



Constitutional and Legislative Affairs Committee

Report: CLA(4)-05-11: 19 September 2011

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

CLA18 - The Poultrymeat (Wales) Regulations 2011

Procedure: Negative.

Date made: 12 July 2011.

Date laid: 13 July 2011.

Coming into force date: 15 August 2011

CLA21 - The Extraction Solvents in Food (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 25 July 2011

Date laid: 25 July 2011.

Coming into force date: 15 August 2011

CLA22 - The Housing (Purchase of Equitable Interests) (Wales) Regulations 2011

Procedure: Negative.

Date made: 26 July 2011

Date laid: 27 July 2011.

Coming into force date: 19 August 2011

CLA23 - The Housing (Service Charge Loans) (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 26 July 2011

Date laid: 27 July 2011.

Coming into force date: 19 August 2011

CLA24 - The National Curriculum (Amendments to the Key Stage 2 and Key Stage 3 Assessment Arrangements) (Wales) Order 2011

Procedure: Negative.

Date made: 29 July 2011

Date laid: 3 August 2011.
Coming into force date: 1 September 2011

CLA25 - The School Governors' Annual Reports (Wales) Regulations 2011

Procedure: Negative.
Date made: 29 July 2011
Date laid: 3 August 2011.
Coming into force date: 1 September 2011

CLA26 - The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2011

Procedure: Negative.
Date made: 31 July 2011
Date laid: 4 August 2011.
Coming into force date: in accordance with regulation 1.

CLA27 - The Pupil Information (Wales) Regulations 2011

Procedure: Negative.
Date made: 29 July 2011
Date laid: 4 August 2011.
Coming into force date: 1 September 2011

CLA28 - The Head Teacher's Report to Parents and Adult Pupils (Wales) Regulations 2011

Procedure: Negative.
Date made: 29 July 2011
Date laid: 4 August 2011.
Coming into force date: 1 September 2011

CLA29 - The School Information (Wales) Regulations 2011

Procedure: Negative.
Date made: 29 July 2011
Date laid: 4 August 2011.
Coming into force date: 1 September 2011

CLA30 - The School Performance and Absence Targets (Wales) Regulations 2011

Procedure: Negative.
Date made: 29 July 2011
Date laid: 4 August 2011.
Coming into force date: 1 September 2011

CLA33 - The School Performance Information (Wales) Regulations 2011

Procedure: Negative.
Date made: 3 August 2011
Date laid: 8 August 2011.

Coming into force date: 1 September 2011

CLA34 - The Education (Student Fees, Awards and Support) (Wales) Regulations 2011

Procedure: Negative.

Date made: 9 August 2011

Date laid: 10 August 2011.

Coming into force date: 31 August 2011

CLA35 - The Cockles and Mussels (Specified Area) (Wales) Order 2011

Procedure: Negative.

Date made: 10 August 2011

Date laid: 11 August 2011.

Coming into force date: 1 September 2011

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

The Committee agreed reports under S.O.21.2 and S.O.21.3 on the following statutory instruments, which are attached as Annexes 1-7.

CLA17 - The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 11 July 2011.

Date laid: 12 July 2011.

Coming into force date: 3 August 2011

The Committee also agreed to write to the Minister to ask whether she was satisfied that the delay in bringing into force of Part 7 of the principal Regulations was adequate to allow for detailed operational arrangements to be agreed with NHS bodies elsewhere in the UK.

CLA19 - The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 15 July 2011

Date laid: 19 July 2011

Coming into force date: 1 September 2011

The Committee also agreed to write to the Minister to ask him to clarify the timescale and location of the pilot of the National Professional Qualification for Headship (NPQH), that the Regulations facilitate and whether there was any intention to keep the Assembly informed of the outcome of the trial.

CLA20 - The Beef and Pig Carcase Classification (Wales) Regulations 2011

Procedure: Negative.

Date made: 21 July 2011

Date laid: 25 July 2011.

Coming into force date: 1 September 2011

The Committee also agreed to write to the Deputy Minister in respect of these regulations to ask him to clarify the timescale for bringing forward amending regulations to correct the technical reporting point in respect of Regulation 2(1).

CLA31 - The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

Procedure: Negative.

Date made: 29 July 2011

Date laid: 4 August 2011.

Coming into force date: in accordance with article 1(2).

The Committee agreed to write to the Minister to ask whether he had any intention to use the powers under article 5 of this Order (and of CLA32) and, if the power was used in future, whether the Minister would keep Assembly Members informed through publishing a written statement.

CLA32 - The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Procedure: Negative.

Date made: 29 July 2011

Date laid: 5 August 2011.

Coming into force date: 1 September 2011

In addition to the common issues in relation to both CLA31 and CLA32, the Committee agreed to write to the Minister to clarify whether the Order required assessments to be carried out during the summer term.

CLA36 - The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Procedure: Negative.

Date made: 11 August 2011.

Date laid: 22 August 2011.

Coming into force date: 1 October 2011

CLA37 - The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 2 September 2011.

Date laid: 7 September 2011.
Coming into force date: 1 October 2011

The Committee agreed to write to the Minister expressing some concern that the Regulations were laid very close to coming into force date for what is such a significant new policy.

Other Business

Committee Correspondence

CLA5 - The Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011

The Committee noted the Minister's response to the Chair's letter dated 4 July 2011 on the merits of the Right of a Child to Make a Disability Discrimination Claim (Schools) (Wales) Order 2011.

CA581 - The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

The Committee noted the First Minister's positive response to the Chair's letter of 4 July 2011 in respect of guidance to be used in deciding the scrutiny route for subordinate legislation.

CS11 - The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011

The Committee noted the Minister's response to the Chair's letter dated 21 July 2011 on the merits and technical reporting points of The Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011, and that there appeared to be a translation error in the Welsh version of his letter.

Statutory Instruments laid before or during the dissolution of the Third Assembly: Social Charges Regulations

The Committee noted the First Minister's response to the Chair's letter expressing concerns that legislation implementing very significant changes should not be laid at a time that frustrated proper scrutiny by the Assembly.

The Committee also agreed to thank Mr Ian Medlicott for his views, on behalf of the Association of Council Secretaries and Solicitors, expressing concern at the number of education related instruments that had been laid over the summer to come into force before the end of the summer recess.

CLA10 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

The Committee noted the Minister's response to the Chair's letter regarding the merits of The Environmental Permitting (England and Wales) (Amendment) Regulations 2011.

Letter from the Presiding Officer to the Chair: Committee Portfolios and Responsibilities in the 4th Assembly

The Committee noted a letter from the Presiding Officer about the intention to review the operation of the new committee system in the Assembly. The Committee agreed that the scrutiny of European matters should be considered in any review.

Letter from the Chair of the Commission on a Bill of Rights, Sir Leigh Lewis, to the Chair of the Constitutional and Legislative Affairs Committee, David Melding

The Committee considered a letter from the Chair of the Commission on a Bill of Rights, Sir Leigh Lewis. Committee Members agreed that an informal meeting with Commission would be useful.

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

19 September 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA17

Constitutional and Legislative Affairs Committee Report

Title: The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (“the principal Regulations”).

Regulation 2(1) delays the coming into force of Part 7 of the principal Regulations from 1 October 2011 to 1 April 2012. Part 7 of the principal Regulations deals with how redress is to be provided where an NHS Trust in Wales or a Local Health Board in Wales enters into an arrangement for the provision of health services with an NHS body in England, Scotland or Northern Ireland.

Technical Scrutiny

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

Merits Scrutiny

The Committee makes the following report to the Assembly under Standing Order 21.3(ii) that these regulations are of political or legal importance and give rise to issues of public policy likely to be of interest to the Assembly.

Background

The *NHS Redress (Wales) Measure 2008* was the first Assembly Measure to be passed by the Assembly. The Measure enables Welsh Ministers to make Regulations, which allow for redress to be provided in circumstances where there is a qualifying liability in tort in relation to the provision of qualifying services. Redress may encompass apologies, explanations, action plans, remedial treatment and, if appropriate, financial compensation.

The first set of regulations made by Welsh Ministers under this Measure was *The National Health Service (Concerns, Complaints and*

Redress Arrangements) (Wales) Regulations 2011 (“the principal regulations”) which were laid by the then Minister for Health and Social Services, Edwina Hart AM, on 7 February 2011.

The objective of the principal regulations is to make it easier for patients to raise concerns if they are dissatisfied or if things go wrong with their NHS care. They also aim to ensure that the NHS approach to such situations is more consistent and results in a fairer outcome for patients and staff.

In 2007, the then Subordinate Legislation Committee took evidence and reported on the Measure. The Committee recommended **a strong level of scrutiny for Regulations made under the Measure and that there should be widespread consultation on the Regulations.**

The principal regulations were considered by the Constitutional Affairs Committee of the third Assembly on 17 February 2011. That Committee produced a merits report on the principal regulations and made the following comments:

“We have considered the current Regulations in relation to the issues raised above, particularly whether the Regulations have been subject to adequate consultation and whether the Regulations as presented adequately reflect issues raised during consultation ...

While we believe that the general concerns about ‘Framework’ Measures remain valid (and while we note the considerable amount of time that has elapsed since the Measure was passed), we are content that consultation in respect of these draft Regulations has in our view been thorough, inclusive and responsive to concerns during it.”

The principal regulations were subject to the affirmative procedure and were approved by the Assembly in plenary on 8 March 2011. They came into force on 1 April 2011, except for provisions in Part 7 of the regulations which were initially due to come into force on 1 October 2011.

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011 (“the amending regulations”) were tabled by the Minister for Health and Social Services, Lesley Griffiths AM, on 12 July 2011.

The objective of the amending regulations is to delay the coming into force of Part 7 of the principal Regulations, which deal with cross-border arrangements, from 1 October 2011 to 1 April 2012.

This is deemed necessary by the Welsh Government to allow for the detailed operational arrangements to be agreed between Welsh and other UK NHS bodies. According to the accompanying Explanatory Memorandum:

“The reason for this change is to allow more time for this work to be completed since the initial assessment that a coming into force date of 1 October 2011 would be sufficient time to agree these amendments, is not now achievable.”

An additional amendment is made to regulation 52(5) of the principal regulations to reflect the new coming into force date for Part 7 of the Regulations and makes it clear that the cross border arrangements outlined in Part 7 will not apply to services provided by English NHS bodies, Scottish NHS bodies or Northern Irish NHS bodies on behalf of Welsh NHS bodies before 1 April 2012.

Consideration by the Constitutional and Legislative Affairs Committee

While we agree with the Constitutional Affairs Committee of the third Assembly that the principal regulations adequately reflect issues raised during consultation, the introduction of the amending regulations suggest that there may have been insufficient consultation with NHS bodies in other parts of the UK in relation to cross-border issues.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

19 September 2011

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA19

Constitutional and Legislative Affairs Committee Report

Title: The Head Teachers' Qualifications and Registration (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Head Teachers' Qualifications and Registration (Wales) Regulations 2005 by altering the definition of "The National Professional Qualification for Headship in Wales" (NPHQ) in regulation 3(2) of those regulations. The requirements of the NPHQ will change from completion of a course of training approved by the Welsh Ministers to the fulfilment of certain standards approved by the Welsh Ministers.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

These regulations come on the back of an Estyn report on the NPQH and the Welsh Government's own research. The Estyn report found the qualification ineffective and that:

- the supply of NPQH holders far exceeds the demand for headteachers in Wales;
- the current selection process does not necessarily identify the most suitable people for headship; and
- the content of the programme needs to be revised.

Teaching unions have been quoted in the *Times Educational Supplement* as welcoming the overhaul in the NPQH, but they expressed concerns that the supply of heads could be damaged if there is no immediate replacement, and concerns about funding for leadership training. In response the Welsh Government said that funding for NPQH was not being withdrawn and the current cohort of

candidates will complete their programme. A pilot for the revised NPQH began earlier this year.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

19 September 2011

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA20

Constitutional and Legislative Affairs Committee Report

Title: The Beef and Pig Carcase Classification (Wales) Regulations 2011

Procedure: Negative

These Regulations:-

- revoke and replace the (i) Beef Carcase (Classification) Regulations 1991 (SI 1991 No.2242) and (ii) Pig Carcase (Grading Regulations 1994 (SI 1994 No. 2155 as amended) in relation to Wales; and
- enforce EU provisions on beef and pig carcase classification and associated price reporting where applicable as contained in EU legislation – Council Regulation (EC) No. 1234/2007 establishing a common organisation of agricultural markets and on specific provisions for certain agricultural products and Commission Regulation (EC) No. 1249/2008 laying down detailed rules on the implementation of the Community scales for the classification of beef, pig and sheep carcasses and the reporting of prices thereof.

Technical Scrutiny

Under Standing Orders 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. Regulation 4 (c) – the regulation purports to revoke the Beef Carcase (Classification) (Amendment) (Wales) Regulations 1994. The Regulations do not exist. Reference to the footnote suggest that it is the Beef Carcase (Classification) (Amendment) Regulations 1994 that are to be revoked in relation to Wales. **(Standing Order 21.2 (vi) –that its drafting appears to be defective or it fails to fulfil statutory requirements)**
2. Regulation 2 (1) and regulation 26- regulation 26 provides that any person who either fails to comply with any requirement or contravenes any prohibition contained in a European pig provision is guilty of an offence. Whilst “European pig provision” is defined in regulation 2 (1) in the English text of the

regulations, there is no definition of "European pig provision" in the Welsh text.(**Standing Order 21.2 (vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts; and Standing Order 21.2 (vi) –that its drafting appears to be defective or it fails to fulfil statutory requirements)**)

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument:

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

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The Government has responded as follows:

The Beef and Pig Carcase Classification (Wales) Regulations 2011

" TECHNICAL REPORTING POINT NO. 1: Regulation 4 (c) - The text "(Wales)" in the title of the regulations is a typographical error. The footnote to the regulations explains that the instrument referred to is the Beef Carcase (Classification) (Amendment) Regulations 1994, S.I. 1994/2853. S.I. 1994/2853 applied in relation to Great Britain. There were never any separate equivalent regulations which applied only to Wales. Regulation 4(c) revokes S.I. 1994/2853 in relation to Wales in line with the Welsh Ministers' powers to do so.

Furthermore, and in so far as its application to Wales, regulation 4(a) revokes the principal Beef Carcase (Classification) Regulations 1991: S.I. 1991/2242. Regulation 4(a) revokes S.I. 1991/2242 as amended. So regulation 4 (c) is arguably unnecessary as there is strictly speaking no need to revoke S.I. 1994/2853.

It is proposed to correct the typographical error upon publication.

Namely to remove the reference to "(Wales)" in regulation 4 (c).

Correction on publication is deemed to suffice for the reasons given.

TECHNICAL REPORTING POINT NO. 2: Regulations 2(1) & 26 - It is accepted that there should be a definition of "European pig provision" in the Welsh text of the regulations. This correction will be made, by way of an amendment to the regulations, as soon as possible.

PUBLICATION POINTS: The points raised as being suitable for correction upon publication will also be actioned."

Annex 4

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA31

Constitutional and Legislative Affairs Committee Report

Title: The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011

Procedure: Negative

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify, by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order sets out those arrangements.

Technical Scrutiny

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

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument - (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 5 contains the following unusual provision -

“The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient.”

The enabling power is section 108(11) of the Education Act 2002 which reads as follows-

“An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Welsh Ministers to be expedient; and **any provisions made under such an order shall, on being published as specified in the order, have effect for the purposes of this Part as if made by the order.**”

Thus Welsh Ministers will be able to make further provision to give full effect to or supplement the provisions of the current Order without having to make an amending order that would be subject to Assembly scrutiny. Nevertheless, it is a power that has been used on a number of occasions by the Assembly (to which the power was originally granted) and by Welsh Ministers (to whom the power was transferred following the Government of Wales Act 2006).

This is not an unusual or unexpected use of the power in section 108(11), which would be reported under Standing Order 21.2(ii), but a power that is itself unusual, and therefore of importance.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

19 September 2011

Annex 5

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA32

Constitutional and Legislative Affairs Committee Report

Title: The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

Procedure: Negative

Under section 108(2)(b)(iii) of the Education Act 2002 the Welsh Ministers may specify by order, such assessment arrangements as they consider appropriate for the foundation phase. This Order provides for pupils to be assessed in the final year of the foundation phase by a teacher, and sets out the purpose of such assessments.

Technical Scrutiny

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

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument - (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

Article 5 contains the following unusual provision –
“The Welsh Ministers may make such provision giving full effect to or otherwise supplementing the provisions of this Order (other than provision conferring or imposing functions as mentioned in section 108(6) of the 2002 Act) as appears to them to be expedient.”

The enabling power is section 108(11) of the Education Act 2002 which reads as follows-

“An order under subsection (2)(b)(iii) or (3)(c) may authorise the making of such provisions giving full effect to or otherwise supplementing the provisions made by the order (other than provision conferring or imposing functions as mentioned in subsection (6) or (7)) as appear to the Welsh Ministers to be expedient; and **any provisions made under such an order shall, on being published as specified in**

the order, have effect for the purposes of this Part as if made by the order.”

Thus Welsh Ministers will be able to make further provision to give full effect to or supplement the provisions of the current Order without having to make an amending order that would be subject to Assembly scrutiny. Nevertheless, it is a power that has been used on a number of occasions by the Assembly (to which the power was originally granted) and by Welsh Ministers (to whom the power was transferred following the Government of Wales Act 2006.

This is not an unusual or unexpected use of the power in section 108(11), which would be reported under Standing Order 21.2(ii), but a power that is itself unusual, and therefore of importance.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

19 September 2011

Annex 6

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA36

Constitutional and Legislative Affairs Committee Report

Title: The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Procedure: Negative

This draft Order will apply to both England and Wales.

This Order deals with the protection of specified plants and animals under the Wildlife and Countryside Act 1981 (“the Act”). The Order adds four new animals to Schedule 5 of the Act and removes two existing entries from protection. The Order also extends protection afforded to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes four existing plant entries. Schedule 5 lists animals protected under section 9 of the Act. Schedule 8 lists plants protected under section 13 of the Act.

Technical Scrutiny

Under Standing Order 21.2 the Assembly is invited to pay special attention to the following instrument:-

1. These Regulations have not been made bilingually.

[21.2(ix) – that it is not made or to be made in both English and Welsh].

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. This Order could have been made in Wales by Welsh Ministers and therefore bilingually.

[21.3(ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly].

David Melding AM

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19 September 2011

Government's response

The Government has responded as follows:

The Wildlife and Countryside Act 1981 (Variation of Schedules 5 and 8) (England and Wales) Order 2011

Technical Response

This composite Order amends Schedules 5 and 8 of the Wildlife and Countryside Act 1981. The Order adds four new animals to Schedule 5 and removes two existing entries from protection. The Order also extends the protection to two animals and decreases the level of protection afforded to two animals. The Order also adds two new plant entries to Schedule 8 and removes 4 existing plant entries. Schedule 5 lists animals protected under section 9 of the Wildlife and Countryside Act and Schedule 8 lists plants protected under section 13 of the Wildlife and Countryside Act.

Merits Response

The composite Order was made following representations by the GB conservation bodies through the Joint Nature Conservation Committee. This Order applies to England and Wales and accordingly, it is not considered reasonably practicable for this Instrument to be made bilingually."

Annex 7

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA37

Constitutional and Legislative Affairs Committee Report

Title: The Single Use Carrier Bags Charge (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Single Use Carrier Bags Charge (Wales) Regulations 2010. They are made under the Climate Change Act 2008 and come into force on 1 October 2011.

The 2010 Regulations require sellers to charge a minimum price for single use carrier bags. They impose record keeping and reporting requirements on sellers, appoint local authorities to administer the charging scheme and confer civil sanctioning powers on local authorities to enforce the Regulations.

The principal amendments made to the 2010 Regulations by these Regulations are summarised in the Explanatory Note that introduces the Regulations.

Technical Scrutiny

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

Merits Scrutiny

Background

The 2010 Regulations were considered by the third Assembly's Constitutional Affairs Committee on 17 November 2010. The Committee agreed to report on the Merits of the Regulations and a copy of that report is attached as an Annex. The Report, which was not unduly critical of the regulations, drew attention to the following points among others:

- that the regulations were the first time in the UK that powers under the Climate Change Act 2008 were being used to require charges for carrier bags and the first time Civil Sanction Powers were being granted to local authorities in Wales;

- that the powers under which the regulations were being made were granted directly to Welsh Ministers and had not previously been scrutinised in the Assembly; and
- that there were a range of detailed concerns about how the regulations would work in practice and how they would impact on, in particular, small retailers.

Procedure

The original Regulations were made under the affirmative procedure and were debated and approved in Plenary on 29 November. This was because the enabling legislation requires the affirmative procedure to be used where the powers:

- are being used for the first time;
- impose new civil sanctions;
- increase or change the basis for determining monetary penalties; or
- amend primary legislation.

None of these factors apply to these amending regulations, which are, therefore, being made under the negative resolution procedure.

Specific Issues

Impact on Small and Medium-sized Enterprises (SMEs)

These regulations address one of the points reported by the Constitutional Affairs Committee in 2010. SMEs were concerned about the impact of the requirement to maintain records and provide them on request to any member of the public. The amending regulations now remove the reporting requirements for businesses with less than 10 full-time equivalent staff.

Costs

The regulations also appear to address another issue reported by the Constitutional Affairs Committee; whether costs incurred in the lead up to the regulations coming into force can be deducted from the income received from charging. The amending regulations now clarify that 'set up' costs count as 'reasonable costs' for the first reporting year and can be deducted.

Timing

These regulations come into effect in 12 days' time on 1 October 2011, which is the date on which charging for carrier bags also comes into effect. However, we understand that the Welsh Government has kept those with an interest in the amending regulations informed of

the possibility of these changes, which should therefore be expected by them.

In the light of the foregoing, the Committee agreed that the amendment regulations raise issues of public policy likely to be of interest to the Assembly. The Committee agreed to draw the draft Order and Regulations to the attention of the Assembly through a report under Standing Order 21.3(ii).

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

19 September 2011