

Subordinate Legislation Committee

Report (SLC(3) 20-09)

Date: 23 September 2009
Time: 9.30am
Venue: Committee Room 4, Tŷ Hywel

CONTENTS

The Committee met on 23 September 2009. At the meeting the following Committee Members were present: Janet Ryder AM, Alun Davies AM, Mike German AM. Apologies were received from Joyce Watson AM and David Melding AM. William Graham AM substituted for David Melding AM.

The Committee had been notified about the forthcoming change in Membership. The Chair thanked David Melding AM for his contribution to the Committee's work.

The Committee reports to the Assembly as follows:

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)

SLC314 - The Houses in Multiple Occupation (Management) (Wales) Regulations 2009

Negative Procedure. Date made 16 July 2009. Date laid 20 July 2009. Coming into force date 10 August 2009

SLC315 - The Products of Animal Origin (Disease Control) (Wales) (Amendment) (No 2) Regulations 2009

Negative Procedure. Date made 15 July 2009. Date laid 20 July 2009. Coming into force date 10 August 2009

SLC316 - The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc.) (Wales) (Amendment) (No.2) Regulations 2009

Negative Procedure. Date made 20 July 2009. Date laid 21 July 2009. Coming into force date 21 July 2009

SLC317 - The Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) (Amendment) Regulations 2009

Negative Procedure. Date made 1 August 2009. Date laid 4 August 2009. Coming into force date 31 August 2009

SLC318 - The Non-Domestic Rating (Deferred Payments) (Wales) Regulations 2009

Negative Procedure. Date made 31 July 2009. Date laid 4 August 2009.
Coming into force date 28 August 2009

SLC319 - The Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 1 August 2009. Date laid 4 August 2009.
Coming into force in accordance with regulation 1

SLC320 - The Assembly Learning Grant (Further Education) Regulations 2009

Negative Procedure. Date made 1 August 2009. Date laid 5 August 2009.
Coming into force date 1 September 2009

SLC322 - The General Teaching Council for Wales (Disciplinary Functions) (Amendment No 2) Regulations 2009

Negative Procedure. Date made 3 August 2009. Date laid 6 August 2009.
Coming into force date in accordance with regulation 1(2) and (3)

SLC323 - The Town and Country Planning (General Permitted Development) (Amendment) (Wales) Order 2009

Negative Procedure. Date made 9 August 2009. Date laid 11 August 2009.
Coming into force date 1 September 2009

SLC324 - The Purity Criteria for Colours, Sweeteners and Miscellaneous Food Additives (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 13 August 2009. Date laid 14 August 2009.
Coming into force date 7 September 2009

SLC325 - The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.3) Regulations 2009

Negative Procedure. Date made 2 September 2009. Date laid 3 September 2009.
Coming into force date 28 September 2009

SLC326 - The Zoonoses and Animal By-Products (Fees) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 6 September 2009. Date laid 7 September 2009.
Coming into force date 28 September 2009

SLC327 - The Equine Identification (Wales) Regulations 2009

Negative Procedure. Date made 7 September 2009. Date laid 9 September 2009.
Coming into force date 1 October 2009.

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

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

SLC309 - The Food Irradiation (Wales) Regulations 2009

Negative Procedure. Date made 6 July 2009. Date laid 7 July 2009. Coming into force date 31 July 2009.

The Members noted the Government's disagreement with the point highlighted in the Committee's report regarding the inconsistency of language, (the Government believed that the inconsistency of language did not result in an inconsistency of meaning, and therefore these Regulations did not require amendment). The Committee decided to write to the Minister for Health and Social Services Edwina Hart AM about the issue. The Committee's letter will be copied to the Counsel General and Leader of the House Carwyn Jones AM.

SLC310 - The National Health Service (Restructuring of National Health Service Bodies: Consequential Amendments) (Wales) Order 2009

Negative Procedure. Date made 8 July 2009. Date laid 9 July 2009. Coming into force date 1 October 2009

SLC311 - The Welsh College of Horticulture (Dissolution) Order 2009

Negative Procedure. Date made 9 July 2009. Date laid 10 July 2009. Coming into force date 1 August 2009

SLC312 - The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 9 July 2009. Date laid 10 July 2009. Coming into force date 10 July 2009

The Members noted that the reason given by the Government for issuing these Regulations in English only was the tight timescale due to the urgent necessity to legislate. However, having considered that extreme brevity of the Regulations (the Regulations and the Explanatory Note together amount to some 548 words) the Committee decided to write to the Minister for Health and Social Services Edwina Hart AM about the issue. The Committee's letter will be copied to the Counsel General and Leader of the House Carwyn Jones AM.

SLC321 – The School Teacher Appraisal (Amendment) (Wales) Regulations 2009

Negative Procedure. Date made 4 August 2009. Date laid 6 August 2009. Coming into force date 1 September 2009

Instruments in respect of which the Assembly is invited to pay special attention under Standing Orders 15.3

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

SLC313 - The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 15 July 2009. Date laid 15 July 2009.
Coming into force date 16 July 2009

The Committee observed that these Regulations had a potential reporting point under S.O.15.3 (“that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.”). The reason was the requirement to use the English descriptions only for natural mineral water under regulation 5(2).

The Members noted the Government’s disagreement with the point highlighted in the draft report. The Government believed that as these Regulations were made directly from a recast EU Directive, it was possible under EU Law to use only the English language when dealing with labelling requirements. It had not provided for the use of the Welsh language equivalents to the mandatory English language terms as in its opinion that would not provide a clear food label solution for the consumer. The Committee was not content with the Government response and decided to write to the Minister for Health and Social Services Edwina Hart AM about the issue. The Committee’s letter will be copied to the Counsel General and Leader of the House Carwyn Jones AM. The Committee decided to defer consideration of these Regulations until the next meeting to allow for the Minister’s response.

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 1-5.

Other Business

The Proposed Shipment of Waste for Recovery (Community Involvement in Arrangements) (Wales) Measure 200-

The Committee considered the proposed Measure, which was laid on 5 November 2008 by Nerys Evans AM. The Members noted that the Legislation Committee No. 1 is considering the general principles of the proposed Measure at Stage 1. The only power to make subordinate legislation in the proposed Measure is one order making power. The Committee considered the procedure under section 55C(2) which would be subject to the affirmative procedure and agreed to forward the legal advice prepared for it to Legislation Committee No. 1.

Response of Counsel General and Leader of the House Carwyn Jones AM to the Chair’s letter regarding the use of affirmative/negative procedure in the Proposed Children and Families Measure

The Members noted the responses of the Counsel General and Leader of the House and the Minister for Social Justice and Local Government to the Committee’s recommendation that any regulations made under Section 60 should be subject to the affirmative procedure. The Committee agreed to

write to the Members of Legislation Committee No2 to recommend that they address this issue during the stage 2 proceedings.

Child Poverty Bill – Evidence session with the Minister for Social Justice and Local Government Dr Brian Gibbons AM

As part of their scrutiny of the Child Poverty Bill, conducted under SO 15.6 (ii). (the Committee may consider and report on “the appropriateness of provisions in Proposed Assembly Measures and in Bills or Acts of the United Kingdom Parliament that grant powers to make subordinate legislation to the Welsh Ministers”), the Members heard the evidence of the Minister for Social Justice and Local Government Dr Brian Gibbons AM.

The Committee agreed to consider a draft report in relation to the Bill at a subsequent meeting.

Agenda Item 6.2, 7 and 8 – Consideration of evidence and initial recommendations for the Committee Report on the Child Poverty Bill; Marine and Coastal Access Bill: Consideration of the Committee Report; Equality Bill: Consideration of the Committee Report

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence and recommendations for the Committee Reports on the Child Poverty Bill, Marine and Coastal Access Bill, and Equality Bill.

Janet Ryder AM
Chair, Subordinate Legislation Committee

23 September 2009

Annex 1

Subordinate Legislation Committee

(SLC(3)-20-09)

SLC309

Subordinate Legislation Committee Report

Title: The Food Irradiation (Wales) Regulations 2009

These Regulations restrict the treatment of food with ionising radiation (irradiation) and the importation, storage and transport for the purpose of sale, and sale, of irradiated food.

Procedure: Negative

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument on the following grounds:

In the Welsh version of the Regulations "significant risk" has been translated variously as "risg o bwys" and "risg sylweddol".

In Schedule 2, paragraph 2(ff) of the Welsh Version the translation states "risg o bwys", but in Schedule 2, paragraph 2(i) the translation states "risg sylweddol".

There is inconsistency in the language and meanings. [Standing Order 15.2(vii)]

Janet Ryder AM

Chair, Subordinate Legislation Committee

23 September 2009

Government have responded as follows:-

The Government has responded as follows:-

The Government notes the comments about the inconsistency of language, but both expressions have very similar meanings and are acceptable translations of "significant risk". As such the inconsistency of language does not result in an inconsistency of meaning, and therefore these Regulations do not require amendment.

Annex 2

Subordinate Legislation Committee

(SLC(3)-20-09)

SLC310

Subordinate Legislation Committee Report

Title: The National Health Service (Restructuring of National Health Service Bodies: Consequential Amendments) (Wales) Order 2009

This Order, which applies in relation to Wales, makes amendments to various provisions within specified subordinate legislation consequential upon the establishment of a new structure for the provision of the National Health Service within Wales from 1 October 2009.

The Order:-

- (i) Revokes the National Health Service Trusts (Pharmaceutical Services Remuneration – Special Arrangement) Order 1991; and
- (ii) Amends references in the following Statutory Instruments to in the main substitute “Local Health Board” for National Health Service Trust”; to make provision for LHBs to be added to the list of bodies to whom the nine Statutory Instruments apply and, where appropriate, will ensure that the seven LHBs will be able to exercise certain of the functions that were formerly exercised by NHS Trusts:

National Health Service (Venereal Diseases) Regulations 1974;
National Health Service (Charges to Overseas Visitors) Regulations 1989;
National Health Service (Optical Charges and Payments) Regulations 1997;
Water Supply (Water Quality) Regulations 2001;
Care Homes (Wales) Regulations 2002;
Registration of Social Care and Independent Health Care (Wales) Regulations 2002;
Nurses Agencies (Wales) Regulations 2003;
National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007; and
Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008.

Procedure: Negative

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

In the English text of regulation 5, “2002” is omitted from the title of the Care Homes (Wales) Regulations 2002. [Standing order 15.2(vi) – defective drafting]

Given that the Welsh text is correct and that there are no other regulations with which this reference could be confused, it is considered that amending legislation to correct this drafting error is not required and correction can be undertaken by the issue of a correction slip.

Janet Ryder AM

Chair, Subordinate Legislation Committee

23 September 2009

Government have responded as follows:-

The Government agrees with the reporting point. The error was corrected on printing which rendered the necessity for the issue of a correction slip as suggested in the report otiose.

Annex 3

Subordinate Legislation Committee

(SLC(3)-20-09)

SLC311

Subordinate Legislation Committee Report

Title: The Welsh College of Horticulture (Dissolution) Order 2009

This Order dissolves with effect from 1 August 2009 the further education corporation established to conduct the Welsh College of Horticulture. It provides for the transfer of its property, rights and liabilities to Deeside College and Glyndwr University and certain other property, rights and liabilities which will be transferred to Deeside College and Glyndwr University to hold for educational purposes. The Order secures the rights of the corporation's employees by applying section 26 (2) to (4) of the Further and Higher Education Act 1992.

Procedure: Negative

The following point has been identified for reporting under Standing Order 15.2.

Paragraph 2 of Part 1, and paragraph 4 of Part 2 of the Schedule to the Welsh text both describe the land in the plan as having “ymyl du a chroeslinellau” (which means “edged black and cross-hatched”). Paragraph 2 of Part 1 of the Schedule in the English text describes the land as being “edged black and hatched”, whilst paragraph 4 of Part 2, describes it as being “edged black and cross hatched” respectively. There is a discrepancy in the description of the land being transferred within the Order in that two parcels of land are described identically in the Welsh text [Standing Order 15.2 (vi)]. There is also an inconsistency between the English and Welsh text of the description of one or other of the parcels of land [Standing Order 15.2 (vii)].

Janet Ryder AM

Chair, Subordinate Legislation Committee

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Government have responded as follows:-

We accept the point made. The English text version is correct. We are taking steps to make an amending order to remove the inconsistency. The order has been drafted in English and is currently being translated. It is likely to be made within the next four to six weeks and will come into force 21 days after being made.

Annex 4

Subordinate Legislation Committee

(SLC(3)-20-09)

SLC312

Subordinate Legislation Committee Report

Title: The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) (Amendment) Regulations 2009

Procedure: Negative

These Regulations amend the National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) Regulations 2004 (“the 2004 Regulations”). The effect of the amendment is to add to the circumstances in which the drug Oseltamivir (Tamiflu) may be ordered for patients in the provision of medical services under a general medical services contract. The additional circumstances are pandemic disease which poses a serious, or potentially serious, risk to human health and the supply of the drug is in accordance with a protocol relating to that disease.

The Regulations were made on 9 July 2009 and came into force on 10 July 2009. By letter dated 10 July 2009 the Counsel General notified the Presiding Officer that it had been necessary to breach the 21 day rule to ensure that GPs were able to issue prescriptions for anti-viral drugs such as Tamiflu in accordance with their General Medical Services contractual obligations thus not compromising access to treatment for symptomatic individuals via community pharmacy on prescription.

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument on the following grounds

The Regulations have not been made in both English and Welsh [Standing Order 15.2(vii)].

In his letter to the Presiding Officer the Counsel General states: “Due to the need to introduce these regulations immediately the Minister for Health and Social Services has deemed it not reasonably practicable for them to be made bilingually within the timescale”.

Given the extreme brevity of the Regulations* which include amending text which did not require translation (the 2004 Regulations were made in English only as they formed part of a suite of regulations made to facilitate the introduction of the GP Contract in 2004), Members may wish to give further consideration to this statement.

*The Regulations (including the Explanatory Note) amount to some 548 words and the amending text which does not require translation to some 129 words leaving 419 words to be translated. Of the required translation the title which appears three times but requires translation only once is 15 words,

Janet Ryder AM

Chair, Subordinate Legislation Committee

23 September 2009

Government have responded as follows:-

The Government is aware that the Standing Orders require that in circumstances where legislation is not made or is not to be made in both English and Welsh the Legislation Committee is required to report that the Assembly should pay special attention to the same.

The changes that these Regulations made to the NHS (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) Regulations 2004 were required to be made urgently to facilitate part of the Welsh Assembly Government's response to the current pandemic influenza and it was not possible to produce a bi-lingual version within the required timeframe.

Annex 5

Subordinate Legislation Committee

(SLC(3)-20-09)

SLC321

Subordinate Legislation Committee Report

Title: The School Teacher Appraisal (Amendment) (Wales) Regulations 2009

These Regulations amend the School Teacher Appraisal (Wales) Regulations 2002 (“the 2002 Regulations”). They bring within the scope of the 2002 Regulations the appraisal of the performance of school teachers (including nursery school teachers) who are employed by local authorities for more than one school term and teachers employed by local authorities who are not attached to one particular school or who teach outside school settings.

Procedure: Negative

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument for the following reasons –

1. The title of the Regulations is misleading. It suggests that regulations of wider application are being amended in relation to Wales only. In fact “(Wales)” is part of the title of the Regulations being amended (as they apply only to Wales), and should therefore precede “(Amendment)” in the title of the present Regulations. [Standing Order 15.2(v)]
2. The insertion made by regulation 5 includes the expression “Where a school is appointed as appraiser in accordance with regulation 36(2)”. But that regulation does not deal with the appointment of an appraiser, but with the delegation of duties. Moreover, that delegation is to a teacher, and not to a school. [Standing Order 15.2(vi)]
3. In regulation 38(1), the authority is to determine the procedures for appraisals subject to regulations 39 to 43. However, in the circumstances to which regulation 38(2) apply, the governing body is to determine the procedures subject to regulations 39 to 41. There is no obvious reason why regulations 42 (The appraisal review and the appraisal statement) and 43 (Appeals) should not apply as much to regulation 38(2) as to 38(1). This therefore appears to be a drafting error. . [Standing Order 15.2(vi)]
4. In regulation 43(8), there is a reference to “All appraisal procedures determined to be repeated under paragraph (7)”. However, the provision relating to such a determination is in paragraph (6), not (7). [Standing Order 15.2(vi)]

Janet Ryder AM

Chair, Subordinate Legislation Committee

23 September 2009

Government have responded as follows:-

The title of the Regulations being misleading is regretted. We accept that there are drafting errors as reported in paragraphs 2 to 4. We will prepare amending regulations. These should be signed and laid within the next three months.