



Constitutional and Legislative Affairs Committee

Report: CLA(4)-06-11 : 3 October 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

CLA41 - The Education (Information About Individual Pupils) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 20 September 2011

Date laid: 22 September 2011

Coming into force date: 14 October 2011

Affirmative Resolution Instruments

CLA42 - The Protection from Tobacco (Sales from Vending Machines) (Wales) Regulations 2011

Procedure: Affirmative.

Date made: not stated.

Date laid: not stated.

Coming into force date: 1 February 2012

The Committee decided to write to the Minister for Education and Skills to clarify the reason for the different coming into force dates in England and Wales.

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA38 - The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011

Procedure: Negative.

Date made: 12 September 2011.

Date laid before Parliament: 16 September 2011.

Date laid before the National Assembly for Wales: 16 September 2011.

Coming into force date: 10 October 2011

The Committee agreed to write to the Deputy Minister for Agriculture, Food, Fisheries and European Programmes to thank him for his undertakings that in future:

- a Welsh language version of instruments made jointly with the UK Parliament would be provided; and
- Explanatory Memorandums for such instruments would be provided in a way that would include both a Welsh perspective and be addressed to the relevant Assembly Committee

The Committee also agreed to clarify with Deputy Minister whether:

- his undertakings applied to all the Welsh Ministers; and
- in the case of these regulations, an assessment had been made of the impact of the regulations on Wales alone.

Affirmative Resolution Instruments

CLA39 - The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

Procedure: Affirmative.

Date made: 2011.

Date laid: not stated.

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

CLA40 - The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

Procedure: Affirmative.

Date made: 2011.

Date laid: not stated.

Coming into force date: 6 June 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 - 3.

Other Business

Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

The Committee took oral evidence from David Lambert, Research Fellow; Marie Navarro, Research Associate and Manon George, Research Assistant, from the Wales Governance Centre.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) 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 Granting of Powers to Welsh Ministers in UK Laws.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

3 October 2011

Annex 1

Constitutional and Legislative Affairs Committee Report

CLA38

Title: The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011

Procedure: Negative

These Regulations provide for the implementation and enforcement of Council Regulation (EC) No 708/2007, concerning use of alien and locally absent species in aquaculture.

Technical Scrutiny

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

These Regulations have been produced in the English language only. Furthermore, no explanation has been provided as to why these Regulations have not been produced bilingually. This appears to be because “this explanatory memorandum has been prepared by the Department for Environment, Food and Rural Affairs and is laid before Parliament by Command of Her Majesty.” No attempt has therefore been made to have regard to Assembly procedures and practices in the Memorandum.

(Standing Order 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.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

3 October 2011

The Government has responded as follows:

The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011

The Alien and Locally Absent Species in Aquaculture (England and Wales) Regulations 2011 are composite Regulations which will apply to

England and Wales and are subject to negative resolution procedure in both the National Assembly for Wales and in Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be made or laid bilingually. It is my preference that, in future, a Welsh language translation of such composite instruments should be made available by the Welsh Government after the relevant instrument has been made, balanced against the most efficient use of resources to deliver Welsh Government policy objectives.

The Explanatory Memorandum which has been laid in connection with these Regulations is in the format adopted prior to the recent change in Standing Orders which enables the Constitutional and Legislative Affairs Committee to consider items also subject to a Parliamentary procedure. Under previous Standing Orders, the Welsh Ministers would lay such an Explanatory Memorandum on a voluntary basis to assist Members in considering the subordinate legislation concerned. I accept that this format is no longer appropriate and will ensure that staff are aware that a) either the involvement of the Welsh Government in the production of the Explanatory Memorandum should be made explicit or a separate Explanatory Memorandum relating to Wales should be prepared in relation to such composite instruments; and b) Explanatory Memorandums must be addressed to the relevant Assembly Committee in future.

Annex 2

Constitutional and Legislative Affairs Committee Report

CLA39

Title: The Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2011

Procedure: Affirmative

These Regulations make provision as to the arrangements for the appointment of Independent Mental Health Advocates (“IMHAs”) including provision as to who may be appointed as an IMHA and persons who may be visited and interviewed by an IMHA for the purposes of providing help to a Welsh qualifying compulsory patient or a Welsh qualifying informal patient.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3 (ii) (issues of public policy likely to be of interest of the Assembly) the Assembly is invited to pay special attention to the following instrument.

These Regulations are part of a suite of regulations made by the Welsh Ministers under powers conferred on them by provisions of the Mental Health (Wales) Measure 2010 (“the Measure”) or under provisions of the Mental Health Act 1983 (“the Act”) as amended by the Measure designed to develop and enhance mental health services in Wales.

These Regulations replace and revoke the Mental Health (Independent Mental Health Advocates) (Wales) Regulations 2008 and are made under the 1983 Act following amendment of that Act by the 2010 Measure.

The amendments to the Act provide for a Wales only extended statutory scheme of mental health advocacy both for patients subject to compulsion under the Act and for those in hospital or a registered establishment informally (i.e. not under compulsion).

These Regulations are made subject to the affirmative procedure and consequently will be debated by the Assembly in Plenary.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

3 October 2011

Annex 3

Constitutional and Legislative Affairs Committee Report

CLA40

Title: The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011

Procedure: Affirmative

These Regulations make provision about mental health assessments for former users of secondary mental health services.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3(ii) (gives 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.

These Regulations are part of a suite of regulations made by the Welsh Ministers under powers conferred on them by provisions of the Mental Health (Wales) Measure 2010 (“the Measure”) or under provisions of the Mental Health Act 1983 as amended by the Measure designed to develop and enhance mental health services in Wales.

Under Part 3 of the Measure patients who have been discharged from secondary mental health services but who subsequently believe their mental health to be deteriorating to such a point as to again require specialist intervention may self-refer themselves within a period of three years from discharge (“the discharge period”) back to secondary services.

Those eligible will be persons over the age of 18 years who have previously received secondary services. However, individuals who have received and have been discharged from secondary services whilst under the age of 18 years will also be eligible if they reach the age of 18 years during the discharge period.

The provisions contained in part 3 of the Measure introduce a regime unique to Wales.

As these Regulations are subject to the affirmative procedure they will be debated by the Assembly in Plenary.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

3 October 2011