Constitutional and Legislative Affairs Committee


The Committee reports to the Assembly as follows:

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

**Negative Resolution Instruments**

**CLA217 - The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order**
Negative Procedure.
Date made: 19 February 2013.
Date laid: 21 February 2013.
Coming into force date: 16 March 2013

**CLA218 - The Coleg Cambria Further Education Corporation (Government) Regulations 2013**
Negative Procedure.
Date made: 20 February 2013.
Date laid: 22 February 2013.
Coming into force date: 26 March 2013

**CLA219 - The Coleg Cambria (Incorporation) Order 2013**
Negative Procedure.
Date made: 20 February 2013.
Date laid: 22 February 2013.
Coming into force date: 26 March 2013

**CLA220 - The Rehabilitation Courses (Relevant Drink Offences) (Wales) Regulations 2013**
Negative Procedure.
Date made: 19 February 2013.
Date laid: 22 February.
Coming into force date: 15 March 2013
CLA221 – The Bovine Semen (Wales) (Amendment) Regulations 2013
Negative Procedure.
Date made: 21 February 2013.
Date laid: 25 February 2013.
Coming into force date: 18 March 2013

CLA223 - The Marine Licensing (Delegation of Functions) (Wales) Order 2013
Negative Procedure.
Date made: 26 February 2013.
Date laid: 26 February 2013.
Coming into force date: 1 April 2013

The committee noted the instruments and was content.

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

*Affirmative Resolution Instruments*

CLA222 - The Natural Resources Body for Wales (Functions) Order 2013
Affirmative Procedure.
Date made not stated.
Date laid not stated.
Coming into force date 1 April 2013

The report in relation to the Order is attached at Annex 1.

The committee was content with the Order.

The Government’s response is attached at Annex 2.

3. **Evidence in relation to the Inquiry on Law Making and the Church in Wales**

The Committee took evidence from Professor Norman Doe and Professor Thomas Glyn Watkin.
The Committee resolved to exclude the public from the remainder of the meeting in accordance with Standing Order 17.42(iv), to consider its draft reports on the Local Government (Democracy) (Wales) Bill and the Human Transplantation (Wales) Bill.

The transcript of the committee’s meeting will be available on its website at:

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

12 March 2013
CLA222 - The Natural Resources Body for Wales (Functions) Order 2013

The Natural Resources Body for Wales (Establishment) Order 2012 established a new statutory body, the Natural Resources Body for Wales and provided for its purpose, membership, procedure, financial governance and initial functions. This Order makes further provision about the Body, including provision about the modification and transfer of environmental functions to the Body.

This Order was initially laid in draft on 15 November 2012. Having taken account of issues raised by Assembly Committees and others, the Minister for Environment and Sustainable Development revised the draft. Annex 2 of the Explanatory Memorandum sets out the changes that have been made in detail.

Procedure: Affirmative

Technical Scrutiny

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

21.2 (i) – that there appears to be doubt as to whether it is intra vires

The consent of the Secretary of State and Minister which is required under Section 17 of the Public Bodies Act 2011 has not yet been obtained.

Section 17 provides that:-

(1) The Secretary of State's consent is required for an order under section 13 or 14 which transfers a function to, or confers a function on—

(a) the Environment Agency,
(b) the Forestry Commissioners, or

(c) any other cross-border operator.

(2) The Secretary of State's consent is required for an order under section 13 or 14 made by virtue of section 15 which in any other way modifies the non-devolved functions of a person referred to in subsection (1).

(3) A Minister's consent is required for an order under section 13 or 14 which transfers a function to, or modifies the functions of, the Minister.

The explanatory memorandum states that:

“The making of the Order is conditional upon the consent of the Secretary of State being obtained in advance under Section 17 of the Public Bodies Act 2011. Consent has been provided subject to agreement being reached between officials on the outstanding details and technicalities relating to the Natural Resources Body for Wales Transfer Scheme, Shared Service Agreements and Delegated Functions, and the Government of Wales Act Order. Discussions on all these are progressing well and we expect discussions to be finalised before the Order is voted upon”

21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements

Schedule 3

Forestry Commission Byelaws 1982

Paragraph 17 (2)

The definition of “the Commissioners” needs to be omitted from the amendment as it does not make sense.
Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999

Paragraph 104 (2) – “the Commissioners” appears in the opening words to Regulation 16 rather than paragraph a.

Hazardous Waste (England and Wales) Regulations 2005

Paragraph 205 (4) (b)– “)” needs to be added after Northern Ireland. Without this, it could be confusing as all the added words remain within the brackets.

Plant Health Forestry Order 2005

Paragraph 208 (9) – the reference should refer to “European Union” rather than “European Community”.

Schedule 5

Countryside Access (Draft Maps) (Wales) Regulations 2001

Paragraph 3

There is no definition of “the Council” in regulations 3-7.

It would be reasonable for the reporting points highlighted above to be corrected on publication, as they make no material change to the draft Order.

Merits Scrutiny

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

No Regulatory Impact Assessment (RIA) accompanies the draft Order. Paragraph 6 of the Explanatory Memorandum provides the reasons for this.
Legal Advisers
Constitutional and Legislative Affairs Committee
March 2013
Annex 2

John Griffiths AC / AM
Gweinidog yr Amgylchedd a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development

Eich cyf/Your ref
Ein cyf/Our ref: SF/JG/1046/13

David Melding AM
Chair
Constitutional and Legislative
Affairs Committee
National Assembly for Wales
Cardiff Bay
CARDIFF
CF99 1NA

March 2013

Dear David,

The Natural Resources Body for Wales (Functions) Order 2013

I have noted the content of your Committee’s latest report on the above item of draft legislation and would wish to make the following observations which I hope you and your committee members will find of assistance.

Comments made under Standing Order 21.2(i)

The report notes that there appears to be doubt as to whether the making of the Order would be intra vires, pointing to the need to obtain relevant Secretary of State and Ministerial consent under Section 17 of the Public Bodies Act 2011 before the Order can be made.

Reference to this was made in the Explanatory Memorandum which was laid alongside the draft Order, explaining that consent has been provided subject to agreement being reached between officials on the outstanding details and technicalities relating to the Natural Resources Body for Wales Transfer Scheme, Shared Service Agreements and Delegated Functions, and the Government of Wales Act Order.

We are very close to concluding those discussions and I will have formal confirmation of the consent before I make the Order.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CPS9 No

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Wedi’i argraffu ar lapur wedi’i algychu (100%)
Comments made under Standing Order 21.2(vi)

The report identifies a small number of defects in the drafting of amendments contained in the Order. The Government agrees that it would be right to amend the Order to address these points, and also agrees with the Committee that this would not involve any material change to the Order’s provisions. We will therefore incorporate the corrections into the final version when the Order is made, assuming the draft Order is approved by the National Assembly on 19 March, in accordance with section 19 of the Public Bodies Act 2011. These changes have also been agreed with the UK Government.

The relevant amendments where we agree are as follows.

**Schedule 4**

**Forestry Commission Byelaws 1982**

*Paragraph 17 (2)*

The definition of “the Commissioners” will be excluded from the amendment.

**Environmental Impact Assessment (Forestry) (England and Wales) Regulations 1999**

*Paragraph 104 (2)* – “the Commissioners” will be correctly identified as being in the opening words of regulation 16 rather than in paragraph (a).

**Hazardous Waste (England and Wales) Regulations 2005**

*Paragraph 205 (4) (b)–(i)* will be added after “Northern Ireland” to avoid any confusion.

**Plant Health Forestry Order 2005**

*Paragraph 208 (9)* – the reference to “European Community” will be corrected so that it refers to the “European Union”.

**Schedule 5**

**Countryside Access (Draft Maps) (Wales) Regulations 2001**

*Paragraph 3*

The reference to the definition of “the Council” will be removed from the amendment to regulations 3-7.

I hope you find this information helpful

\[Signature\]

John Griffiths AC / AM

Gweinidog yr Amlwydded a Datblygu Cynaliadwy
Minister for Environment and Sustainable Development