The Welsh Ministers are to make the amendments by order. The types of legislation which may be amended using this power are set out in Section 9.

Section 7 empowers Welsh Ministers to make an order to apply the whole of, or any provision of, the Measure in relation to young persons (i.e. 18 to 24 year olds).

## Regulations made or under consultation

The Assembly approved the Welsh Government's Children's Rights Scheme on 27 March 2012. The Scheme states that "a consultation process will begin in the Spring/Summer of 2012. It will involve holding workshops with young people and relevant stakeholders, which will result in a document for full public consultation".<sup>67</sup>

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<sup>67</sup> Welsh Government, The Children's Rights Scheme, 22 May 2012

This section in addition requires Welsh Ministers to consider and report on whether and to what extent the UNCRC could be relevant to young people and whether the Measure could be applied to them in an amended form. This section also enables Welsh Ministers to carry out a consultation about any matter relating to young people they consider appropriate. This may cover a consultation on whether there are other more appropriate ways to address the rights of young persons.

Section 8 enables Welsh Ministers to amend sections 1 and 8 and the Schedule of the Measure to reflect any amendment made to the UNCRC.

### 2.16. Domestic Fire Safety (Wales) Measure 2011 - Royal Approval granted 7 April 2011

The *Domestic Fire Safety (Wales) Measure 2011* provides Welsh Ministers with the ability to require that new homes are fitted with an effectively operating fire suppression system which complies with such requirements as may be prescribed by Welsh Ministers in regulations.

Section 1 enables Welsh Ministers to make regulations to prescribe the requirements of the automatic fire suppression systems that must be provided. Such regulations would specify the technical standards of such a system.

Section 3 enables Welsh Ministers to make regulations to prescribe the information that must be provided to demonstrate that the work to be carried out will comply with the requirements of Section 4 (which relates to the authentication and service of documents).

Certain sections of the Measure came into effect on 8 April 2011, whilst others are required to be commenced by Welsh Ministers by order.

No regulations or orders have been made under powers conferred on Welsh Ministers by the Measure to date.

The Minister for Environment and Sustainability, John Griffiths AM, announced on 30 May 2012 that the Welsh Government intends to “develop consultation proposals aimed at requiring fire suppression systems to be installed in all new and converted residential accommodation” and that related regulations will be made “in September 2013”.<sup>68</sup>

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<sup>68</sup> Welsh Government John Griffiths (Minister for Environment and Sustainability, *Regulating for automatic fire suppression systems in domestic buildings*, Cabinet Written Statement, 30 May 2012

Section 6 provides for the Welsh Ministers to amend the definition of what a “residence” means in relation to the Measure.

Section 7 provides Welsh Ministers with order-making powers to make transitional, transitory, consequential, saving, incidental and other provisions that they think are necessary or appropriate.

### 2.17. *Local Government (Wales) Measure 2011 - Royal Approval granted 10 May 2011*

The *Local Government (Wales) Measure 2011* aims to strengthen the structures and working of local government in Wales to ensure better engagement between local councils and the communities they serve. In particular, the Measure enables the review and improvement of the current local governance structures in Wales; enhance the role of backbench councillors in the scrutiny of local services; develop and strengthen the role of community councils by enabling them to deliver a wider range of services and actions; reform the system for setting allowances for councillors; allow Welsh Ministers to issue statutory guidance on collaboration between local authorities, and between them and other bodies; and allow Welsh Ministers to establish new local authorities by amalgamating two or three existing authorities.

The provisions of the Measure which are currently in force were commenced at different stages between 10 May 2011 and 30 April 2012.<sup>69</sup>

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<sup>69</sup> See *Local Government (Wales) Measure 2011 (Commencement No 1) Order 2011* (SI 2011/2011) (W.221); *Local Government (Wales) Measure 2011 (Commencement No 2 and Saving Provisions) Order 2012* (SI 2011/1187) (W.145)

## Powers for making Regulations in the Measure

Section 1 empowers Welsh Ministers to prescribe in regulations details which local authorities are required to comply with when conducting surveys of unsuccessful candidates who have stood for election as councillors at ordinary elections to principal and community councils in Wales (normally held concurrently every four years), and also of those persons who have been successfully elected as councillors at these elections. Such regulations can prescribe the survey questions, survey form and the manner in which local authorities are required to collect the information.

Section 2 places a duty on Welsh Ministers to collate and publish the survey information received by each local authority within 12 months.

Section 3 empowers Welsh Ministers to issue guidance about surveys.

Section 4 empowers Welsh Ministers to issue guidance on remote attendance at a meeting of a local authority.

Section 5 empowers Welsh Ministers to issue guidance on annual reports which local authorities are required to publish about the activities of their council members.

## Regulations made or under consultation

The *Local Election Survey (Wales) Regulations 2012*<sup>70</sup> were made by Welsh Ministers on 4 March 2012 and came into force on 31 March 2012. These regulations prescribe the questions that a local authority must ask when conducting a local election survey. The prescribed questions and the form in which they may be asked are set out in the Schedule to the regulations.

Powers used to make the *Local Election Survey (Wales) Regulations 2012*.

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<sup>70</sup> [The Local Election Survey \(Wales\) Regulations 2012](#) (SI 2012/685) (W.93)

## Powers for making Regulations in the Measure

## Regulations made or under consultation

Section 6 empowers Welsh Ministers to issue guidance on the timing of local authority meetings.

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012. The draft guidance related to provisions set out in Sections 6, 7, 16, 56, 62, 63, 75, 76 and 85 of the Measure.

Section 7 empowers Welsh Ministers to issue guidance on the training and development of members of a local authority.

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012.

Section 9 enables Welsh Ministers to add, through regulations, to the statutory functions of the Head of Democratic Services which are set out in the Section.

Section 10 Enables the Welsh Ministers to make regulations requiring local authorities to incorporate in standing orders prescribed provisions relating to the management of staff provided to the Head of Democratic Services and other modifications of the authority's standing orders relating to the management of staff.

Section 16 empowers Welsh Ministers to issue guidance on the discharging of a democratic services committee's functions.

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012.

Section 24 entitles a councillor to a period of up to 26 weeks maternity absence if the councillor has given birth

to a child and satisfies prescribed conditions. The section enables Welsh Ministers to set out the details relating to maternity absence in regulations, in order to allow Welsh Ministers to respond to and reflect any changes made in the wider employment regime.

Section 25 enables Welsh Ministers to make regulations similar to those that may be made under Section 24, but in relation to “newborn absence”.

Section 26 enables Welsh Ministers to make regulations similar to those that may be made under Section 24, but in relation to “adopter’s absence”.

Section 27 enables Welsh Ministers to make regulations similar to those that may be made under Section 24, but in relation to “new adoption absence”.

Section 28 enables Welsh Ministers to make regulations similar to those that may be made under Section 24, but in relation to “parental absence”.

Section 29 enables the Welsh Ministers to make regulations setting out certain administrative details and requirements for local authorities and members of local authorities in connection with the new entitlements introduced by the provisions in this Part (relating to family

absence for members of local authorities).

Section 30 empowers Welsh Ministers to issue guidance on family absence entitlements.

Section 35 enables Welsh Ministers to issue directions to local authorities who replace their “alternative arrangements” with “executive arrangements” in relation to the governance on the local authority in question.

Paragraph 13(2) of Schedule 2 provides Welsh Ministers with a power to require local authorities to replace their “alternative arrangements” with “executive arrangements”.

Section 58 empowers Welsh Ministers to provide by regulation that two or more principal councils may set up one or more joint overview and scrutiny committees, and arrange for the committee or committees to make reports or recommendations to any of the principal councils setting up the committee, and to the executives of those councils.

Section 61 empowers the Welsh Ministers to designate by order those persons or categories of persons (a whose responsibilities or functions may be scrutinised by an overview and scrutiny committee of a local authority.

## Powers for making Regulations in the Measure

Section 75 enables Welsh Ministers to make regulations about the appointment procedure for allocating scrutiny committee chairs and to issue guidance or directions.

Section 76 requires a local authority to have regard to any guidance or direction about co-option issued by the Welsh Ministers.

Section 77 enables Welsh Ministers by regulations to make provision to require the publication of forward plans of overview and scrutiny committees and sub-committees.

Section 79 enables Welsh Ministers to issue guidance or give directions about overview and scrutiny committees.

Section 85 allows Welsh Ministers to issue guidance about the functions and membership of audit committees, to which local authorities and audit committees must have regard.

Section 94 enables Welsh Ministers through regulations to specify a question for a community poll.

Section 113 enable Welsh Ministers by order to alter the thresholds for the various establishment and dissolution procedures introduced by this Measure

## Regulations made or under consultation

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012.

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012.

The Welsh Government held a consultation on draft guidance that may be issued under the Measure between 3 February 2012 and 30 March 2012.

Section 116 enables Welsh Ministers to set requirements, other than those listed on the face of the Measure, relating to public notices where vacancies in community council membership are to be filled by co-option.

Section 117 empowers Welsh Ministers to issue guidance about giving public notice about co-option.

Section 119 enables Welsh Ministers to set requirements, other than those listed on the face of the Measure, in connection with youth representative appointments.

Section 120 empowers Welsh Ministers to issue guidance about the appointment of community youth representatives.

Section 121 enables Welsh Ministers, by regulations, to provide for a community youth representative to be treated as a member of the council for purposes specified in the regulations.

Section 127 enables Welsh Ministers by order to make modifications to any enactment which they think prevents or obstructs community councils from exercising their power under section 2(1) of the *Local Government Act 2000*.

Section 129 enables Welsh Ministers to pay grants to community councils.

Section 130 enables Welsh Ministers to set out a model charter agreement in an order.

Section 131 enables Welsh Ministers to issue directions requiring the adoption of a model charter.

Section 132 empowers Welsh Ministers to issue guidance about charter agreements

Section 133 requires Welsh Ministers to consult the bodies, persons or local government institutions stipulated before making an order or issuing a direction about model charter agreements.

Section 134 enables Welsh Ministers to make regulations to provide for an accreditation of quality scheme for community councils. Information which such regulations may prescribe are set out in Sections 135 to 140.

Section 149 enables Welsh Ministers to direct the Independent Remuneration Panel for Wales to reconsider a provision of a draft report.

Section 155 empowers Welsh Ministers to issue directions, following consultation with the Independent

Remuneration Panel, to an authority requiring it to withhold payments as determined by the Welsh Ministers, to a member of an authority for reasons specified in the direction.

Section 156 empowers Welsh Ministers to issue a direction requiring a local authority to comply, in circumstances where Welsh Ministers are satisfied that an authority has failed to discharge any duty imposed on it by the Independent Remuneration Panel for the purposes of the Measure.

Section 158 empowers Welsh Ministers to modify, by order, the provisions in this Part of the Measure relating to the appointment of members of the IRP or its functions and to make any consequential modifications to other enactments as a result.

Section 161 empowers Welsh Ministers to issue comprehensive statutory guidance on all aspects of local authorities' powers and duties as outlined under the *Local Government (Wales) Measure 2009*.

Section 162 enables Welsh Ministers by order to amalgamate two or three (and no more) local authorities to create a single new local government area.

Section 163 enables Welsh Ministers, when making an amalgamation order, to make provision in that order for the election of the council of the new local authority.

Section 165 enables Welsh Ministers to make regulations by which they may direct the shadow authority of a new local government area to hold a referendum on whether or not the new local authority should operate the elected mayor and cabinet form of executive arrangements.

Section 166 enables Welsh Ministers to make supplementary, incidental, consequential, transitional and saving provision in connection with an amalgamation order.

Section 167 enables Welsh Ministers to direct the Welsh Local Boundary Commission to undertake a review of the electoral arrangements for the new local government area.

Section 170 enables Welsh Ministers, by order, to correct an error made in an amalgamation order.

### 2.18. *Safety on Learner Transport (Wales) Measure 2011 - Royal Approval granted 10 May 2011*

The *Safety on Learner Transport (Wales) Measure 2011* aims to ensure high standards for dedicated learner transport by enabling Welsh Ministers to make regulations which placing numerous duties on relevant bodies to fit appropriate seat belts; use only single deck vehicles; use buses manufactured after a certain date; fit CCTV and meet the conditions of operation set out by the Welsh Ministers; use vehicles which meet the “yellow buses” specification and the standards of such buses; provide the relevant standards of driver training set out by the Welsh Ministers; carry out safety risk assessments set out by the Welsh Ministers; provide staff to supervise school buses (part 5); and to meet certain specifications in relation to taxis and private hire vehicles.

Section 2 empowers Welsh Ministers to make regulations requiring that only particular descriptions of vehicle are used for learner transport provided or otherwise secured by a local authority or the governing body of a maintained school.

Section 1 of the Measure relating to requirements for local authorities to ensure that seatbelts are placed on learner transport buses comes into force on 1 October 2014. The remainder of the Measure came into force on 10 July 2011. Regulations have yet to be made under this Measure.

Section 3 empowers Welsh Ministers to make regulations requiring arrangements to be made for recording visual images or sound on learner transport and setting out provisions about the use, storage and retention of visual images or sound. The regulations may specify the kinds of arrangements that are to be made.

Section 4 empowers Welsh Ministers to make regulations requiring a relevant body to carry out safety risk assessments on the learner transport it provides.

Section 5 empowers the Welsh Ministers to make regulations requiring a local authority or a governing body of a maintained school that provides learner transport to ensure that the drivers of those vehicles have completed appropriate training about safety on learner transport and working with children.

Section 6 empowers the Welsh Ministers to make regulations concerning the provision of supervisors on learner transport by a relevant body and the provision of relevant training for such supervisors.

Section 8 empowers the Welsh Ministers to appoint a person or body as an enforcement authority.

Section 11 empowers the Welsh Ministers to make regulations, empowering an enforcement authority to require a local authority or governing body of a school or a person who provides learner transport to provide information, documents, records and other items which relate to learner transport and are considered by the enforcement authority to be necessary or expedient for the purpose of its functions.

Section 12 empowers the Welsh Ministers to make regulations whereby an officer of a body corporate or a partner of a partnership may be personally liable for offences committed under sections 14A, 14B or 14C by the body corporate or partnership, as well as the body corporate or partnership itself.

### 2.19. *Housing (Wales) Measure 2011 - Royal Approval granted 10 May 2011*

The *Housing (Wales) Measure 2011* contains two broad elements: it enables Welsh Ministers to temporarily suspend the right to buy, the preserved right to buy and the right to acquire held by tenants of a social housing provider in Wales, on application from a Local Housing Authority in areas of acute housing pressure; and provides Welsh Ministers with enhanced regulatory and intervention powers concerning the provision of housing by Registered Social Landlords.

Section 34 gives the Welsh Ministers power by order to make provision in consequence or for giving full effect to any provision in the Measure or make provision for applying or extending any provision about or connected with a right related to the right to buy.

Certain provisions in the Measure relating to Registered Social Landlords (contained in Part 2) were commenced at different times by order on 18 October 2011 and 2 December 2011.<sup>71</sup> The remaining provisions of the Measure relating to the right to buy were commenced by Welsh Ministers on 3 September 2012.<sup>72</sup>

The *Housing (Wales) Measure 2011 (Consequential Amendments to Subordinate Legislation) Order 2012* was made by Welsh Ministers on 9 August 2012 and came into force on 3 September 2012. The order will make consequential amendments to provisions in existing subordinate legislation that relate to the right to buy and related rights.

The Welsh Government held a **consultation on right to buy guidance** between 28 July 2011 and 31 October 2011. A **summary of responses** has been published on the Government's website.

<sup>71</sup> See *Housing (Wales) Measure 2011 (Commencement No. 1) Order 2011* (SI 2011/2475) (W.267)

<sup>72</sup> See *The Housing (Wales) Measure 2011 (Commencement No.2) Order 2012* (SI 2012/2091) (W.241)

## 2.20. *Education (Wales) Measure 2011 - Royal Approval granted 9 February 2011*

The *Education (Wales) Measure 2011* puts in place a series of powers and duties that makes collaboration commonplace in the education system in order to improve school governance and to simplify the planning of school places in Wales. Sections 26 to 32 and Section 34 of the Measure came into force on 9 April 2011. The remaining provisions of the Measure are yet to be commenced by Welsh Ministers.

Section 6 provides a power for Welsh Ministers to make further provision by way of regulations about the “powers to collaborate” which are set out in Section 5 of the Measure.

Section 30 allows Welsh Ministers to make provision by order which they consider necessary or expedient to give full effect to sections 25 to 28 relating to foundation schools. An order made by the Welsh Ministers under this power may, among other things, amend or revoke subordinate legislation.

Cynulliad  
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Wales



## **Constitutional and Legislative Affairs Committee**

**Report: CLA(4)-20-12 : 8 October 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**

None

### **Affirmative Resolution Instruments**

None

**Instruments that raise reporting issues under Standing Order 21.2, 21.3 or 21.7**

### **Negative Resolution Instruments**

**CLA178 – The Bluetongue (Wales) (Amendment) Regulations 2012**

**Procedure:** Negative.

**Date made:** 15 September 2012.

**Date laid:** 19 September 2012.

**Coming in to force date:** 10 October 2012

**CLA179 – Radioactive Contaminated Land Statutory Guidance for Wales 2012**

**Procedure:** Negative.

**Date made:** Not stated.

**Date laid:** 24 September 2012.

**Coming in to force date:** Not stated.

### **Affirmative Resolution Instruments**

None

### **Other Business**

**Scrutiny of Legislative Competence: Implications of the Byelaws Bill**

The Committee discussed the implications of the problems with the legislative competence for the Bylaws Bill. The Committee decided to return to this issue after the Supreme Court delivers its judgement on the matter. The Committee resolved, in the meantime, that when scrutinising a Bill, that the Minister responsible for that Bill, is asked whether he or she is aware of any issues concerning the legislative competence of the Assembly in relation to any provisions of the Bill.

### **Public Audit (Wales) Bill**

The Committee considered the Legal Adviser's report on delegated powers contained in the Public Audit (Wales) Bill which was laid before the Assembly 9 July 2012. The Committee decided that as the Bill contained no significant delegated powers that it was not necessary to invite the Minister to give oral evidence to the Committee. The Committee did, however, resolve to write to the Minister for Finance and Leader of the House Jane Hutt AM to invite her to confirm that she has no concerns relating to the legislative competence of the Assembly.

### **Committee Correspondence**

#### **The Natural Resources Body for Wales (Functions) Order 2012 – letter to the Chair of Environment and Sustainability Committee**

The Members noted the letter from the Minister for Environment and Sustainable Development John Griffiths AM to the Chair of the Environment and Sustainability Committee Lord Dafydd Elis-Thomas AM concerning the provision of an early draft of the Natural Resources Body for Wales (Functions) Order. The Members noted that Environment and Sustainability Committee would be looking at the draft Order in depth from a policy perspective and decided that the Constitutional and Legislative Affairs Committee would scrutinise it at a later date when the final draft is submitted.

#### **Subsidiarity monitoring report (May 2012 – August 2012)**

The Members noted the second Subsidiarity monitoring report, covering the proposals received between May and August 2012.

#### **Subordinate legislation made by Welsh Ministers under Assembly Measures**

The Members noted the paper on Subordinate legislation made by Welsh Ministers under Assembly Measures that was published by Research Service in October 2012.

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

**8 October 2012**

## **Annex 1**

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

**(CLA(4)-20-12)**

**CLA178**

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

**Title: The Bluetongue (Wales) (Amendment) Regulations 2012**

**Procedure: Negative**

These regulations amend the Bluetongue (Wales) Regulations 2008 by transposing Directive 2012/5/EU (the Directive) as regards vaccination against bluetongue and will allow animal keepers to vaccinate their animals against bluetongue using inactivated vaccines.

#### **Technical Scrutiny**

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

#### **Merits Scrutiny**

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument at the present time.

Article 1 of the Directive amends Directive 2000/75/EC (the 2000 Directive). Article 1(2) of the Directive, which amends Article 5 of the 2000 Directive, includes the following –

“2. Whenever live attenuated vaccines are used, Member States shall ensure that the competent authority demarcates:

- (a) a protection zone, consisting of at least the vaccination area;
- (b) a surveillance zone, consisting of a part of the Union territory with a depth of at least 50 kilometres extending beyond the limits of the protection zone.”

Article 1(4) of the Directive replaces Article 8(2)(b) of the 2000 Directive with the following –

“(b) The surveillance zone shall consist of a part of the Union territory with a depth of at least 50 kilometres extending beyond the limits of the protection zone and in which no vaccination against bluetongue

with live attenuated vaccines has been carried out during the previous 12 months.";

The Regulations do amend the Bluetongue (Wales) Regulations 2008 in relation to surveillance zones, but no reference is made to the required depth of at least 50 kilometres.

The National Assembly is therefore invited to pay special attention to these Regulations because they inappropriately implement European Union legislation. [Standing Order 21.3(iv)]

**David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**8 October 2012**

**The Government has responded as follows:**

**The Bluetongue (Wales) (Amendment) Regulations 2012**

**Response to Merits Scrutiny Reporting Point**

The minimum distances specified in Article 1(4) of Directive 2012/5/EU ("the Directive") can, and would, be imposed by the Welsh Ministers as the "competent authority" within the meaning of Article 1 of the Directive in the event of an outbreak and it is not necessary make reference to those minimum distances in the Bluetongue (Wales) (Amendment) Regulations 2012 ("the Regulations).

The Bluetongue (Wales) Regulations 2008, as amended by the Regulations, confer executive powers on the Welsh Ministers to declare the necessary zones, while the Directive is clear and unambiguous on what the requisite distances are. The Welsh Ministers are, of course, subject to those demarcation requirements. Therefore, the ability of the Welsh Ministers to deal with any outbreak, lawfully and in accordance with the requirements of the Directive, is not in question. The Regulations give proper effect to the Directive and it is not necessary for the Regulations to make reference to the minimum distances specified in the Directive.

## Annex 2

### Constitutional and Legislative Affairs Committee

(CLA(4)-20-12)

CLA179

### Constitutional and Legislative Affairs Committee Report

#### Title: Radioactive Contaminated Land Statutory Guidance

1. “The Guidance is intended to explain how local authorities should implement the radioactive contaminated land regime, including how they should go about deciding whether land is “contaminated land” in the legal sense of the term”
2. On 24<sup>th</sup> September 2012, the Statutory Guidance was laid before the National Assembly together with a brief Explanatory Memorandum. Statutory guidance may (or may not) constitute subordinate legislation. The usual test is whether or not the guidance is legislative in character. The persons (including public bodies) to whom the guidance is directed are required to have regard to such guidance. In practice this means that they must have a very good reason for not following that guidance. The reason must be capable of justifying the course of action adopted in any judicial review procedure.
3. The procedure applicable to the guidance is legislative in character, and therefore it has been agreed that the Committee will consider the guidance.

#### Enabling Power

4. The Welsh Ministers have various powers to issue guidance under Part IIA of the Environmental Protection Act 1990. The Explanatory Memorandum states that the guidance is legally binding on local authorities and the Environment Agency.

#### Procedure

5. The procedure for approval is set out in Section 78YA as follows:-  
*Section 78YA*
  - (1) *Any power of the Minister for the Environment and Sustainable Development to issue guidance under this Part shall only be exercisable after consultation with the appropriate Agency and such other bodies or persons as he may consider it appropriate to consult in relation to the guidance in question.*

- (2) *A draft of any guidance proposed to be issued under section 78A(2) or (5), 78B(2) or 78F(6) or (7) above shall be laid before the National Assembly for Wales and the guidance shall not be issued until after the period of 40 days beginning with the day on which the draft was so laid or, if the draft is laid on different days, the later of the two days.*
  - (3) *If, within the period mentioned in subsection (2) above, the National Assembly for Wales resolves that the guidance, the draft of which was laid before it, should not be issued, the Minister for the Environment and Sustainable Development shall not issue that guidance.*
  - (4) *In reckoning any period of 40 days for the purposes of subsection (2) or (3) above, no account shall be taken of any time during which the National Assembly for Wales is dissolved or prorogued or during which the National Assembly for Wales is adjourned for more than four days.*
  - (5) *The Minister for the Environment and Sustainable Development shall arrange for any guidance issued by him under this Part to be published in such a manner as he considers appropriate.*
6. The guidance is subject to a variation on the negative procedure. As in negative procedure cases, the guidance can be made and come into force unless the Assembly resolves to the contrary within a specified period. However, in the case of statutory instruments made under a negative procedure, the instruments are normally made before they are laid. In this case, the guidance is laid in draft, and may not be made until the end of a specified period. The procedure therefore provides a greater measure of scrutiny than a standard negative procedure.

### **Scrutiny**

7. The Committee has agreed to scrutinise guidance which is subject to an Assembly procedure. If the guidance is regarded as subordinate legislation not made by statutory instrument, the Constitutional and Legislative Affairs Committee may report on it under Standing Order 21.7 (i). Even if it is not so regarded, the Committee may still report on it as being a legislative matter of a general nature under Standing Order 21.7 (v).

### **Technical Scrutiny**

8. If this had been a statutory instrument, the matter would have been drawn to the attention of the Assembly under Standing Order 21.2 (ix) – *that it is not made or to be made in Welsh*

9. The Minister for the Environment and Sustainable Development has discretion to publish the guidance in such a manner he considers appropriate. (Section 78YA (5)).
10. There appears to be a typographical error in paragraph 3 of the Explanatory Memorandum which states that *“This Statutory Guidance has been scored in accordance with the Welsh Government’s Welsh Language Scheme and **does** require translation due to the length, the technical nature and limited target audience of the document.”*

### **Merits Scrutiny**

11. No merits points are identified that would have been reported under Standing Order 21.3 if this had been a statutory instrument.
12. This matter is drawn to the attention of the Assembly under Standing Orders 21.7 because it raises legislative and procedural issues likely to be of interest to the Assembly.

### **David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**8 October 2012**

**The Government has responded as follows:**

### **Draft Radioactive Contaminated Land Statutory Guidance 2012**

The draft Guidance was scored against the criteria to be applied under the Welsh Government's Welsh Language Scheme and did not require translation due to the length, technical nature, and limited target audience of the document. I am grateful to the Committee for pointing out the typographical error in the Explanatory Memorandum and will ensure that it is corrected in any copies that are produced for further distribution.