

## **Subordinate Legislation Committee**

### **Report (SLC(3) 04-08)**

**Meeting Date:** 19 February 2008  
**Meeting Time:** 8.15am  
**Meeting Venue:** Committee Room 2, Senedd

#### **Remit:**

The remit of the Committee is:-

1. Subject to Standing Order 15.7, the Committee must consider all statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly and report on whether the Assembly should pay special attention to the instrument or draft on any of the following grounds:

- (i) that there appears to be doubt as to whether it is intra vires;
- (ii) that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) that the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) that it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly; or
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

2. Subject to Standing Order 15.7, the Committee may consider and report on whether the Assembly should pay special attention to any statutory instrument

or draft statutory instrument required by any enactment to be laid before the Assembly on any of the following grounds:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (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;
- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;
- (iv) that it inappropriately implements European Union legislation; or
- (v) that it imperfectly achieves its policy objectives.

3. The Committee must make any report under Standing Order 15.2 or 15.3 in respect of any statutory instrument or draft statutory instrument no later than 20 days after the instrument or draft has been laid.

4. In calculating for the purposes of Standing Order 15.4 any period of days, no account is to be taken of any time during which the Assembly is dissolved or is in recess for more than 4 days.

5. Subject to 15.7, the Committee may also consider and report on:

- (i) any other subordinate legislation laid before the Assembly;
- (ii) the appropriateness of provisions in proposed Assembly Measures and in Bills for Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers, the First Minister or the Counsel General;
- (iii) consequences for legislation subject to the consideration of the Assembly of draft orders under Part 1 of the Legislative and Regulatory Reform Act 2006;
- (iv) the exercise of commencement powers by the Welsh Ministers; or
- (v) any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers.

6. The Committee may not consider:

- (i) any draft legislative competence order; or

(ii) any statutory instrument or draft statutory instrument that is required to be laid before Parliament.

**Membership:**

The current membership of the Committee is:

Dr Dai Lloyd AM (Chair)  
Eleanor Burnham AM  
Andrew RT Davies AM  
Alun Davies AM  
Irene James AM

**Legal Advisers:**

Gwyn Griffiths  
Joanest Jackson

**Clerking Team:**

**Clerk to the Committee:**

Anna Daniel

**Deputy Clerk to the Committee:**

Olga Lewis

**Administrative Support Officers:**

Hasera Khan  
Runa Haque

**Contacts:**

To attend an Assembly committee meeting it is necessary to book a seat in advance; either by telephoning:

**Assembly Booking Line; telephone 029 2089 8477**

Or by e-mailing [assembly.bookings@wales.gsi.gov.uk](mailto:assembly.bookings@wales.gsi.gov.uk)

You can contact the Committee by sending an e-mail to:

[Legislation.comm@wales.gsi.gov.uk](mailto:Legislation.comm@wales.gsi.gov.uk)

**Or you can speak to the Clerk, Anna Daniel; telephone 029 20898144**

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The Committee met on 19 February 2008. At the meeting the following Committee Members were present: Dr Dai Lloyd AM, Andrew RT Davies AM, Alun Davies AM. There were no apologies. Mike German AM substituted for Eleanor Burnham AM.

The Chair stated that the Assembly had determined to reduce the Committee membership to five Members and thanked the Assembly Members who were no longer members of the Committee - Paul Davies AM, Sandy Mewies AM, Janet Ryder AM, Karen Sinclair AM - for their contribution to the Committee's work, specifically mentioning their work during the scrutiny of the Proposed NHS Redress (Wales) Measure 2007.

The Committee reports to the Assembly as follows:

### **Instruments and draft instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2**

#### **Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)**

SLC106 - The Collaboration Between Maintained Schools (Wales) Regulations 2008  
Negative Procedure. Date made 28 January 2008. Date laid 30 January 2008. Coming into force date 16 March 2008.

SLC107 – The Childcare Act 2006 (Local Authority Assessment) (Wales) Regulations 2008  
Negative Procedure. Date made 28 January 2008. Date laid 30 January 2008. Coming into force date 1 April 2008.

SLC109 - The Fire and Rescue Authorities (Improvement Plans) (Wales) Order 2008  
Negative Procedure. Date made 30 January 2008. Date laid 1 February 2008. Coming into force date 29 February 2008.

SLC110 - The Education (School Teachers' Qualifications) (Amendment) (Wales) Regulations 2008  
Negative Procedure. Date made 2 February 2008. Date laid 5 February 2008. Coming into force date 1 September 2008.

SLC111 - The Local Government (Politically Restricted Posts) (Wales) Regulations 2008  
Negative Procedure. Date made 3 February 2008. Date laid 5 February 2008. Coming into force date 29 February 2008.

SLC112 - The Road Traffic (Permitted Parking Area and Special Parking Area) (County Borough of Wrexham) Order 2008

Negative Procedure. Date made 5 February 2008. Date laid 6 February 2008.  
Coming into force date 1 March 2008.

**Instruments in respect of which the Assembly is invited to pay special attention under Standing Order 15.2**

**Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)**

SLC105 - The Control of School Premises (Wales) Regulations 2008  
Negative Procedure. Date made 23 January 2008. Date laid 24 January 2008.

Coming into force date 31 March 2008.

SLC108 - The Childcare Act 2006 (Provision of Information) (Wales) Regulations 2008

Negative Procedure. Date made 28 January 2008. Date laid 30 January 2008. Coming into force date 1 April 2008.

The Committee's Reports under S.O.15.2 on Statutory Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure) are attached as Annexes 1 - 2 to this Report.

The Chair suggested that the Committee should scrutinise under SO 15.6 (ii) Proposal for a Learning and Skills (Wales) Measure 2008. The Chair suggested further that the scrutiny should take place in March 2008 as the Welsh Assembly Government's deadline for responses to its public consultation is 29 April 2008.

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

**19 February 2008**

## **Annex 1**

### **Subordinate Legislation Committee**

**(SLC(3)-04-08)**

**SLC105**

#### **Subordinate Legislation Committee Report**

**Under Standing Order 15.2 the Assembly is invited to pay special attention to the following instrument.**

**Title: The Control of School Premises (Wales) Regulations 2008**

These Regulations make provision as to the control by governing bodies of the occupation and use of school premises.

#### **Procedure: Negative**

The following points have been identified for reporting under Standing Order 15.2.

1. The Welsh text of regulation 10(a) contains the following expression “neu benderfyniad a wneir yn unol â pharagraff 62 neu 63 o Atodlen 8 i Ddeddf Addysg Bellach ac Uwch 1992” [*or a decision made in accordance with paragraph 62 or 63 of Schedule 8 to the Further and Higher Education Act 1992*]. There is no corresponding expression in the English text. The regulation is therefore inconsistent as to whether arrangements made in accordance with those paragraphs continue to be relevant, and it should be corrected as soon as possible. [Standing Order 15.2(vii)]
2. In a number of places in the Regulations, the English text contains the expression “must have regard to the desirability of the premises being made available for community use”. The expression used in Welsh text is “roi sylw i ba mor ddymunol fyddai trefnu bod y fangre ar gael at ddefnydd cymunedol”. The emphasis is different, in that the English text requires regard to be had to the principle that it is desirable, whilst the Welsh requires regard to be had to be had to how desirable it would be, i.e. the degree of desirability. As it is necessary to have regard to this factor, it is important that it is clear and consistent in both languages. [Standing Order 15.2(vi and vii)]

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

**19 February 2008**

## **Government Response:**

### **The Control of School Premises (Wales) Regulations 2008**

The Government has indicated that it accepts point 1 above, and correcting legislation has already been drafted. The second point is not accepted, and the following explanation has been provided -

“Conveying the English phrase “having regard to the desirability of” in Welsh is not easily conveyed word for word as the use of the Welsh nouns “dymunoldeb” or “dymunolrwydd” for the English ‘desirability’ would be possible but unidiomatic. We aim to produce a text which respects the idioms of both languages. The *New Shorter Oxford English Dictionary* defines ‘desirability’ as ‘the quality of being desirable’. As noted, the Welsh as it stands may be translated into English as ‘having regard to how desirable it would be’. This would include the question ‘does it have the quality of being desirable or not-desirable?’ as well as degrees of desirability between the two absolutes. We are satisfied therefore that this Welsh phrase is equivalent in meaning to the English phrase. We would also add that this phrase has been used previously in the subordinate legislation without comment. ”

## **Annex 2**

### **Subordinate Legislation Committee**

(SLC(3) 04-08)

**SLC108**

#### **Subordinate Legislation Committee Report**

**Under Standing Order 15.2 the Assembly is invited to pay special attention to the following instrument.**

**Title: The Childcare Act 2006 (Provision of Information)(Wales) Regulations 2008**

These regulations set out the types of information which are required to be provided to parents and prospective parents by local authorities under their duties in section 27 of the Childcare Act 2006.

#### **Procedure: Negative**

The following points have been identified for reporting under Standing Order 15.2.

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2(vi) (defective drafting), and Standing Order 15.2(vii) (inconsistencies between the meaning of Welsh and English texts):

- Regulation 4(1)(h) makes reference to whether the provision of childcare is registered by the 'National Assembly for Wales'. This reference does not take account of the position post the Government of Wales Act 2006. The correct reference should be to the Welsh Ministers carrying out this function [Standing Order 15.2(vi)]
- Regulation 6 makes reference to local authority in the singular in the English version, but in the Welsh version reference is made to the local authorities ie the plural is used [Standing Order 15.2(vii)]
- Regulation 7 in the Welsh and English versions appear to be inconsistent, and additional words appear in the English version which do not appear in the Welsh version. Words equivalent to '....on any other services or facilities or any publications....' do not appear in the Welsh version. [Standing Order 15.2(vii)]
- Regulation 9 makes reference in the Welsh to 'adnoddau' (resources) whilst the reference in the English is to 'sources' (ffynonellau). The



context would suggest that the English text is correct. [Standing Order 15.2(vii)]

The Government has indicated that the identified reporting points are accepted and that it intends to correct them when next the Regulations are amended.

**Dr Dai Lloyd AM**  
Chair, Subordinate Legislation Committee

**19 February 2008**