

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
21 October 2013

Meeting time:
14:45

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 (Page 1)

CLA(4)-24-13(p1) - Background information on Statutory Instruments with clear reports

Negative Resolution Instruments

CLA316 The Nitrate Pollution Prevention (Wales) Regulations 2013

Negative procedure; Date made: 1 October 2013; Date laid: 2 October 2013; Coming into Force Date: 25 October 2013

CLA317 The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2013

Negative procedure; Date made: 1 October 2013; Date laid: 4 October 2013; Coming into Force Date: 1 January 2014

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

Affirmative Resolution Instruments

CLA319 The Food Additives, Flavourings, Enzymes and Extraction Solvents

(Wales) Regulations (Pages 2 - 27)

Negative procedure; Date made: 7 October 2013; Date laid: 9 October 2013; Coming into Force Date: 31 October 2013

CLA(4)-24-13(p2) - Regulations

CLA(4)-24-13(p3) - Explanatory Memorandum

CLA(4)-24-13(p4) - Legal Report

4 Consideration of The School Admission Appeals Code (Page 28)

CLA(4)-24-13(p5) - Report on the School Admission Appeals Code

5 Evidence in relation to the Control of Horses (Wales) Bill

Alun Davies AM, Minister for Natural Resources and Food;

Julia Hill - Legal Services, Rural Affairs and Agriculture Team, Welsh Government;

Fiona Leadbitter - Policy Officer, Equine Policy Team, Welsh Government

<http://www.senedd.assemblywales.org/mglIssueHistoryHome.aspx?Ild=7815>

6 Papers to note (Pages 29 - 35)

CLA(4)-24-13(p6) - Letter from Gwenda Thomas AM, Deputy Minister for Social Services

CLA(4)-24-13(p6A) - Annex to accompany letter from Gwenda Thomas AM, Deputy Minister for Social Services

7 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;

Constitutional and Legislative Affairs Committee

CLA(4)-24-13 - Paper 1

BACKGROUND INFORMATION ON STATUTORY INSTRUMENTS WITH CLEAR REPORTS

CLA316 - The Nitrate Pollution Prevention (Wales) Regulations 2013

Procedure: Negative

These Regulations revoke and replace the corresponding 2008 Regulations. These Regulations continue to implement the EC Nitrates Directive to control the application of nitrogen fertiliser in nitrate sensitive areas.

There are various controls, including imposing annual limits on the amount of nitrogen fertiliser that may be applied and establishing periods when nitrogen fertiliser cannot be applied.

CLA317 - The Education (Admissions Appeals Arrangements) (Wales) (Amendment) Regulations 2013

These Regulations amend the *Education (Admission Appeals Arrangements) (Wales) Regulations 2005* and provide that appeal panels may consider whether admissions arrangements are unlawful in addition to whether the decision of the admission authority was unreasonable. They also specify arrangements for the payment of allowances that may be paid to panel members.

W E L S H S T A T U T O R Y
I N S T R U M E N T S

2013 No. 2591 (W. 255)

FOOD, WALES

**The Food Additives, Flavourings,
Enzymes and Extraction Solvents
(Wales) Regulations 2013**

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations, which apply to Wales, provide for the execution and enforcement of the following EU Regulations —

- (a) Regulation (EC) No 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods (OJ No. L309, 26.11.2003, p.1);
- (b) Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes (OJ No. L354, 31.12.2008, p.7);
- (c) Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives (OJ No. L354, 31.12.2008, p.16);
- (d) Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods (OJ No. L354, 31.12.2008, p.34).

2. These Regulations also implement Directive 2009/32/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients (OJ No. L141, 6.6.2009, p.3).

3. These Regulations revoke, in whole or in part, the following Regulations —

- (a) The Extraction Solvents in Food Regulations 1993 (S.I. 1993/1658);

- (b) The Smoke Flavourings (Wales) Regulations 2005 (S.I. 2005/1350 (W.98));
- (c) The Food (Suspension of the Use of E128 Red 2G Food Colour) (Wales) Regulations 2007 (S.I. 2007/23315 (W.186));
- (d) The Food Enzymes (Wales) Regulations 2009 (S.I. 2009/3377 (W.299));
- (e) The Food Additives (Wales) Regulations 2009 (S.I. 2009/3378 (W.300));
- (f) The Flavourings in Food (Wales) Regulations 2010 (S.I. 2010/1198 (W.2922)).

4. These Regulations, in Part 2, provide that it is an offence, subject to any applicable transitional arrangements, to contravene or to use or place on the market a product that contravenes specified requirements of —

- (a) Regulation (EC) No 1333/2008 relating to food additives (*regulation 3 and Table 1 of Schedule 1*);
- (b) Regulation (EC) No 1334/2008 relating to food flavourings and foods with flavouring properties (*regulation 4 and Table 1 of Schedule 2*);
- (c) Regulation (EC) No 2065/2003 relating to smoke flavourings (*regulation 5 and Table 1 of Schedule 3*); and
- (d) Regulation (EC) No 1332/2008 relating to food enzymes (*regulation 6 and Table 1 of Schedule 4*).

5. These Regulations also provide in Part 2 that in the case of certain types of non-compliance, relating to labelling, an authorised officer of an enforcement authority may serve an improvement notice requiring specified steps to be taken, failing which an offence will be committed (*regulation 7 and Table 2 of Schedules 1 to 4*). A person served with an improvement notice may appeal against it to a magistrates court (*regulation 8*).

6. Part 3 of these Regulations implement Directive 2009/32/EC relating to extraction solvents, in particular by —

- (a) specifying the circumstances where the controls on extraction solvents do not apply (*regulation 10*);
- (b) defining what constitutes a permitted extraction solvent (*regulation 11*);
- (c) prohibiting any person from using an extraction solvent other than a permitted

extraction solvent, as defined, in the production of food (*regulation 12*);

- (d) prohibiting any person from placing on the market an extraction solvent that is not a permitted extraction solvent or which is not accompanied by certain information on the packaging, container or label (*regulations 13 and 14*).

7. These Regulations in Part 4 —

- (a) designate the Food Standards Agency as the competent authority for the purposes of applications for authorisation of a smoke flavouring (*regulation 15*);
- (b) assign the duty of enforcing these Regulations to food authorities (*regulation 16*);
- (c) provide for the maximum penalty to which a person may be liable on conviction for an offence under these Regulations (*regulation 17*);
- (d) provide that, where food is certified as being food which it is an offence to place on the market, the food will be treated for the purposes of section 9 of the Food Safety Act 1990 as failing to comply with food safety requirements (*regulation 18*); and
- (e) apply, with certain modifications, various provisions of the Food Safety Act 1990 for the purposes of these Regulations (*regulation 19*).

8. These Regulations in Part 5 —

- (a) make a minor amendment to the Food Labelling Regulations 1996 (*regulation 20*); and
- (b) revoke certain instruments in whole or in part (*regulation 21 and Schedule 5*).

9. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

2013 No. 2591 (W. 255)

FOOD, WALES

**The Food Additives, Flavourings,
Enzymes and Extraction Solvents
(Wales) Regulations 2013**

Made 7 October 2013

Laid before the National Assembly for Wales

9 October 2013

Coming into force 31 October 2013

The Welsh Ministers make the following Regulations in exercise of the powers conferred by sections 16(1)(a),(e) and (f),17(1) and (2), 26(1), (2)(e) and (f) and (3), and 48(1) of the Food Safety Act 1990(1) and now vested in them(2),as read with paragraph 1A of Schedule 2 to the European Communities Act 1972(3).

In accordance with section 48(4A) of the Food Safety Act 1990, they have had regard to relevant advice given by the Food Standards Agency.

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- (1) 1990 c. 16. Section 1(1) and (2) (definition of “food”) was substituted by S.I. 2004/2990. Sections 17 and 48 were amended by paragraphs 12 and 21 respectively of Schedule 5 to the Food Standards Act 1999 (1999 c.28), “the 1999 Act”. Section 48 was also amended by S.I. 2004/2990. Section 26(3) was amended by Schedule 6 to the 1999 Act. Section 53(2) was amended by paragraph 19 of Schedule 16 to the Deregulation and Contracting Out Act 1994 (1994 c.40), Schedule 6 to the 1999 Act, S.I. 2004/2990 and S.I. 2004/3279.
- (2) Functions of “the Ministers”, so far as exercisable in relation to Wales, were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672) as read with section 40(3) of the Food Standards Act 1999 (1999 c.28), and subsequently transferred to the Welsh Ministers by paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c.32).
- (3) 1972 c.68. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006, c.51) and amended by Part 1 of the Schedule to the European Union (Amendment) Act 2008 (2008 c.7).

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Welsh Ministers that it is expedient for any reference to an Article of or an Annex to any of the EU instruments specified in regulation 2(4) to be construed as a reference to that Article or that Annex as amended from time to time.

As required by Article 9 of Regulation (EC) No. 178/2002 of the European Parliament and of the Council laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety⁽¹⁾, there has been open and transparent public consultation during the preparation and evaluation of these Regulations.

PART 1

Introductory

Title, application and commencement

1. The title of these Regulations is the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013, they apply in relation to Wales and come into force on 31 October 2013.

Interpretation

2.—(1) In these Regulations —

“the Act” (“*y Ddeddf*”) means the Food Safety Act 1990;

“Directive 2009/32” (“*Cyfarwyddeb 2009/32*”) means Directive 2009/32/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients⁽²⁾;

“Regulation 2065/2003” (“*Rheoliad 2065/2003*”) means Regulation (EC) No 2065/2003 of the European Parliament and of the Council on smoke

(1) OJ No. L31, 1.2.2002, p.1. That Regulation was last amended by Commission Regulation (EC) No. 596/2009 of the European Parliament and of the Council adapting a number of instruments subject to the procedure referred to in Article 251 of the treaty to Council Decision 1999/468/EC with regard to the regulatory procedure with scrutiny: Adaptation to the regulatory procedure with scrutiny – Part Four (OJ No. L188, 18.7.2009, p14).

(2) OJ No. L141, 6.6.2009, p.3. This instrument was amended by Commission Directive 2010/59/EU (OJ No. L225, 27.8.2010, p.10).

flavourings used or intended for use in or on foods(1);

“Regulation 1332/2008” (“*Rheoliad 1332/2008*”) means Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes(2);

“Regulation 1333/2008” (“*Rheoliad 1333/2008*”) means Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives(3), as read with —

- (a) Commission Regulation (EU) No 1129/2011 amending Annex II to Regulation (EC) No 1333/2008 of the European Parliament and of the Council by establishing a Union list of food additives(4),
- (b) Commission Regulation (EU) No 1130/2011 amending Annex III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives by establishing a Union list of food additives for use in food additives, food enzymes, food flavourings and nutrients(5), and
- (c) Commission Regulation (EU) No 231/2012 laying down specifications for food additives listed in Annexes II and III to Regulation (EC) No 1333/2008 of the European Parliament and of the Council(6);

“Regulation 1334/2008” (“*Rheoliad 1334/2008*”) means Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods(7), as read with Commission Regulation (EU) No 873/2012 on transitional measures concerning the Union list of flavourings and source materials set out in Annex I to Regulation (EC) 1334/2008 of the European Parliament and of the Council(8);

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- (1) OJ No. L309, 26.11.2003, p.1. This instrument was amended by Regulation (EC) No 596/2009 of the European Parliament and of the Council (OJ No. L188, 18.7.2009, p.14).
 - (2) OJ No. L354, 31.12.2008, p.7. This instrument was last amended by Commission Regulation (EU) No 1056/2012 (OJ No. L313, 13.11.2012, p.9).
 - (3) OJ No. L354, 31.12.2008, p.16. This instrument was last amended by Commission Regulation (EU) No. 510/2013 (OJ No. L150, 4.6.2013, p.17).
 - (4) OJ No. L295, 12.11.2011, p.1.
 - (5) OJ No. L295, 12.11.2011, p.178.
 - (6) OJ No. L83, 22.3.2012, p.1. This instrument was last amended by Commission Regulation (EU) No. 497/2013 (OJ No. L143, 30.5.2013, p.20).
 - (7) OJ No. L354, 31.12.2008, p.34. This instrument was last amended by Commission Implementing Regulation (EU) No 545/2013 (OJ No. L163, 15.6.2013, p.15).
 - (8) OJ No. L267, 2.10.2012, p.162.

“authorised officer” (“*swyddog awdurdodedig*”) means any person who is authorised in writing, either generally or specially, by a food authority to act in matters arising under these Regulations;

“food authority” (“*awdurdod bwyd*”) means —

- (a) a county council; and
- (b) a county borough council;

“the EU Regulations” means Regulation 2065/2003, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(2) Other expressions used in these Regulations and in the EU instruments listed in paragraph (4) have the same meaning in these Regulations as they do in those instruments.

(3) Any reference in these Regulations to an Article of or Annex to any of the EU instruments listed in paragraph (4) is a reference to that Article or Annex as amended from time to time.

(4) The EU instruments are Directive 2009/32, Regulation 2065/2003, Regulation (EC) No 1331/2008 of the European Parliament and of the Council establishing a common authorisation procedure for food additives, food enzymes and food flavourings⁽¹⁾, Regulation 1332/2008, Regulation 1333/2008 and Regulation 1334/2008.

(5) Where any functions under the Act are assigned —

- (a) by an order under section 2 of the Public Health (Control of Disease) Act 1984⁽²⁾, 1984⁽²⁾, to a port health authority; or
- (b) by an order under section 6 of the Public Health Act 1936⁽³⁾, to a joint board for a united district;

any reference in these Regulations to a food authority is to be construed, so far as relating to those functions, as a reference to the authority to which they are so assigned.

(1) OJ No. L354, 31.12.2008, p.1. This instrument is implemented by Commission Regulation (EU) No. 234/2011 (OJ No. L64, 11.03.2011, p.15) and that Regulation has been amended by Commission Implementing Regulation (EU) No. 562/2012 (OJ No. L168, 28.06.2012, p.2).

(2) 1984 c.22; section 7(3)(d) was substituted by paragraph 27 of Schedule 3 to the Food Safety Act 1990 (1990 c.16).

(3) 1936 c.49; section 6 is to be read with paragraph 1 of Schedule 3 to the Food Safety Act 1990.

PART 2

Food additives, flavourings and enzymes

Offence of contravening EU requirements on food additives

3. Any person who contravenes, or who uses or places on the market a product that fails to comply with, any of the provisions of Regulation 1333/2008 specified in the first column of Table 1 of Schedule 1, as read with transitional measures contained in or to be read with that Regulation, commits an offence.

Offence of contravening EU requirements on flavourings, including smoke flavourings

4. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1334/2008 specified in the first column of Table 1 of Schedule 2, as read with Article 4 (flavouring substances under evaluation) of Commission Implementing Regulation (EU) No 872/2012 adopting the list of flavouring substances provided for by Regulation (EC) No 2232/96 of the European Parliament and of the Council⁽¹⁾ and with transitional measures contained in or to be read with Regulation 1334/2008, commits an offence.

5. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 2065/2003 specified in the first column of Table 1 of Schedule 3 commits an offence.

Offence of contravening EU requirements on food enzymes

6. Any person who contravenes, or who uses or places on the market a product which fails to comply with, any of the provisions of Regulation 1332/2008 specified in the first column of Table 1 of Schedule 4, as read with Articles 18 and 24 (transitional measures), commits an offence.

Improvement notices – application of subsections (1) and (2) of section 10 of the Food Safety Act 1990

7.—(1) Subsections (1) and (2) of section 10 of the Act (improvement notices) apply for the purposes of these Regulations with the following modifications.

(1) OJ No. L267, 2.10.2012, p.1.

(2) For subsection (1), substitute—

“(1) If an authorised officer of an enforcement authority has reasonable grounds for believing that a person is failing to comply with a provision of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013 specified in paragraph (1A), the authorised officer may, by a notice served on that person (in this Act referred to as an “improvement notice”)—

- (a) state the officer’s grounds for believing that the person is failing to comply with the relevant provision;
- (b) specify the matters which constitute the person’s failure so to comply;
- (c) specify the measures which, in the officer’s opinion, the person must take in order to secure compliance; and
- (d) require the person to take those measures, or measures that are at least equivalent to them, within such period as may be specified in the notice.

(1A) Any EU provision specified in the first column of Table 2 of—

- (a) Schedule 1;
- (b) Schedule 2;
- (c) Schedule 3; or
- (d) Schedule 4; or
- (e) regulation 13(2)”.

Appeal against improvement notice – application of subsections (1) and (6) of sections 37 and section 39 of the Food Safety Act 1990

8.—(1) Subsections (1) and (6) of section 37 of the Act (appeals) apply for the purposes of these Regulations with the following modifications—

(a) for subsection (1), substitute—

“(1) Any person who is aggrieved by a decision of an authorised officer of an enforcement authority to serve an improvement notice under section 10(1), as applied and modified by regulation 7 of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013, may appeal to a magistrates court.”; and

(b) in subsection (6), for “(3) or (4)”, substitute “(1), (3) or (4)”.

PART 3

Extraction solvents

Controls on extraction solvents

9. In this Part any reference to a numbered Article or Annex is a reference to that Article or Annex to Directive 2009/32.

10. The provisions of this Part do not apply to any extraction solvent —

- (a) used in the production of any food additives, vitamins or any other nutritional additives, unless such food additives, vitamins or other nutritional additives are listed in Annex I; or
- (b) intended for export outside the European Union.

11. In this Part “permitted extraction solvent” means —

- (a) an extraction solvent that —
 - (i) is listed in Annex I,
 - (ii) is used in accordance with the conditions of use and within any maximum residue limits specified in that Annex,
 - (iii) does not contain a toxicologically dangerous amount of any element or substance,
 - (iv) subject to any exceptions deriving from specific purity criteria, does not contain more than 1 mg/kg of arsenic or more than 1 mg/kg lead, and
 - (v) meets the requirements of Article 3(c) as regards purity criteria; or
- (b) water to which substances regulating acidity or alkalinity may have been added; or
- (c) food substances which possess solvent properties.

12. No person may use as an extraction solvent in the production of food any extraction solvent that is not a permitted extraction solvent.

13.—(1) No person may place on the market —

- (a) an extraction solvent that is not a permitted extraction solvent; or
- (b) any food having in it or on it an added extraction solvent that is not a permitted extraction solvent.

(2) No person may place on the market an extraction solvent that does not meet the requirements of regulation 14.

14.—(1) Subject to paragraph (2), the following information must appear on the packaging, container or label —

- (a) the commercial name as indicated in Annex I;
- (b) a clear indication that the material is of a quality suitable for use for the extraction of food or food ingredients;
- (c) a reference by which the batch or lot may be identified;
- (d) the name or business name and address of the manufacturer or packer or of a seller established in the territory of the EU;
- (e) the net quantity given as units of volume; and
- (f) if necessary, the special storage conditions or conditions of use.

(2) The particulars specified in subparagraphs (c), (d), (e) and (f) of paragraph (1) may alternatively appear on the trade documents relating to the batch or lot which are to be supplied with, or prior to, the delivery.

(3) The information specified in paragraph (1) must be easily visible, clearly legible and indelible.

(4) The information specified in paragraph (1) may be provided in more than one language, but at least one of those languages must be easily understood by the purchaser unless other measures have been taken to ensure that the purchaser is informed of the specified information.

PART 4

Administration and enforcement

Competent authorities

15. The competent authority for the purpose of Article 7 of Regulation 2065/2003 is the Food Standards Agency.

Enforcement authorities

16. It is the duty of each food authority within its area or district to execute and enforce these Regulations and the EU Regulations.

Offences and penalties

17.—(1) Any person who contravenes regulation 12 or 13(1) commits an offence.

(2) Any person guilty of an offence under regulation 3, 4, 5, 6, 7(4) or 17(1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Condemnation of food

18. Where any food is certified by a food analyst as being food which it is an offence to place on the market, that food shall be treated for the purposes of section 9 of the Act (under which food may be seized and destroyed under an order of a justice of the peace) as failing to comply with food safety requirements.

Application of various provisions of the Food Safety Act 1990

19.—(1) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act or Part of it is to be construed as a reference to these Regulations —

- (a) section 20 (offences due to fault of another person);
- (b) section 21 (defence of due diligence)(1) with the modification that —
 - (i) subsections (2) to (4) shall apply in relation to an offence under regulation 3, 4, 5, 6, 7(4) or 17(1) as they apply in relation to an offence under section 14 or 15, and
 - (ii) in subsection (4) the references to “sale” are deemed to include references to “placing on the market”;
- (c) section 30(8) (which relates to documentary evidence);
- (d) section 35(1) (punishment of offences)(2), in so far as it relates to offences under section 33(1) as applied by paragraph (3)(b);
- (e) section 35(2) and (3)(3), in so far as it relates to offences under section 33(2) as applied by paragraph (3)(c);

(1) Section 21 was amended by S.I. 2004/3279.

(2) Section 35(1) is amended by the Criminal Justice Act 2003 (2003 c.44), Schedule 26, paragraph 42, from a date to be appointed.

(3) Section 35(3) was amended by S.I. 2004/3279.

- (f) section 36 (offences by bodies corporate);
and
- (g) section 36A (offences by Scottish partnerships)(1).

(2) The following provisions of the Act apply for the purposes of these Regulations with the modification that any reference in those provisions to the Act is to be construed as including a reference to the EU Regulations and these Regulations —

- (a) section 3 (presumption that food is intended for human consumption) with the modification that the references to “sold” and “sale” are deemed to include references to “placed on the market” and “placing on the market” respectively;
- (b) section 33(1) (obstruction etc. of officers);
- (c) section 33(2), with the modification that the reference to “any such requirement as is mentioned in subsection (1)(b) above” is deemed to be a reference to any such requirement as is mentioned in that subsection as applied by sub-paragraph (b); and
- (d) section 44 (protection of officers acting in good faith).

(3) Section 34 of the Act (time limit for prosecutions) applies to offences under these Regulations as it applies to offences punishable under section 35(2) of the Act.

PART 5

General

Consequential and other amendments

20. In regulation 2(1) (interpretation) of the Food Labelling Regulations 1996(2), in the definition of “the additives regulations” omit the expression “the Food Additives (Wales) Regulations 1999,”.

Revocations

21. The instruments listed in the first column of Schedule 5 are revoked to the extent specified in the second column.

(1) Section 36A was inserted by the Food Standards Act 1999 (1999 c.28), Schedule 5, paragraph 16.
(2) S.I. 1996/1499. Relevant amending instruments are S.I. 2010/2817 and 2012/2619.

Mark Drakeford

Minister for Health and Social Services, one of the
Welsh Ministers

7 October 2013

SCHEDULE 1 Regulations 3 and 7
Specified provisions of Regulation 1333/2008

Table 1

<i>Provision of Regulation 1333/2008</i>	<i>Subject matter</i>
Article 4.1 (as read with Articles 11.3 and 11.4, 12, 13.2 and 18.1(a), 18.2 and 18.3)	Requirement that only food additives included in the list in Annex II to Regulation 1333/2008 be placed on the market as such and that they be used in accordance with any conditions specified in those Articles and that Annex.
Article 4.2 (as read with Articles 12, 13.2 and 18.3)	Requirement that only food additives included in the list in Annex III to Regulation 1333/2008 may be used in food additives, food enzymes, food flavourings and nutrients and under the conditions of use specified in that Annex.
Article 4.5	Requirement that food additives comply with the specifications referred to in Article 14 of Regulation 1333/2008.
Article 5	Prohibition on placing on the market of food additives or food containing food additives if the use of the food additive does not comply with Regulation 1333/2008.
Article 11.2	Requirement to use food additives in accordance with the <i>quantum satis</i> principle where no maximum numerical level fixed for the additive concerned.
Article 15	Prohibition on use of food additives in unprocessed foods except where provided for in Annex II to Regulation 1333/2008.
Article 16	Prohibition on use of food additives in foods for infants and young children (including dietary foods for infants and young children for special medical purposes) except where provided for in Annex II to Regulation 1333/2008.
Article 17	Requirement to use only food colours listed in Annex II to Regulation 1333/2008 for the purpose of health marking meat or meat products, decorative colouring of eggshells or stamping of eggshells.
Article 18.1(b) (as read with Article 18.2)	Requirement that food additives be present in food to which a food additive, food enzyme or food flavouring has been added, only if the additive is permitted in the additive, enzyme or flavouring under Regulation 1333/2008, has been carried over to the food via the additive, enzyme or flavouring and has no technological function in the final food.
Article 18.1(c) (as read with Article 18.2)	Requirement that food additives be present in foods to be used solely in the preparation of a compound food only if the compound food complies with Regulation 1333/2008.

Article 18.4	Requirement that food additives be used as sweeteners in compound foods with no added sugars, energy reduced compound foods with no added sugars, energy reduced compound foods, compound dietary foods intended for low calorie diets, non cariogenic compound foods and compound foods with an increased shelf life only if the sweetener is permitted in any of the ingredients of the compound food.
Article 26.1	Requirement that producers and users of food additives inform the Commission immediately of any new scientific or technical information which might affect the assessment of the safety of the food additive concerned.

Table 2

<i>Provision of Regulation 1333/2008</i>	<i>Subject matter</i>
Article 21.1 (as read with Article 22)	Requirement that food additives not intended for sale to the final consumer be labelled, in accordance with Article 22 of Regulation 1333/2008, visibly, clearly legibly and indelibly and in a language easily understandable to purchasers.
Article 23.1 (as read with Article 23.2 and 23.5)	Prohibition on marketing of food additives sold singly or mixed with each other and/or other food ingredients and intended for sale to the final consumer unless their packaging contains specified information.
Article 23.3 (as read with Article 23.5)	Requirement that the labelling of table-top sweeteners containing polyols and/or aspartame and/or aspartame – acesulfame salt bear specified warnings.
Article 23.4	Requirement that manufacturers of table top sweeteners make available by appropriate means the information necessary to allow safe use by consumers.
Article 24.1 (as read with Article 24.2)	Requirement that labelling of the food containing the colours listed in Annex V should contain the additional information specified in that Annex.
Article 26.2	Requirement that producers and users of food additives, at the request of the Commission, inform it of the actual use of the food additive concerned.

SCHEDULE 2 Regulations 4 and 7
Specified provisions of Regulation 1334/2008

Table 1

<i>Provision of Regulation 1334/2008</i>	<i>Subject matter</i>
Article 4	Requirement that the use of flavourings or food ingredients with flavouring properties does not pose a safety risk or mislead the consumer.
Article 5	Prohibition on the placing on the market of non-compliant flavourings or non-compliant food.
Article 6.1 (as read with Part A of Annex III)	Prohibition on adding certain specified substances as such in foods.
Article 6.2 (as read with Part B of Annex III)	Requirement that certain substances naturally present in flavourings or food ingredients with flavouring properties should not exceed specified levels in compound foods as a result of the use of flavourings or food ingredients with flavouring properties.
Article 7.1 (as read with Part A of Annex IV)	Prohibition on the use of certain source materials to produce flavourings or food ingredients with flavouring properties.
Article 7.2 (as read with Part B of Annex IV)	Restrictions on the use of flavourings or food ingredients with flavouring properties produced from certain source materials.
Article 10	Restriction on the placing on the market or use of flavourings and source materials that are not included on the Union list.
Article 19.2	Requirement that a producer or user of an approved flavouring that is prepared by production methods or using starting materials significantly different from those included in the risk assessment must submit the necessary data to the Commission to allow an evaluation with regard to the modified production method or characteristics before marketing the flavouring
Article 19.3	Requirement on food business operators to inform the Commission immediately if they become aware of any new scientific or technical information that might affect the assessment of the safety of a flavouring substance.

Table 2

<i>Provision of Regulation 1334/2008</i>	<i>Subject matter</i>
Article 14.1 (as read with Articles 15 and 16)	Requirements for the labelling of flavourings not intended for sale to the final consumer.
Article 17 (as read with Articles 15.1(a) and 16)	Requirements for the labelling of flavourings intended for sale to the final consumer.

SCHEDULE 3 Regulations 5 and 7

Specified provisions of Regulation 2065/2003

Table 1

<i>Provision of Regulation 2065/2003</i>	<i>Subject matter</i>
Article 4.2	Prohibition on marketing a smoke flavouring not on the list of authorised smoke flavourings, or any food in or on which such a smoke flavouring is present
Article 4.2	Prohibition on marketing an authorised smoke flavouring, or any food in or on which such a smoke flavouring is present, otherwise than in accordance with any conditions of use laid down in the authorisation
Article 5.1, first subparagraph	Prohibition on using treated wood, unless it can be demonstrated by appropriate certification or documentation that the substance used in treatment does not give rise to potentially toxic substances during combustion
Article 5.1, second subparagraph	Requirement to be able to demonstrate by documentation or certification that the prohibition in the first paragraph of Article 5.1 has been observed
Article 5.2, first sentence	Requirement to observe conditions in Annex I during production of primary products (primary smoke condensates or primary tar fractions)
Article 5.2, second sentence	Prohibition on the use of water-insoluble oily phase during the production of smoke flavourings
Article 9.4	Requirement that an authorisation holder or any other food business operator using an authorised product, or a derived smoke flavouring produced from an authorised product, must comply with any conditions or restrictions attached to the authorisation
Article 9.5	Requirement that an authorisation holder inform the Commission immediately of any new scientific or technical information relating to an authorised product which might influence the assessment of its safety

Table 2

<i>Provision of Regulation 2065/2003</i>	<i>Subject matter</i>
Article 13.1	Requirement that food business operators ensure the specified information is transmitted to the receiving food business operator when the product is first placed on the market
Article 13.2	Requirement that following the first placing on the market, on each subsequent occasion that the product is placed on the market, food business operators placing products on the market transmit the information specified in Article 13.1 to the receiving food business operators

SCHEDULE 4 Regulations 6 and 7
Specified provisions of Regulation 1332/2008

Table 1

<i>Provision of Regulation 1332/2008</i>	<i>Subject matter</i>
Article 4	Requirement that food enzymes may not be placed on the market as such or used in foods unless they appear in the Union list of authorised enzymes provided for in Article 17 and in accordance with the prescribed specifications and conditions of use.
Article 5	Prohibition on placing on the market of non-compliant food enzymes or foods containing such enzymes which do not comply with Regulation 1332/2008 and its implementing measures.
Article 14.1	Requirement that a producer or user of a food enzyme shall inform the Commission immediately of any new scientific or technical information that might affect its safety assessment.
Article 14.2	Requirement that a producer or user of an approved food enzyme that is prepared by production methods or using starting materials significantly different from those included in the risk assessment must submit the necessary data to the Commission to allow an evaluation with regard to the modified production method or characteristics before marketing the enzyme.

Table 2

<i>Provision of Regulation 1332/2008</i>	<i>Subject matter</i>
Article 10.1 (as read with Article 11)	Requirements for labelling of food enzymes and preparations not intended for sale to the final consumer.
Article 12.1	Requirements for labelling of food enzymes and preparations intended for sale to the final consumer.

SCHEDULE 5 Regulation 21

Revocations

<i>Name of instrument</i>	<i>Extent of revocation</i>
The Extraction Solvents in Food Regulations 1993 (S.I. 1993/1658)	The whole Regulations
The Extraction Solvents in Food (Amendment) Regulations 1995 (S.I. 1995/1440)	The whole Regulations
The Extraction Solvents in Food (Amendment) Regulations 1998 (S.I. 1998/2257)	The whole Regulations

The Extraction Solvents in Food (Amendment) (Wales) Regulations 2011 (S.I. 2011/1849 (W.199))	The whole Regulations
The Smoke Flavourings (Wales) Regulations 2005 (S.I. 2005/1350 (W.98))	The whole Regulations
The Food (Suspension of the Use of E128 Red 2G Food Colour) (Wales) Regulations 2007 (S.I. 2007/2315 (W.186))	The whole Regulations
The Food Enzymes Regulations 2009 (S.I. 2009/3377 (W.299))	Regulations 3, 4, 5, 6, 7(2)(b) and 8
The Food Additives (Wales) Regulations 2009 (S.I. 2009/3378 (W.300))	All provisions except regulations 1, 2, 18(4) and 19
The Food Additives (Wales) (Amendment) Regulations 2011 (S.I. 2011/655 (W.93))	The whole Regulations
The Food Additives (Wales) (Amendment) (No.2) Regulations 2011 (S.I. 2011/1450 (W.172))	The whole Regulations
The Food Additives (Wales) (Amendment) and the Extraction Solvents in Food (Amendment) (Wales) Regulations 2012 (S.I. 2012/1198 (W.148))	The whole Regulations
The Flavourings in Food (Wales) Regulations 2010 (S.I. 2010/2922 (W.243))	All provisions except regulations 1, 2 and 7.

**Explanatory Memorandum to THE FOOD ADDITIVES, FLAVOURINGS,
ENZYMES AND EXTRACTION SOLVENTS (WALES) REGULATIONS 2013**

This Explanatory Memorandum has been prepared by the Food Standards Agency (FSA) and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Member's Declaration

In my view the Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013. I am satisfied that the benefits outweigh any costs.

Mark Drakeford, AM

Minister for Health and Social Services, one of the Welsh Ministers

7 October 2013

THE FOOD ADDITIVES, FLAVOURINGS, ENZYMES AND EXTRACTION SOLVENTS (WALES) REGULATIONS 2013

1. Description

The proposed Regulation revokes existing regulations on food additives, flavorings, food enzymes, smoke flavorings and extraction solvents and replaces them with a single consolidated statutory instrument.

2. Matter of Special Interest to the Constitutional and Legislative Affairs Committee

None.

3. Legislative Background

The powers enabling this instrument to be made are conferred by sections 16(1)(a), (e) and (f), 17(2), 26(1)(a) and (3), and 48(1) of the Food Safety Act 1990. These powers, so far as exercisable in relation to Wales, were transferred to the former National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 and are now vested in the Welsh Ministers by virtue of section 162 of and paragraph 30 of Schedule 11 to the Government of Wales Act 2006. There are no issues of regularity or propriety for the Welsh Government arising from the making of these Regulations.

4. Purpose and Intended Effect of the Legislation

Harmonised European legislation controls the use of food additives, flavourings, smoke flavourings, food enzymes and extraction solvents in the European Union. In general, all the above substances are controlled by way of positive lists e.g. only authorised substances can be used in food and substances must meet specific conditions of use. For food enzymes and for certain categories of flavourings, work is underway to establish the positive list.

For the food enzymes, smoke flavourings and extraction solvent provisions no changes are required to the current measures. However, in the proposed regulations the extraction solvents provisions have been simplified and will refer directly to Annex I of the European Directive (as amended) with the effect that any changes to the list of permitted extraction solvents or their conditions of use will directly apply. Therefore enabling businesses to use newly authorised solvents more quickly without having to wait for UK implementing legislation.

Currently the Food Additives (Wales) Regulations 2009 (SI 2009/3378 (W.93)) have a dual function – as well as enforcing Regulations (EC) No.1333/2008 on

food additives, they also enable the Annexes and associated Articles of the three previous additives Directives on sweeteners, colours and miscellaneous additives to continue to apply by way of transitional provisions. This dual function was required until 1 June 2013 when the relevant provisions in the three Directives were transferred to Annexes II and III of Regulations (EC) No. 1333/2008 and will cease to apply.

An amendment is required to the Flavourings in Food (Wales) Regulations 2010 (SI 2010/922 (W.243)) to reflect the different dates of application of the Union (positive) list of flavourings and the transitional periods as set out in Commission Regulation (EU) No.873/2012. The existing SI simply refers to the transitional measures as set out in Article 30 of Regulation (EC) No.1334/2008 on food flavourings and therefore does not take into account the different dates of application of the Union list as set out in Regulations (EU) 873/2012.

5. Consultation

A 6 week consultation was conducted which ended on the 12th September 2013. A wide range of enforcement authorities and businesses were consulted and the consultation was available on the Food Standards Agency (FSA) website. No responses were received to the consultation in Wales. There were 11 responses to the consultation in England, from Trading Standards Groups, Industry Trade Associations, professional bodies and member of the public. Generally the respondents supported the consolidation as this reduces the amount of legislation needed to be referred to and the majority supported the use of compliance notices for non-food safety related offences. A summary of the consultation responses and the FSAs view on the issues raised will be available on the FSAs website during September 2013.

6. Impact Assessment

A Regulatory Impact assessment has not been prepared for the Instrument, as there are no identifiable costs to consumers, businesses or enforcement authorities associated with the implementation of the new Regulations.

The Regulations will not impose any new burden on Government or enforcement officers. The FSA believes that the proposal will have no impact on race, gender or disability equality.

Constitutional and Legislative Affairs Committee Draft Report CLA(4)-24-13

CLA319 – The Food Additives, Flavourings, Enzymes and Extraction Solvents (Wales) Regulations 2013

These Regulations provide for the execution and enforcement of the following EU Regulations —

- Regulation (EC) No 2065/2003 of the European Parliament and of the Council on smoke flavourings used or intended for use in or on foods;
- Regulation (EC) No 1332/2008 of the European Parliament and of the Council on food enzymes;
- Regulation (EC) No 1333/2008 of the European Parliament and of the Council on food additives; and
- Regulation (EC) No 1334/2008 of the European Parliament and of the Council on flavourings and certain food ingredients with flavouring properties for use in and on foods.

These Regulations also implement Directive 2009/32/EC of the European Parliament and of the Council on the approximation of the laws of the Member States on extraction solvents used in the production of foodstuffs and food ingredients.

Procedure: Negative

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Regulations 17(2) and 19(1)(b)(i) both refer to regulation 7(4), but no such provision exists.
[Standing Order 21.2(vi) – defective drafting]
2. Regulation 19(1)(e) refers to paragraph (3)(c), but no such provision exists.
[Standing Order 21.2(vi) – defective drafting]

Merits Scrutiny

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

3. Table 1 of Schedule 4 provides for the enforcement of specified provisions of Regulation 1332/2008. Articles 14.1 and 14.2 are specified as both require the provision of information to the Commission. Article 14.3 also contains such a requirement, but no provision appears to be made for its enforcement.

[Standing Order 21.3(iv) – inappropriate implementation of EU legislation.]

Legal Advisers

Constitutional and Legislative Affairs Committee

October 2013

Constitutional and Legislative Affairs Committee Draft Report CLA(4)-24-13

Title: School admission appeals code 2013

The Code on School Admission Appeals (the Code) contains practical guidance and imposes requirements in respect of the discharge by local authorities (LAs), the governing bodies of maintained schools, admission appeal panels and admissions forums of their admission appeal functions under the School Standards and Framework Act 1998. The Code includes guidelines setting out the aims, objectives and other matters relating to the discharge of appeal functions and each of the bodies or persons covered must act in accordance with the Code. The Code replaces the Welsh Assembly Government's School Admission Appeals Code which was published in July 2009.

Technical Scrutiny

No points are identified for reporting in respect of this code.

Merits Scrutiny

No points are identified for reporting in respect of this code.

Legal Advisers

Constitutional and Legislative Affairs Committee

October 2013

Agenda Item 6

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cymru
Welsh Government

Ein cyf/Our LF/GT/0992/13

David Melding AM
Chair of the Constitutional and
Legislative Affairs Committee

Dear David,

15 October 2013

I refer to the contribution made by Suzy Davies AM on behalf of your Committee to the Stage 1 debate on the General Principles of the Social Services and Well-being Bill. Having reflected on this contribution, I have concluded that I would provide you with a detailed response to each of your Committee's 14 Stage 1 report recommendations. Although there is no strict requirement to provide a recommendation by recommendation response to your report, I feel it is important that I set out for you the consideration which I have given to each of them. I therefore enclose a table setting out a summary of my thinking in deciding whether or not to accept your recommendations.

You will also be aware that I will be making a Written Statement, before the end of October, in responses to recommendations 1 and 2 of your report.

I hope you will agree that I have been positive in my overall response to your report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Gwenda'.

Gwenda Thomas AC / AM
Y Dirprwy Weinidog Gwasanaethau Cymdeithasol
Deputy Minister for Social Services

LFGT099213 Doc 2

Summary of Responses to the Constitutional and Legislative Affairs Committee Stage 1 Report Recommendations

No.	Theme	Summary of Recommendation	Deputy Minister's Response
1	Balance	<p>"We believe that a Bill of such public importance should have more detail on its face. We recommend that the Deputy Minister reviews the balance of the Bill with a view to tabling amendments to ensure that the Bill's policy intent is much clearer."</p>	<p>I accept this recommendation on the basis that I have already reviewed the balance of the Bill following comments made during the scrutiny process so far, both by stakeholders and the relevant scrutiny Committees.</p> <p>However, I retain very strongly my view that the balance of primary to subordinate legislation is not only appropriate and proportionate, but necessary. This is a Bill for a generation, and it needs to retain the flexibility that is currently provided for in order to respond to changing needs and circumstances over time. The only way in which we can ensure that flexibility is to retain the current balance between detail on the face of the Bill and the subordinate legislation powers.</p> <p>I recognise however that this is an issue of great interest to the scrutiny Committees, Assembly Members and stakeholders. As I made clear during the debate on the general principles of the Bill, I intend to publish a Written Statement in the Autumn, clarifying my views and rationale in relation to this issue.</p>
2	Procedures	<p>"As part of the review in recommendation 1, and while we make recommendations later in this report regarding the procedure to be applied to subordinate legislation, we recommend that the Deputy Minister</p>	<p>While I accept the principle behind this recommendation I will not be undertaking a review of the type proposed. This is because the procedures for all of the subordinate legislation under the Bill have been reviewed throughout</p>

		reconsiders all the procedures to be applied to the making of subordinate legislation, and issues a written statement on that aspect of the review, prior to tabling appropriate amendments.”	Stage 1 scrutiny and following my appearances and discussion at Committee. I believe that I am responding positively by accepting recommendations made elsewhere in this Committee’s report as well as in the Health and Social Care Committee’s report to change procedures.
3	Definitions and Descriptions	<p>“We recommend that the Deputy Minister should consider tabling an amendment to apply the Affirmative procedure to the regulation-making powers contained in Sections 3(6), 7(3) and 9(3).”</p> <p><i>NB. These powers relate to the extension of the definitions of ‘disabled’; social enterprises, co-operatives and third sector organizations; and sensory impairments.</i></p>	<p>Changing the procedure for section 3(6) was a commitment I gave in my letter to the Health and Social Care Committee on 20 May. I also recall our discussion of this matter during my evidence session with your Committee on 22 April.</p> <p>Changing the procedure for section 7(3) is something I gave a verbal commitment to do during my evidence session with the Committee on 22 April as was changing the procedure for section 9(3).</p> <p>In light of the concerns raised by the Committee and in addition to stakeholder feedback, I will bring forward Government amendments at Stage 2 to change the procedure by which Regulations under these sections are made, from Negative to Affirmative.</p>
4	Eligibility	<p>“We recommend that the Deputy Minister should consider tabling an amendment to the Bill to apply a super-Affirmative procedure to regulation-making powers under Section 19 of the Bill.”</p> <p><i>NB. Section 19 relates to the determination of eligibility.</i></p>	I have already made a commitment to consult on groups of Regulations and the Regulations to be made under section 19 will form part of that consultation, prior to scrutiny by the Assembly under the Affirmative procedure. I believe this provides sufficient assurance and opportunity for scrutiny and on that basis am rejecting this recommendation.

5	Duty to meet needs	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 23, 26 and 27, followed thereafter by the Negative procedure."</p> <p><i>NB. Sections 23, 26 and 27 relate to duties to meet care and support needs of a child; an adult carer; and a child carer.</i></p>	<p>I made a commitment in my correspondence of 20 May to the Health and Social Care Committee, to change the procedure on all of the powers referenced in this recommendation. My commitment was to change the procedure to Affirmative for the first set of Regulations, and Negative for any sets thereafter. However, on reflection and in order to provide maximum scrutiny and accountability, I have decided to go further and to change the procedure to Affirmative for all uses of the Regulations under the sections referenced. I therefore propose to bring forward Government amendments at Stage 2.</p>
6	Direct Payments	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 34 to 37, followed thereafter by the Negative procedure."</p> <p>Sections 34 to 37 relate to Direct Payments.</p>	<p>I believe that the existing regime, which currently operates via a Negative procedure under the Health and Social Care Act 2001, works satisfactorily.</p>
7	Looked After Children	<p>"We recommend that the Deputy Minister should table an amendment to provide that in each case where Welsh Ministers issue a direction under Section 62(5), the direction is accompanied by a written statement explaining the reason for its use."</p> <p><i>NB. Section 62(5) relates to the power for the Welsh Ministers to direct a Local Authority to exercise its powers in a specific way with respect to a child it is looking after, for the purposes of protecting members of the public from serious injury.</i></p>	<p>I recall our discussion about this matter during my evidence session on 22 April. At that time I indicated that I would be willing to issue a Written Statement when a Direction under this power is used.</p> <p>The reasons for making such a Direction are likely to involve an analysis of personal information about the young person in relation to whom it was made. It is unlikely to be appropriate, therefore, for this kind of information to be issued publicly. The Welsh Ministers would, as a matter of general public law, be required to</p>

			<p>keep a record of a decision of this sort including their reasons for it.</p> <p>Therefore after careful consideration I will be rejecting this recommendation.</p>
8	Looked After Children	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply the Affirmative procedure in the first instance to the making of Regulations under Sections 92 and 93, followed thereafter by the Negative procedure."</p> <p><i>NB. Sections 92 and 93 relate to support for Category 2 and Category 3 young people (care leavers), respectively.</i></p>	<p>You have already received my letter (LFGT095413) that sets out my thinking in response to this recommendation.</p>
9	Safeguarding	<p>"We recommend that the Deputy Minister should table an amendment to apply the Affirmative procedure to the making of Regulations under Sections 105(9) and 112(4)."</p> <p><i>NB. Section 105 relates to adult protection and support orders; and Section 112 relates to the functions and procedures of Safeguarding Boards.</i></p>	<p>Changing the procedure for sections 105(9) and 112(4) was something that was raised during my appearance at Committee on 22 April at which time I agreed to give the matter further thought. I subsequently gave a commitment to make this change in my letter of 20 May to the Health and Social Care Committee. I will therefore be bringing forward Government amendments during Stage 2.</p>
10	Safeguarding	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply a super-Affirmative procedure to the order-making power under Section 117 of the Bill."</p> <p><i>NB. Section 117 relates to the merging of Children and Adults' Safeguarding Boards.</i></p>	<p>This is also a recommendation of the Health and Social Care Committee. Although this is a permissive power, I have been clear that I have no plans currently to use it. In recognition of both Committees' support for this change of procedure, I am proposing bringing forward a Government amendment during Stage 2.</p>

11	Social Services Functions	<p>"We recommend that the Deputy Minister should table an amendment to the Bill to apply a Super-Affirmative procedure to an order made under Section 119(2), unless the order makes changes of only a minor or consequential nature, in which case the Affirmative procedure should apply."</p>	<p>The report appears to suggest that the power under section 119(2) could be used to substantially change the functions of a Local Authority. However, it would in fact simply enable the Welsh Ministers to amend the list of functions which are considered to be "social services functions", or to include Local Authority functions as a social services function in the list under Schedule 2 of the Bill.</p> <p>When this issue was raised at the Committee's scrutiny session I gave my view that the Affirmative procedure was sufficient in this case and my view has not changed.</p>
12	Directions	<p>"We recommend that the Deputy Minister should table an amendment to provide that in each case where Welsh Ministers issue a direction under Sections 122, 125 and 129 to 133, the direction is accompanied by a written statement explaining the reason for its use."</p>	<p>As I have stated in my response to recommendation 7 above, the Welsh Ministers would record, and hold on record, the reasons for making a Direction of this sort. The reasons would then be disclosable.</p> <p>While I do not object to issuing a Written Statement with Directions made under these sections, it may not always be possible for that statement to 'accompany' the Direction. I also do not believe that primary legislation is the correct vehicle for a requirement such as this. In my view, this would be better dealt with in the Code of Practice.</p> <p>I am therefore happy to give a commitment to the issuing of a Statement, following the use of a Direction under the Sections referenced. However, this will be within a specified time, rather than it <i>accompanying</i> the Direction. The requirement will also feature in the Code, rather than on the face of the Bill.</p>

13	Cooperation (Children)	<p>"We recommend that the Deputy Minister should table an amendment to apply the Affirmative procedure to Section 144 of the Bill."</p> <p><i>NB. Sections 143 and 144 relate to arrangements to promote co-operation in relation to adults with needs for care and support; and children, respectively.</i></p>	<p>You have already received my letter (LFGT095413) that sets out my thinking in response to this recommendation.</p> <p>In addition to what I have already said, you will wish to be aware that I do propose to bring forward a Government amendment during Stage 2 in relation to this recommendation. It will be to amend the Children Act 2004, to apply a procedure to the Regulation making power that will be inserted into that Act by section 144 of the Bill. This power will be subject to the Negative procedure.</p>
14	Partnerships	<p>"We recommend that the Deputy Minister should consider tabling an amendment to the Bill to apply a Super-Affirmative procedure to the regulation-making power under Section 147."</p> <p><i>NB. Section 147 relates to partnership arrangements.</i></p>	<p>The potentially intrusive nature of this power is already acknowledged by the assignment of the Affirmative procedure through which any exercise of this power would be subject to a period of consultation (unless in the case of an emergency where such may not be appropriate). I do not believe I need to change this.</p>