



## **Constitutional and Legislative Affairs Committee**

**Report: CLA(4)-20-12 : 8 October 2012**

**The Committee reports to the Assembly as follows:**

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

### **Negative Resolution Instruments**

None

### **Affirmative Resolution Instruments**

None

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

### **Negative Resolution Instruments**

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

**Procedure:** Negative.

**Date made:** 15 September 2012.

**Date laid:** 19 September 2012.

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

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

**Procedure:** Negative.

**Date made:** Not stated.

**Date laid:** 24 September 2012.

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

### **Affirmative Resolution Instruments**

None

### **Other Business**

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

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

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

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

### **Committee Correspondence**

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

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

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

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

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

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

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

**8 October 2012**

## **Annex 1**

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

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

**CLA178**

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

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

**Procedure: Negative**

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

#### **Technical Scrutiny**

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

#### **Merits Scrutiny**

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

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

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

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

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

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

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

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

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

**David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**8 October 2012**

**The Government has responded as follows:**

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

**Response to Merits Scrutiny Reporting Point**

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

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

## Annex 2

### Constitutional and Legislative Affairs Committee

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CLA179

### Constitutional and Legislative Affairs Committee Report

#### Title: Radioactive Contaminated Land Statutory Guidance

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

#### Enabling Power

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

#### Procedure

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

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

### **Scrutiny**

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

### **Technical Scrutiny**

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

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

### **Merits Scrutiny**

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

### **David Melding AM**

Chair, Constitutional and Legislative Affairs Committee

**8 October 2012**

**The Government has responded as follows:**

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

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