

Constitutional and Legislative Affairs Committee

Report: CLA(4)-11-12 : 21 May 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 or 21.3

Negative Resolution Instruments

CLA144 - The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

Procedure: Negative.

Date made: 5 May 2012.

Date laid: 9 May 2012.

Coming in to force date: 1 June 2012

Affirmative Resolution Instruments

CLA142 - The Mental Health (Secondary Mental Health Services) (Wales) Order 2012

Procedure: Affirmative.

Date made: 2012

Date laid: Not stated

Coming into force date: 6 June 2012

CLA143 - The Mink Keeping (Prohibition) (Wales) Order 2012

Procedure: Affirmative.

Date made: 8 May 2012.

Date laid: 8 May 2012.

Coming into force date: 1 June 2012

Other Business

Committee Correspondence

CLA124 - The Controlled Waste (England and Wales) Regulations 2012

The Members noted the response of the Minister for Environment and Sustainable Development to the Chair's letter dated 26 April 2012 regarding the merits points of the CLA124 - The Controlled Waste (England and Wales) Regulations 2012.

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

The Committee took oral evidence from Emyr Lewis of Morgan Cole Solicitors and Senior Fellow in Welsh Law at the Wales Governance Centre and Professor Dan Wincott, Blackwell Professor of Law and Society at Cardiff Law School and Co-Chair of the Wales Governance Centre, Cardiff University. Professor Dan Wincott agreed to provide the Committee with the information on the percentage of the students in Cardiff University studying the Welsh legal dimension at undergraduate and graduate levels.

Resolution to Meet in Private

In accordance with Standing Orders 17.42(vi) and (ix) 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 the Welsh Government's Response to the Committee's Inquiry into Powers granted to Welsh Ministers in UK Laws.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA142

Constitutional and Legislative Affairs Committee Report

Title: The Mental Health (Secondary Mental Health Services) (Wales) Order 2012

Procedure: Affirmative

This Order provides that, for the purposes of Parts 2 and 3 of the Mental Health (Wales) Measure 2010, local primary mental health support services made available in a particular local authority areas are not to be regarded as secondary mental health services in that local authority area.

The order further provides that services in England, Scotland or Northern Ireland which are the equivalent of secondary mental health services provided in Wales are to be regarded as secondary mental health services for certain purposes in Part 3 of the Measure.

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) the committee is invited to consider whether the Assembly should pay special attention to this instrument as it gives rise to issues of public policy likely to be of interest to the Assembly.

- Part 2 of the Measure contains requirements in respect of care co-ordination and care and treatment planning. Part 3 of the Measure enables eligible adults who have been discharged from secondary mental health services to refer themselves back to secondary services directly if they believe their mental health is deteriorating.
- Article 3 of the Order has the effect of excluding any service or treatment identified and made available as part of a local primary mental health service in a local authority area under Part 1 of the Measure from the requirements of Parts 2 and 3 of the Measure.

- Consequently service providers (LHBs and local authorities) will not be required to appoint care co-ordinators or provide care and treatment plans for individuals accessing services or treatment which are regarded as local primary mental health support services within a local authority area. A further consequence is that a person who has been discharged from services delivered as part of local primary health support service will not be entitled to seek reassessment.
- The Order extends the entitlement of those eligible to receive an assessment under Part 3 of the Measure to persons who have received secondary mental health services (equivalent to those provided in Wales) in England, Scotland or Northern Ireland.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA143

Constitutional and Legislative Affairs Committee Report

Title: The Mink Keeping (Prohibition) (Wales) Order 2012

This Order, in exercise of the power granted by section 10 of the Destructive Imported Animals Act 1932, prohibits the keeping of mink in Wales.

Procedure: Affirmative

Technical Scrutiny

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

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument at this stage:-

- the previous Order, prohibiting the keeping of Minks, lapsed in 2004 due to an administrative oversight. The prohibition that this Order seeks to introduce has not, therefore, been in force for around 8 years;
- the Welsh Government has not received any applications to keep mink in the last five years and they do not anticipate the introduction of this Order affecting any groups in Wales;
- there has been no consultation on this proposal and purportedly no public interest in the issue in the last five years;
- the main justification for introducing this Order is because not doing so could undermine efforts to eradicate mink from localised areas or the benefits that competition from otters is having on mink numbers and distribution.

The Committee noted that:

- no evidence has been provided to support the reason for introducing the Order. Furthermore, such evidence as there is (of the practical effect of there being no prohibition for the last

8 years) suggests that the need for the Order is now questionable;

- the Order is being introduced simply to regularise an administrative oversight that appears to have had no practical effect for at least 5 years (possibly 8).

The Committee agreed to the report to the Assembly under Standing Order 21.3:

- that the matter gives rise to a matter of public policy likely to be of interest to the Assembly; and
- that the proposed Order may now be inappropriate in view of changed circumstances since the lapsed 2004 Order was made.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-11-12)

CLA144

Constitutional and Legislative Affairs Committee Report

Title: The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

These Regulations revoke and replace certain provisions in the Nitrate Pollution Prevention (Wales) Regulations 2008 (“the principal Regulations”), which relate to the designation of nitrate vulnerable zones. The principal Regulations implement, in Wales, Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources. The provision made by these Regulations relates to the review by the Welsh Ministers of the designation of nitrate vulnerable zones in 2009 by the principal Regulations. Provision is made by these Regulations for the Environment Agency to make recommendations to the Welsh Ministers to publish and notify their decisions following those recommendations, and for appeals to be made to the Welsh Ministers and determined by a person appointed by them.

Procedure: Negative

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument at this stage:-

These Regulations (at regulation 9(4)) illustrate a significant change in the drafting style of Statutory Instruments made by Welsh Ministers. When the National Assembly was established in 1999, sub-paragraphs were initially lettered (a), (b), (c), (d), (e), etc. in both language texts of Statutory Instruments. By 2000, they were lettered (a), (b), (c), (ch), (d), etc. in the Welsh text as it was considered that using the Welsh alphabet more faithfully reflected the equal status of the two languages. That practice has continued until now. It means, for example, that sub-paragraph (ch) in Welsh corresponds to sub-

paragraph (d) in the English text, whilst paragraph (d) in the Welsh text corresponds to (e) in English.

When the Assembly acquired the competence to make primary legislation by way of measures under the Government of Wales Act 2006, it was decided to revert to the initial practice of using the English alphabet for the lettering of sub-paragraphs in both language texts. The principal explanation was that as Members would routinely be proposing and debating amendments to draft Measures, it would be less confusing to refer to paragraphs (the third level of sub-division in primary legislation) labelled in the same way in both language texts.

That approach has been continued in relation to Bills introduced during the current Assembly.

The Welsh Government has now decided to extend that approach to statutory instruments, even though they are not capable of being amended in the same way as Bills. Although this ensures a consistent approach in all legislation currently before the Assembly, it is inconsistent with the practice in relation to statutory instruments for the last twelve years or so.

This matter is drawn to the attention of the Assembly under Standing Order 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

Chair, Constitutional and Legislative Affairs Committee

21 May 2012

The Government has responded as follows:

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

As reported by the Constitutional and Legislative Affairs Committee, the Welsh Government confirms that the lettering of sub-paragraphs in the Welsh text of statutory instruments will in future use the English alphabet. The reason for using the English alphabet in the Welsh text of bilingual legislation is that we think it removes the potential for confusion to arise in legal proceedings and Assembly debate, particularly where both texts are being referred by means of simultaneous translation. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use.

As recognised in the Committee's report, the change ensures a consistent approach to the lettering of paragraphs and sub-paragraphs

in all bilingual legislation before the Assembly, since the practice in respect of draft Measures and now carried on in respect of Bills, was determined by the Presiding Officer under the Third Assembly. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use, albeit a relatively minor one.