



Constitutional and Legislative Affairs Committee

Report: CLA(4)-01-12 : 16 January 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

CLA64 - The Civil Enforcement of Parking Contraventions (County Borough of Merthyr Tydfil) Designation Order 2011

Procedure: Negative.

Date made: 29 November 2011

Date laid: 01 December 2011

Coming into force date: 11 January 2012

CLA65 - The Flood Risk (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 30 November 2011

Date laid: 1 December 2011

Coming into force date: 22 December 2011

CLA67 - The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 4 December 2011

Date laid: 6 December 2011

Coming into force date: 31 December 2011

CLA69 - The General Teaching Council for Wales (Disciplinary Functions) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 2 December 2011

Date laid: 6 December 2011

Coming into force date: 31 December 2011

CLA70 - The School Teacher Appraisal (Wales) Regulations 2011

Procedure: Negative.

Date made: 6 December 2011

Date laid: 8 December 2011

Coming into force date: 1 January 2012

CLA71 - The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2011

Procedure: Negative

Date made: 7 December 2011

Date laid: 8 December 2011

Coming into force date: 1 January 2012

CLA75 - The Landfill Allowances Scheme (Wales) (Amendment) (No. 2) Regulations 2011

Procedure: Negative

Date made: 19 December 2011

Date laid: 20 December 2011

Coming into force date: 16 January 2012

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA66 - The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 4 December 2011

Date laid: 6 December 2011

Coming into force date: 27 December 2011

CLA68 - The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 2 December 2011

Date laid: 6 December 2011

Coming into force date: 31 December 2011

CLA72 - The Non-Commercial Movement of Pet Animals Order 2011

Procedure: Negative

Date made: 6 December 2011

Date laid before Parliament: 9 December 2011

Date laid before the National Assembly for Wales: 9 December 2011

Coming into force date: 1 January 2012

CLA73 - The Environmental Permitting (England and Wales) (Amendment) (No. 2) Regulations 2011

Procedure: Negative
Date made: 6 December 2011
Date laid before Parliament: 9 December 2011
Date laid before the National Assembly for Wales: 9 December 2011
Coming into force date: 1 January 2012

CLA74 - The Eels (England and Wales) (Amendment) Regulations 2011

Procedure: Negative
Date made: 12 December 2011
Date laid before Parliament: 13 December 2011
Date laid before the National Assembly for Wales: 13 December 2011
Coming into force date: 3 January 2012

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 - 5.

Other Business

Local Government By-Laws Bill

The Committee considered the legal briefing on The Local Government Byelaws (Wales) Bill and decided to scrutinise the Bill further. The Members noted that to fit in with the Communities, Equality and Local Government Committee's deadline, the Committee would need to report on the Bill by mid-March at the latest. Consequently, the Members agreed to invite the Minister for Local Government and Communities, Carl Sargeant to give evidence on Monday 23 January 2012.

Committee Correspondence

CLA49 - The Audit and Assessment Reports (Wales) (Amendment) Order 2011

The Committee noted the Minister's response to the Chair's letter dated 17 November 2011 on the merits of The Audit and Assessment Reports (Wales) (Amendment) Order 2011.

Amendments to the Localism Bill

The Committee noted the First Minister's response to the Chair's letter to the Minister for Local Government and Communities on the amendments to the Localism Bill, dated 14 November 2011.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

16 January 2012

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA66

Constitutional and Legislative Affairs Committee Report

Title: The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2011

Procedure: Negative

These Regulations amend the National Health Service (Charges to Overseas Visitors) Regulations 1989 by updating, by the addition of Jersey, the list of countries or territories with which the UK Government has entered into a reciprocal health care arrangement. The Regulations also introduce exemptions from charges for NHS treatment (for the period 9 July 2012 to 12 September 2012) for members of the Olympic and Paralympic Games Families taking part in the 2012 Olympic and Paralympic Games.

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(ii) (matters giving rise to issues of public policy likely to be of interest to the Assembly) the Assembly is invited to pay special attention to the following instrument.

Members may wish to note that in December 2009 the then Minister for Health and Social Services notified the Committee of the cessation in March 2009 by the Department of Health of the bilateral agreement which had been in place between the UK and the Channel Islands. The cessation of the agreement was given effect to by The National Health Service (Charges to Overseas Visitors) (Amendment) (No.2) (Wales) Regulations 2009 - SLC353 refers.

It is not clear from the Explanatory Memorandum why a bilateral agreement is to be reinstated with Jersey, nor does the Explanatory Memorandum indicate why a similar arrangement is not being reinstated with the other Channel Islands. Nor is it clear whether Wales is alone in reinstating the agreement with Jersey. An

explanation as to why the Welsh government is now reinstating the bilateral agreement with Jersey would be welcome.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

16 January 2012

The Government has responded as follows:

**The National Health Service (Charges to Overseas Visitors)
(Amendment) (Wales) Regulations 2011**

In response to your Committee's report CLA66, I set out below further information on the points raised.

The UK government agreed a reciprocal healthcare agreement with the State of Jersey effective from April 2011. The earlier 'agreement' was rescinded in 2009. Under the previous agreement the UK was charged for the costs of treatment for UK visitors to Jersey and the UK charged Jersey for the cost of treatment for visitors to the UK from Jersey. The Department of Health (DH) estimated that there was a net loss to the UK Administrations of several million pounds under the terms of this agreement. Jersey did not co-operate with the required exchange of data regarding patient numbers and treatment costs and the decision was made to cancel the agreement.

DH negotiated a new agreement with Jersey under which no money would be exchanged. This brings Jersey into line with other countries and territories with which the UK has reciprocal Healthcare Agreements. The devolved administrations were consulted prior to the new agreement being entered into and all supported the new agreement. The new reciprocal agreement has also been implemented by Northern Ireland and Scotland.

It is probable that there will be a net financial gain for Wales under the new agreement as historically the number of visitors from Jersey requiring immediate and necessary treatment in Wales is small. Figures are not available from Jersey as to how many visitors from Wales required immediate and necessary treatment when visiting Jersey.

The reciprocal agreement between the UK and Guernsey was terminated in 2009. The situation with Guernsey is more complicated as healthcare covered by reciprocal agreements, that is immediately necessary treatment including A & E, is not free for local residents. If Guernsey was to enter into a reciprocal healthcare agreement with the UK which is similar to the one that the UK has entered into with Jersey, Guernsey would have a difficult situation where UK visitors would

receive free healthcare whereas Guernsey residents would be charged. At present Guernsey is not willing to enter into a reciprocal healthcare agreement with the UK which includes the provision that no money is exchanged between administrations.

Even though not one of the Channel Islands, the Committee may be interested to know the position regarding the Isle of Man. The original agreement between the UK and the Isle of Man was due to end in March 2010 but was extended until September 2010. A new agreement was implemented on 1st October 2010 so there has always been a reciprocal healthcare agreement in place with the Isle of Man.

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA68

Constitutional and Legislative Affairs Committee Report

Title: The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (S.I. 2008/3100) by adding five new fuels to, and amending the specification of one other fuel, in the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993.

Technical Scrutiny

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

(1) The newly substituted paragraph 36 at sub-paragraph (c) of the English version does not refer to the “cushion shaped briquettes” being unmarked whereas the Welsh text does refer to the “cushion shaped briquettes” being unmarked. It is unclear which the correct version is.

[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 its statutory requirement].

(2) Regulation 3 (Saving) of the English text refers to paragraph 36 of the Schedule of the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (“2008 Regulations”), whereas although the Welsh version refers to paragraph 36, it does not refer to the Schedule of the 2008 Regulations, and so it is unclear as to where paragraph 36 originates 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

There are no points identified for reporting under Standing Order 21.3 in respect of this instrument.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

16 January 2012

The Government has responded as follows:

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Response to the issues that have been raised by the Legal Advisers to the Constitutional and Legislative Affairs Committee

Point 1

There is, as the draft report says, a difference between the Welsh and English texts of the newly substituted paragraph 36 at sub-paragraph (c). This is contained in regulation 2(dd) of the Welsh text and the corresponding regulation 2(f) of the English text.

The Welsh text incorrectly states that the briquettes are unmarked but then goes on to correctly describe the marking on the briquette. The Welsh text is, therefore, ambiguous but does contain words indicating that marking is present. The English text is correct and unambiguous, and correctly reflects the purpose and intended effect as set out in the Explanatory Memorandum. Given the description of the marking in the Welsh text, taken in combination with the English text, there is no doubt as to which text is correct: the error is clearly with the Welsh text of the newly substituted paragraph 36(c). Therefore, it is appropriate, in order to remove the ambiguity, for the Welsh text to be corrected on publication by the deletion of the words “heb eu marcio”, and this will be done.

Point 2

There is, as the draft report says, a difference between regulation 3 of the Welsh and English texts. However, despite the inconsistency, the legal effect of the Welsh text is clear, and is the same as the English text. This is because there is no paragraph 36 in the main body of the Regulations being amended, only in the sole Schedule to those Regulations (to which the English text clearly refers). Accordingly, it is appropriate for the error to be corrected on publication and this will be done.

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA72

Constitutional and Legislative Affairs Committee Report

Title: The Non-Commercial Movement of Pet Animals Order 2011

Procedure: Negative

This Order makes provision for the administration and enforcement of a number of Commission Decisions in Great Britain, including those dealing with protection measures with regard to monkey pox virus, highly pathogenic avian influenza and movements of pet birds accompanying their owners into the Community, the protection against the risk of the introduction of rabies, Hendra disease, Nipah disease and for the administration and enforcement of Commission Delegated Regulation (EU) No 1152/2011 supplementing Regulation (EC) No. 998/2003 as regards preventive health measures for the control of tapeworm infection in dogs.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

The Non-Commercial Movement of Pet Animals Order 2011 has not been made bilingually.

[Standing Order 21.2 (ix)-that it is not made in both English and Welsh.

Merits Scrutiny

There are no points identified for reporting under Standing Order 21.3 in respect of this instrument.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

16 January 2012

The Government has responded as follows:

The Non-Commercial Movement of Pet Animals Order 2011

This composite Order applies to England and Wales and is subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.

Annex 4

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA73

Constitutional and Legislative Affairs Committee Report

Title: The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011

Procedure: Negative

These draft Regulations will apply to both England and Wales.

These Regulations amend the Environmental Permitting (England and Wales) Regulations 2010 so as to include transposition of Directive 2009/126/EC of the European Parliament and of the Council on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations.

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

No points are identified for reporting under Standing Order 21.3 in respect of this instrument at this stage.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

16 January 2012

The government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) (No.2) Regulations 2011

These composite Regulations amend some of the provisions in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 to transpose the Directive on Stage II petrol vapour recovery during refuelling of motor vehicles at service stations (Directive 2009/126/EC). The requirements of the Stage I petrol vapour Directive (Directive 1994/63/EC on the control of volatile organic compound (VOC) emissions resulting from the storage of petrol and its distribution from terminals to service stations) are already contained in the Environmental Permitting (England and Wales) Regulations 2010.

The Environmental Permitting regime streamlines the procedural parts of a raft of highly technical and complex legislation. It has enabled the simplification of the operation of the permitting system that industry and regulators work with without in any way compromising environmental or human health standards. This has brought much needed simplification to the complexity that industry and regulators in England and Wales previously faced .

Securing these changes via composite instruments made with the Secretary of State is consistent with the aim of simplification referred to above. The composite instrument also minimises the inconvenience and potential confusion for those affected by the Regulations, especially as the Environment Agency (a regulator) is a cross border body. **These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.**

Annex 5

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA74

Constitutional and Legislative Affairs Committee Report

Title: The Eels (England and Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend regulations 6 and 7 of the Eels (England and Wales) Regulations 2009 ('the principal Regulations'), which implement Council Regulation (EC) No 1100/2007 establishing measures for the recovery of the stock of European eel.

The amendments correct defects in the principal Regulations identified by the Joint Committee on Statutory Instruments in its scrutiny of those Regulations. At that time, statutory instruments subject to a procedure at Westminster were not scrutinised by the corresponding National Assembly committee.

Technical Scrutiny

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

(3) These Regulations are made in English only, being combined regulations for England and Wales that are subject to a negative procedure at Westminster.

[Standing Order 21.2(ix) – that the regulations are not made in both English and Welsh]

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

16 January 2012