

Constitutional and Legislative Affairs Committee

Report: CLA(4)–19–12 : 24 September 2012

The Committee reports to the Assembly as follows:

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

Negative Resolution Instruments

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

Procedure: Negative.

Date made: 17 July 2012.

Date laid: 18 July 2012.

Coming in to force date: 1 September 2012

The Committee agreed to write to the Minister for Health and Social Services Lesley Griffiths AM to invite her comments on the accuracy of the Explanatory Memorandum to the Regulations.

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

Procedure: Negative.

Date made: 18 July 2012.

Date laid: 19 July 2012.

Coming in to force date: 31 August 2012

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

Procedure: Negative.

Date made: 18 July 2012.

Date laid: 19 July 2012.

Coming in to force date: 1 September 2012

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

Procedure: Negative.

Date made: 9 August 2012.

Date laid: 13 August 2012.

Coming in to force date: 3 September 2012

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

Procedure: Negative.

Date made: 6 September 2012.

Date laid: 11 September 2012.

Coming in to force date: 5 October 2012

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

Procedure: Negative.

Date made: 6 September 2012.

Date laid: 11 September 2012.

Coming in to force date: 5 October 2012

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

Procedure: Negative.

Date made: 15 September 2012.

Date laid: 19 September 2012.

Coming in to force date: 10 October 2012

Consideration of CLA178 – The Bluetongue (Wales) (Amendment) Regulations 2012 was deferred to the meeting 8 October 2012 to allow for the consideration of additional information.

Affirmative Resolution Instruments

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

Procedure: Affirmative.

Date made: not stated.

Date laid: not stated.

Coming into force date: 17 October 2012

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

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

Procedure: Negative.

Date made: 17 July 2012.

Date laid before Parliament: 19 July 2012.

Date laid before the National Assembly for Wales: 19 July 2012.

Coming into force date: 1 October 2012

CLA174 – The Conservation of Habitats and Species (Amendment) Regulations 2012

Procedure: Negative.

Date made: 20 July 2012.

Date laid before Parliament: 25 July 2012.

Date laid before the National Assembly for Wales: 25 July 2012.

Coming into force date: 16 August 2012

Affirmative Resolution Instruments

None

The Committee agreed the Reports under S.O.21.2 and S.O.21.3 on these statutory instruments, which are attached as Annexes 1 – 2.

Other Business

Committee for the Scrutiny of the First Minister: approach to work and topics for scrutiny

The Committee noted the potential future work programme of the Committee for the Scrutiny of the First Minister.

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

The Committee took oral evidence from Lord Carlile of Berriew C.B.E., Q.C.

Business Committee – Review of Committee Structure and Timetable

The Committee noted the Presiding Officer's letter to the Chair regarding the operation of the present Committee structure.

International research project on the control of the EU legislative process: Early Warning System

The Committee noted the Chair's response to Dr Karolina Boronska-Hryniewiecka's (Institute of Political Science, University of Wroclaw) request for information about the National Assembly's experience of the multilevel governance and subsidiarity control under the Early Warning System introduced by the Lisbon Treaty.

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction and agree the Report on Committee study visit to Northern Ireland and the Report on the Food Hygiene Rating (Wales) Bill.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

24 September 2012

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)–19–12)

CLA171

Constitutional and Legislative Affairs Committee Report

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

Procedure: Negative

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

Technical Scrutiny

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

Merits Scrutiny

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

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

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

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

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

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

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

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

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

24 September 2012

The Government has responded as follows:

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

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

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

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

The Claimants and Interested Parties were provided with a draft of the regulations on 4 July 12. The Claimants indicated by letter on 13 July 12 that they were not content with the amending regulations, but gave no substantive reasons for their position. Substantive reasons were

provided by letter on 16 August, after the regulations were laid. It would therefore at best, only have been possible to have indicated in the Explanatory Memorandum, the bare fact that the Claimants were not satisfied.

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

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

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

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)–19–12)

CLA174

Constitutional and Legislative Affairs Committee Report

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

Procedure: Negative

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

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

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

Technical Scrutiny

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

Merits Scrutiny

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

1. The Explanatory Memorandum states that the amendments are being introduced in response to correspondence received from the European Commission regarding gaps in the UK transposition of the Wild Birds Directive, and that the Regulations have been made on a composite basis as they are required to be made urgently.
2. The Regulations are subject to the negative procedure. Welsh Ministers pursuant to the designation under Section 2(2) of the European Communities Act 1972 have a choice as to which Assembly procedure is to be followed. Whilst the Regulations do not amend any provision of an Assembly Act or Measure, they do make minor amendments to a piece of UK primary legislation.
3. Regulation 23 requires the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after these Regulations come into force and within every five years after that. The Explanatory Memorandum is silent as to why in the event that it was not considered appropriate for the Welsh Ministers to carry out a review, this is the case.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

24 September 2012

The Government has responded as follows:

The Conservation of Habitats and Species (Amendment) Regulations 2012

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not considered reasonably practicable for this instrument to be made or laid bilingually.