

Plenary

Meeting date:
Tuesday, 18 October 2011

Meeting time:
13:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



Agenda (23)v4

1. Questions to the First Minister (60 mins)

[View Questions](#)

2. Business Statement and Announcement (30 mins)

[View Business Statement and Announcement](#)

3. Statement by the Minister for Health and Social Services: Launch of a consultation on the need to introduce legislation to ensure parental consent for cosmetic piercing procedures carried out on young people (45 mins)

4. Statement by the Minister for Environment and Sustainable Development: Climate Change Progress on Reducing Greenhouse Gas Emissions and Preparing for Climate Change (45 mins)

5. Motion to approve The Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011 (15 mins) (Pages 1 - 3)

NDM4828 Jane Hutt (Vale of Glamorgan)

To propose that the National Assembly for Wales, in accordance with Standing Order 27.5:

Approves that the draft The Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011 is made in accordance with the draft laid in the Table Office on 27 September 2011.

Supporting Documents

[The Protection from Tobacco \(Sales from Vending Machines\) \(Wales\) Regulations 2011](#)

[Explanatory Memorandum](#)

Proposal to debate the following 2 items together under Standing Order 12.24 but with separate votes (15 mins)

6. Motion to approve the Mental Health (Independent Mental Health Advocates) Wales Regulations 2011

NDM4830 Jane Hutt (Vale of Glamorgan)

To propose that the National Assembly for Wales, in accordance with Standing Order 27.5:

Approves that the draft The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011 is made in accordance with the draft laid in the Table Office on 19 September 2011.

Supporting Documents

[The Mental Health \(Independent Mental Health Advocates\) \(Wales\) Regulations 2011 Explanatory Memorandum](#)
[Report of the Constitutional and Legislative Affairs Committee](#)

7. Motion to approve the Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

NDM4829 Jane Hutt (Vale of Glamorgan)

To propose that the National Assembly for Wales, in accordance with Standing Order 27.5:

Approves that the draft The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011 is made in accordance with the draft laid in the Table Office on 19 September 2011.

Supporting Documents

[The Mental Health \(Assessment of Former Users of Secondary Mental Health Services\) \(Wales\) Regulations 2011 Explanatory Memorandum](#)
[Report of the Constitutional and Legislative Affairs Committee](#)

8. Debate on the Qualifications Review (60 mins)

NDM4831 Jane Hutt (Vale of Glamorgan)

To propose that the National Assembly for Wales:

Notes that the Review of Qualifications will consider how we can ensure that our qualifications system is understood, valued and meets the needs of our young

people and the Welsh economy.

Supporting Document

A Written Statement from the Deputy Minister for Skills on the Review of Qualifications is available on the following link:

<http://wales.gov.uk/about/cabinet/cabinetstatements/2011/reviewofqualifications/?lang=en>

The following amendments were tabled:

Amendment 1 - Jocelyn Davies (South Wales East)

Insert after 'Welsh Economy':

'and in particular ensures that qualifications are only awarded to students with appropriate levels of literacy and numeracy'.

Amendment 2 - William Graham (South Wales East)

Add as new point at end of motion:

Regrets that the current qualification system has become complex.

Amendment 3 - William Graham (South Wales East)

Add as new point at end of motion:

Raises concern that the review is wide ranging in scope.

Voting Time

9. Short Debate postponed from 5 October 2011 - NDM4815 Dafydd Elis-Thomas: Reforming the Conditions of Tenure Within the Private Rented Sector (30 mins)

The Assembly will sit again at Plenary at 13:30 on Wednesday, 19 October 2011

Agenda Item 5

**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 National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

5 October 2011

Dear Lesley

CLA42 - The Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011

The Constitutional and Legislative Affairs Committee considered the above Statutory Instrument at its meeting on 3 October 2011.

The Committee noted that the regulations come into effect on 1 February next year but that the equivalent regulations came into effect in England on 1 October this year.

Welsh Government spokespersons have explained that the delay in Wales was due to legal challenges to the equivalent regulations in England. The Committee would be grateful if you could confirm that this is the reason for the delay and why it is that legal action has delayed the introduction of the Welsh regulations but not the regulations that were the subject of the legal challenge?

I understand that these regulations are to be debated in Plenary on 18 October. It would be helpful to Plenary consideration of the regulations if you could reply before the Plenary debate and if your reply could be made available to all Assembly Members as a supporting document for the debate.

Yours sincerely

David Melding AM
Chair, Constitutional and Legislative Affairs Committee



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

11th October 2011

Dear David

Thank you for your letter of 5 October concerning the coming into force date of the Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011.

The Welsh Government consulted on the draft regulations in April 2010, which included a proposed coming into force date of 1 October 2011. However, legal challenges from the tobacco industry have raised timetabling issues.

In February 2010 Sinclair Collis, a tobacco vending machine operator and subsidiary of Imperial Tobacco, wrote to the Department of Health indicating that they intended to apply for a judicial review of section 22 of the Health Act 2009. After an exchange of correspondence with the Department of Health, Sinclair Collis made an application for judicial review. Section 22 of the Health Act 2009 is the section which gives the Secretary of State in relation to England, and Welsh Ministers in relation to Wales, the power to ban the sale of tobacco from vending machines. Sinclair Collis argued that section 22 of the Act breaches article 34 of the Treaty on the Functioning of the European Union (TFEU), as a ban on tobacco vending machines would constitute a restriction, without justification, on the free movement of goods between European Union Member States and, as such, would infringe article 34. They further argued that such a ban would amount to an unjustified interference with the property of Sinclair Collis contrary to Article 1 to the First Protocol of the European Convention on Human Rights.

Sinclair Collis also submitted a second application for judicial review challenging the making of the Tobacco (Sales from Vending Machines) (England) Regulations 2010. The two applications were consolidated.

If the Welsh Ministers had made the Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations before the judicial review proceedings were concluded, it was anticipated that Welsh Ministers would be joined as a party to the judicial review action that was ongoing against the Secretary of State. The reason for this view is that the Welsh Regulations are identical in content and rely upon the same legal powers as those of the Secretary of State. The disadvantage to being added as a party to the proceedings would be the considerable legal costs that would be incurred in defending the judicial review action. Further, if the judicial review action had been successful any Regulations made under section 22 of the Health Act 2009 would have been quashed.

In view of the uncertainties raised by the judicial review proceedings and the desirability of avoiding Welsh Ministers' involvement in these proceedings, no action was taken to make the Welsh Regulations until the outcome of the judicial review was known. As the Judicial Review action completed in August, when Sinclair Collis' application to take their case to the Supreme Court was turned down, Welsh Ministers decided to bring forward the Regulations banning the sale of tobacco from vending machines in Wales. In the consultation report the Welsh Government committed to allowing appropriate time for businesses to implement the legislation and as such it is proposed for the Regulations to come into force 1 February 2012.

I am happy for this reply to be used in support of the debate on 18 October and I will arrange for it to be made available as a supporting document on the agenda.



Lesley Griffiths AC / AM

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