

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
10 June 2013

Meeting time:
14:00

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 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

CLA273 – The Animal Health (Miscellaneous Fees) (Wales) Regulations 2013
Negative procedure: Date Made: 29 May 2013; Date Laid: 31 May 2013; Coming into Force Date: 24 June 2013

- 3 Spring 2013 subsidiarity monitoring report (January – April 2013)**
(Pages 1 – 10)
CLA(4)–15–13(p1)– Spring 2013 subsidiarity monitoring report (January – April 2013)

4 Papers to note (Pages 11 – 15)
CLA(4)–15–13(p2) – Letter from the Minister for Health and Social Services in relation to CLA235 – The Food (Miscellaneous Amendments and Revocation) (Wales) Regulations 2013

CLA(4)–15–13(p3) – Letter to the Minister in relation to CLA235

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

(vi) the committee is deliberating on the content, conclusions or recommendations of a report it proposes to publish; or is preparing itself to take evidence from any person;

Consideration of Legislative Consent Memorandums in relation to the Anti-Social Behaviour, Crime and Policing Bill (Pages 16 – 20)
CLA(4)-15-13(p4) – Legislative Consent Memoranda

Consideration of the draft report on the Social Services and Well-being (Wales) Bill (Pages 21 – 59)
CLA (4)-15-13(p5) – Draft report on the Social Services and Well-being (Wales) Bill

Update on Rapporteur Visit to Brussels (Pages 60 – 66)
CLA(4)-15-13(p6) – Draft Itinerary

Forward Work Programme (Pages 67 – 68)
CLA(4)-15-13(p7) – Forward Work Programme

Constitutional and Legislative Affairs Committee

Spring 2013 subsidiarity monitoring report (January - April 2013)

Date of paper:

June 2013

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

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Research
Service



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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, 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.¹

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]*²

2. The monitoring process

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

² 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 Assembly’s Research Service for information.
- The relevant UK Government department will then prepare an Explanatory Memorandum (EM) based on the proposals included on the batch list usually within 4 to 6 weeks of the initial notification by the Foreign and Commonwealth Office. Each EM includes an assessment of the policy impact of the proposals (including whether the UK Government department believes the proposal raises any subsidiarity concerns). Copies of each EM are 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’³ and whether they encompass issues which may be of interest to the Assembly (i.e. relating to devolved matters).
- Those EMs that relate to proposals that are both ‘legislative’ and deal with issues of interest to the Assembly are then checked further by officials from the Assembly’s Legal Services, Brussels Office and the Research Service to see whether they raise any potential subsidiarity concerns.
- If a proposal raises subsidiarity concerns, Assembly officials will alert the Constitutional and Legislative Affairs Committee immediately whereupon Members will be asked to consider whether the Committee should ask either or both Houses at Westminster to issue a ‘reasoned opinion’ on the proposal or not.
- Those proposals which are ‘legislative’ and relate to devolved matters but raise no subsidiarity concerns are then collated in a monitoring report produced by the Research Service which is considered as a paper to note by the Constitutional and Legislative Affairs Committee during each term in an Assembly year (Autumn [September–December], Spring [January–April] and Summer [May – August]).

This report therefore includes a general overview of those draft EU legislative proposals received by the Assembly’s Research Service between January and April 2013, 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.

³ Subsidiarity concerns can only be raised in relation to draft ‘legislative’ proposals.

3. Overview of draft EU legislative proposals received (January – April 2013)

A total of **271** UK Government EMs relating to EU proposals were received by the Assembly's Research Service from the UK Government between 1 January 2013 and 30 April 2013. Of these, **17** EMs were identified by Assembly officials as being both 'legislative' in nature and of interest to the Assembly. Following further analysis by officials from the Assembly's Legal Service, Brussels Office and Research Service, these were subsequently filtered as follows:

- **1** proposal was identified as raising subsidiarity concerns and was the subject of a 'written representation' by the Constitutional and Legislative Affairs Committee to the European Scrutiny Committee in the House of Commons and the EU Select Committee in the House of Lords.
- **2** proposals were the subject of correspondence between the Constitutional and Legislative Affairs Committee and the the European Scrutiny Committee in the House of Commons and the EU Select Committee in the House of Lords, on the basis that they have a particular impact on devolved matters in Wales.
- **14** proposals did not raise any subsidiarity concerns.

Additional details about these filtered proposals are included below.

3.1. *EU legislative proposals identified as raising subsidiarity concerns*

Date EM received

Title, description and timeline

24 April 2013	<p><i>Proposal for a Regulation of the European Parliament and of the Council on measures to reduce the cost of deploying high-speed electronic communications networks</i> (COM(2013)147).</p> <p>The proposed regulation contains eleven articles which are aimed at reducing the overall cost of deploying new superfast broadband infrastructure, primarily through measures intended to reduce the costs of civil engineering works during rollout. The key aims of the proposed regulation fall into four main areas: access to existing infrastructure; information provision around existing infrastructure; co-ordination of street works / permitting; and infrastructure in new buildings.</p> <p>The proposed regulations support the the Digital Agenda for Europe and the European Commission's main broadband targets of achieving 30 Mbps broadband speeds for 100% of households, and at least 50% of these households subscribing to speeds over 100 Mbps, by 2020.</p> <p>The proposal was discussed by the Committee on 13 May 2013. A <u>written representation</u> was subsequently sent from the Chair to the Lords EU Select Committee, the Commons' European Scrutiny Committee, the four Welsh MEPs and the European Commission on 15 May 2013.</p>
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3.2. EU legislative proposals that were subject to correspondence

<u>Date EM received</u>	<u>Title, description and timeline</u>
EM not received: copy obtained from the Department of Health's website	<p><i>Proposal for a directive of the European Parliament and of the Council on the approximation of the laws, regulation and administrative provisions of the Member States concerning <u>the manufacture, presentation and the sale of tobacco and related products</u> (COM(2012)0788)</i></p> <p>The proposal revises the current legal framework relating to the manufacture, presentation and sale of tobacco products and sets out new and strengthened rules. The proposal in particular aims to extend the scope of the current Tobacco Products Directive to encompass non-tobacco nicotine-containing products ('NCP') (e.g. electronic-cigarettes) below a certain nicotine threshold.</p> <p>At present, NCP products fall outside the scope of the Tobacco Products Directive, and Member States have taken different approaches to these products, including regulating them as medicinal products, applying certain provisions that are used for tobacco products, or having no specific legislation. The proposal aims as a result to remove the current legislative divergence between Member States.</p> <p>The proposal was discussed by the Committee on 25 February 2013⁴ and a Letter was subsequently sent by the Chair of the Committee to the Chairs of the Lords EU Select Committee and the Commons' European Scrutiny Committee on <u>26 February 2013</u>.</p>
15 February 2013	<p><i>Proposal for a Directive of the European Parliament and of the Council on <u>the Deployment of Alternative Fuels Infrastructure</u> (COM(2013)18).</i></p> <p>The proposal sets out mandatory requirements for the build-up and coverage of alternative fuels infrastructure for transport, and common technical standards for their construction and interoperability. Four alternative fuels have been identified as having the potential to substantially reduce greenhouse gas emissions from transport (both road and maritime) and oil consumption, but these are currently held back by a lack of infrastructure across the EU.</p> <p>The proposal in particular would require Member States to adopt and publish national policy frameworks, which the Commission intends to review for coherence at an EU level and report its findings to the European Parliament.</p>

⁴ National Assembly for Wales, *RoP: Constitutional and Legislative Affairs Committee*, 25 February 2013



The proposal was discussed by the Committee on 18 March 2013⁵ and a letter was subsequently sent by the Chair of the Committee to the four Welsh MEPs, and the Chairs of the Lords EU Select Committee and the Commons' European Scrutiny Committee on **20 March 2013**.

⁵ National Assembly for Wales, *[RoP: Constitutional and Legislative Affairs Committee](#)*, 18 March 2013

3.3. EU legislative proposals that did not raise any subsidiarity concerns

<u>Date EM received</u>	<u>Title and description</u>
6 February 2013	<p><i>Proposal for a Directive of the European Parliament and of the Council on <u>the accessibility of public sector bodies' websites</u> (COM(2012)721).</i></p> <p>This proposal seeks to improve the accessibility of public sector websites in the EU and to harmonise the approaches taken across Member States by 31 December 2015. The purpose of the Directive is to help Member States achieve national commitments on website accessibility and meet their obligations under the United Nations Convention on the Rights of Persons with Disabilities regarding websites of public sector bodies.</p>
14 February 2013	<p><i>Proposal for a Regulation of the European Parliament and of the Council on <u>common rules for the normalisation of accounts of railway undertakings</u> (COM(2013)26).</i></p> <p><i>Proposal for a Regulation of the European Parliament and of the Council on the <u>European Union Agency for Railways</u> and repealing Regulation (EC) No 881/2004 (COM(2013)27).</i></p> <p><i>Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1370/2007 concerning <u>the opening of the market for domestic passenger transport services by rail</u> (COM(2013)28).</i></p> <p><i>Proposal for a Directive of the European Parliament and of the Council amending Directive 2012/34/EU establishing a single European railway area, as regards <u>the opening of the market for domestic passenger transport services by rail and the governance of the railway infrastructure</u> (COM(2013)29).</i></p> <p><i>Proposal for a Directive of the European Parliament and of the Council on the <u>interoperability of the rail system within the European Union</u> (recast) (COM(2013)30).</i></p> <p><i>Proposal for a Directive of the European Parliament and of the Council on <u>railway safety</u> (recast) (COM(2013)31).</i></p> <p>These six separate proposals form an element of the European Commission's 'Fourth Railway Package', which is an initiative intended to open the domestic rail passenger market to competition and improve the operation of the EU railway system and its institutional framework.</p>

11 March 2013	<p><i>Proposal for a Regulation of the European Parliament and of the Council on Consumer Product Safety</i> (COM(2013)75).</p> <p><i>Proposal for a Regulation of the European parliament and of the Council on market surveillance of products</i> (COM(2013)78).</p> <p>These two proposals form part of the European Commission's 'Product Safety and Market Surveillance Package' which is aimed improving the functioning of the Internal Market and ensuring safer products through effective cross-border market surveillance in the European Single Market.</p> <p>The objective of the proposal on consumer product safety is to ensure that all consumer goods are safe and it therefore has a very broad application, including provisions on food imitating products and product traceability.</p> <p>The proposal on the market surveillance of products aims to establish a single market surveillance framework across the Single Market. The proposal is mainly addressed to Member States and their market surveillance authorities ('MSA') and includes obligations to carry out market surveillance, how MSA should be organised and for co-ordination within member states. It also contains rules on checks/controls of products imported into the EU from third countries and provisions on the measures to be taken where products present a risk, including the ability for MSA to charge fees.</p>
26 March 2013	<p><i>Proposal for a Directive of the European Parliament and of the Council establishing a framework for maritime spatial planning and integrated coastal management</i> (COM(2013)133).</p> <p>The proposal aims to establish a framework for the implementation of maritime spatial planning ('MSP') and integrated coastal management ('ICM') across the EU, aimed at promoting sustainable growth of maritime and coastal activities and the sustainable use of coastal and marine resources.</p> <p>The key requirements of this proposal are for Member States to establish and implement maritime spatial plans in marine waters (including their offshore waters), and ICM strategies within their territorial waters, while cooperating with neighbouring Member States and third countries which share coastal and marine boundaries.</p>
9 April 2013	<p><i>Proposal for an amendment to the European Commission proposal COM(2011)607 on the European Social Fund</i> (COM(2013)145).</p> <p><i>Proposal for an amendment to a Regulation of the European Parliament</i></p>

*and of the Council laying down **common provisions on the European Regional Development Fund, The European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund** (COM(2013)146).*

These proposals amend the Common Provisions Regulation and the European Social Fund Regulation in order to implement the European Commission's Youth Employment Initiative – a set of measures intended to drive down youth unemployment.

*Proposal for a regulation of the European Parliament and of the Council concerning the notification to the Commission of **investment projects in energy infrastructure** within the European Union (COM(2013)153).*

17 April
2013

This proposal aims to replace an existing regulation (Council Regulation EC No. 617/2010) that requires Member States to provide notification to the Commission every other year of their planned new energy infrastructure investment projects or those which are soon to be decommissioned.

A new regulation is required because of a decision by the European Court of Justice in September 2012, following legal action by the European Parliament, to annul the previous regulations on grounds that it did not have the correct legal base. The substance of the new regulations therefore will not change – the only alterations to the text will be consequential ones to reflect the different legal base and legislative procedure.

*Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 577/98 on **the organisation of the Labour Force Survey** (COM(2013)155).*

24 April
2013

This proposal amends the Labour Force Survey Regulation in line with new post-Lisbon Treaty rules relating to the delegation of powers to the European Commission. The proposal also includes a new provision to enable the Commission to make a direct financial contribution to Member States carrying out 'ad hoc modules' of the Survey, and to enable that contribution to be made in the form of a lump sum grant.

Mark Drakeford AC / AM
Y Gweinidog Iechyd a Gwasanaethau Cymdeithasol
Minister for Health and Social Services



Llywodraeth Cymru
Welsh Government

Eich cyf/Your ref CLA235

David Melding, AM
Chair, Constitutional and Legislative Affairs Committee

24 May 2013

Dear David

CLA235 – The Food (Miscellaneous Amendment and Revocation (Wales) Regulations 2013

Thank you for your letter of 12 May 2013, drawing my attention to the concerns of the Constitutional and Legislative Affairs Committee (CALM) in respect of the Explanatory Memorandum associated with the above Regulations. Specifically, the Committee felt the Explanatory Memorandum lacked the level of clarity within it to explain how the General Food Law Regulations 2004 would provide adequate alternative public health protection once the Ungraded Eggs (Hygiene) Regulations 1990, the Chloroform in Food Regulations 1980 and the Arsenic in Food Regulations 1959 were revoked.

The General Food Regulations 2004

The General Food Regulations 2004 provide for the enforcement in Great Britain of General Food Law (Regulation (EC)) No. 178/2002 of the European Parliament and of the Council of 28 January 2002 ("General Food Law").

Article 14 of the EU Regulation states that

1. Food shall not be placed on the market if it is unsafe.
2. Food shall be deemed to be unsafe if it is considered to be:
 - (a) injurious to health;
 - (b) unfit for human consumption.

Regulation 10 of the General Food Regulations 2004 amends section 8 of the Food Safety Act 1990 to state at section 8(2) that –

"(2) For the purposes of this Part Food fails to comply with food safety requirements if it is unsafe within the meaning of article 14 of Regulation (EC) No 178/2002 and references to food safety requirements or to food complying with such requirements shall be construed accordingly."

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Therefore, comprehensive protection for consumers is provided by the provisions of General Food Law (Regulation (EC) No 178/2002. As an EC Regulation it has direct applicability in UK law subject to the need for amendments to UK legislation to provide for enforcement etc of the EC Regulation.

The Arsenic in Food Regulations 1959

The Arsenic Regulations were based on science which is now out of date; they set a statutory level for total arsenic that had not been amended to take into account later science. Total arsenic is the sum of all different chemical forms in which arsenic can exist within the environment. The toxicity of arsenic is dependent on the chemical forms in which it is present. Since the Regulations were introduced, it has been shown that the organic forms of arsenic are less harmful but the inorganic forms can cause cancer¹. As such, inorganic arsenic present in food at the statutory level that was set out in the Arsenic Regulations would be considered 'unsafe' under General Food Law as above. Currently, if a food incident occurs in relation to arsenic in food, a risk assessment is carried out and any necessary action is taken under the General Food Regulations. The Arsenic Regulations were therefore no longer required to ensure public health protection.

The Chloroform in Food Regulations 1980

There is now very limited use of chloroform in the food industry, which means that even an isolated contamination incident is highly unlikely. At the time these Regulations were made an absolute prohibition on the presence of chloroform was required because detection was not possible at the very low levels achievable now. Having a limit set at the limit of detection is now inappropriate, as detection with powerful modern analytical techniques can be achieved at levels that are of no relevance for safety.

I am advised by the Food Standards Agency that an equivalent level of public protection is achieved by the General Food Law Regulation (EC) No 178/2002 and the General Food Regulations 2004. These Regulations prevent the sale of food that contains chloroform at a level that is injurious to health.

The Ungraded Eggs (Hygiene) Regulations 1990

The Ungraded Eggs (Hygiene) Regulations 1990 were introduced to prohibit the retail sale of cracked eggs by producers on their own farms, in local public markets or by door to door selling because of the potential food safety risk from such products.

I am advised by the Food Standards Agency that an equivalent level of public health protection is achieved under the General Food Law Regulations as above, which prohibits the sale or supply of unsafe food.

The equivalent legislation in Scotland was revoked on 1 January 2006 by The Food Hygiene (Scotland) Regulations 2005 and the revocation of that legislation has had no detrimental effect on consumer protection.

England, Scotland and N Ireland have also revoked the Arsenic in Food Regulations 1959, the Chloroform in Food Regulations 1980 and the Ungraded Eggs (Hygiene) Regulations

¹ Scientific Opinion of the European Food Safety Authority on Arsenic in Food (EFSA Journal 2009; 7(10):1351 doi:10.2903/j.efsa.1351) which can be accessed at: <http://www.efsa.europa.eu/en/efsajournal/pub/1351.htm>

1990 as they were no longer considered necessary for the protection of consumers given the wide ranging provisions in the General Food Law (Regulation (EC)) No. 178/2002 and the General Food Law Regulations 2004.

I trust that this further information appropriately meets the concerns of the Committee

Best wishes

Mark

Mark Drakeford AC / AM

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

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

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Cynulliad
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Wales



13 May 2013

Dear Minister

**CLA235 – The Food (Miscellaneous Amendment and Revocation) (Wales)
Regulations 2013**

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 15 April 2013 and agreed that I should bring to your attention the Committee's consideration, under Standing Order 21.3, on the merits of the Instrument.

Whilst we were generally content with the instrument and have not reported on it, we did have some concerns about the Explanatory Memorandum and in particular, the lack of information it contains on how the existing *General Food Regulations 2004* provide equivalent public protection to the various regulations being revoked.

In our view, in revoking legislation applying to food safety because of legislative duplication, it would be helpful and reassuring to have a clear explanation of how food safety and public health will continue to be protected to the same level by the legislation that remains in force.

I would be grateful if you could consider these points and let the Committee have your response in due course.

Yours sincerely

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**David Melding AM
Chair**

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