

Subordinate Legislation Committee

Report (SLC(3) 13-07)

Meeting Date: 04 December 2007
Meeting Time: 8.15am
Meeting Venue: Committee Room 3, 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
Paul Davies AM
Irene James AM
Sandy Mewies AM
Janet Ryder AM
Karen Sinclair AM

Legal Advisers:

Gwyn Griffiths
Joanest Jackson

Clerking Team:

Clerk to the Committee:

Chris Reading

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

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

Legislation.com@wales.gsi.gov.uk

Or you can speak to the Clerk, Chris Reading; telephone 029 2089 8164.

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The Committee met on 4 December 2007. At the meeting the following Committee Members were present: Dr Dai Lloyd AM, Eleanor Burnham AM, Andrew RT Davies AM, Alun Davies AM, Paul Davies AM, Irene James AM, Sandy Mewies AM, Janet Ryder AM, Karen Sinclair AM. There were no apologies.

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)

SLC79 – The Plant Health (Wales) (Amendment) (No. 2) Order 2007

Negative Procedure. Date made 22 November 2007. Date laid 23 November 2007. Coming into force date 18 December 2007.

SLC81 - The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2007

Negative Procedure. Date made 23 November 2007. Date laid 26 November 2007. Coming into force date 27 December 2007.

SLC82 - The Non-Domestic Rating (Unoccupied Property) (Amendment) (Wales) Regulations 2007

Negative Procedure. Date made 23 November 2007. Date laid 27 November 2007. Coming into force date 27 December 2007.

SLC83 - The Contaminants in Food (Wales) (Amendment) Regulations 2007

Negative Procedure. Date made 24 November 2007. Date laid 27 November 2007. Coming into force date 19 December 2007.

SLC84 - The Food Labelling (Declaration of Allergens) (Wales) Regulations 2007

Negative Procedure. Date made 27 November 2007. Date laid 29 November 2007. Coming into force date 23 December 2007.

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)

SLC75 - The Materials and Articles in Contact with Food (Wales) Regulations 2007

Negative Procedure. Date made 13 November 2007. Date laid 14 November 2007. Coming into force date: for the purpose of regulations 5, 7 and 14(3) - 1 August 2008; for all other purposes - 6 December 2007.

SLC77 - The Official Feed and Food Controls (Wales) Regulations 2007

Negative Procedure. Date made 19 November 2007. Date laid 21 November 2007. Coming into force date 14 December 2007.

SLC78 - The Export and Movement Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007

Negative Procedure. Date made 6.10 p.m. on 20 November 2007. Date laid 21 November 2007. Coming into force date 6.25 p.m. on 20 November 2007.

SLC80 - The Plant Health (Import Inspection Fees) (Wales) (Amendment) (No.2) Regulations 2007

Negative Procedure. Date made 22 November 2007. Date laid 23 November 2007. Coming into force date 18 December 2007.

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, 3 and 4 to this Report.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

4 December 2007

Annex 1

Subordinate Legislation Committee

(SLC(3) 13-07)

SLC75

Subordinate Legislation Committee Report

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

Title: The Materials and Articles in Contact with Food (Wales) Regulations 2007

These Regulations revoke the Materials and Articles in Contact with Food (Wales) Regulations 2005 and re-enact or re-enact with amendments provisions contained in those Regulations. These Regulations provide for the enforcement of Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food. They also provide for the enforcement of Regulation (EC) No. 2023/2006 on good manufacturing practice for materials and articles intended to come into contact with food and implement Commission Directive 2007/42/EC relating to materials and articles made of regenerated cellulose film intended to come into contact with foodstuffs.

Procedure: Negative

1. The Regulations contain examples of gender specific language in regulations 19(3)(c) (“him”) and 19(4) (“his [Standing Order 15.2(viii)]
2. Regulation 19 (and 20) also includes a number of examples of the use of “will” in relation to the role of the authorised officer. If the intention is that he is required to take these steps, the appropriate verb is “must”. If it is a simple narrative of the process to be used, it is not appropriate matter to be included in legislation. [Standing Order 15.2(v)]

The Government has indicated that it accepts that the above mentioned reporting points and has indicated that it intends to incorporate these amendments when the Regulations are next amended.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

4 December 2007

Annex 2

Subordinate Legislation Committee

(SLC(3) 13-07)

SLC77

Subordinate Legislation Committee Report

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

Title: The Official Feed and Food Controls (Wales) Regulations 2007

- providing for the execution and enforcement of the feed and food elements of Regulation (EC) No 882/2004 on official feed and food. They revoke and re-enacting with changes the Official Feed and Food Controls (Wales) Regulations 2006 (“the 2006 Regulations”).

Procedure: Negative

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

- In the English text of regulation 2(1), the definition of “feed authority” refers to the authority required by section 67(1) of the Agriculture Act 1970 to enforce that Act within its area or district. Section 67(1) applies to England; in relation to Wales the correct reference is to section 67(1A). [Standing Order 15.2(vi)]
- The English text of regulation 2(4)(a) refers to sections 2 and 7 of the Public Health (Control of Disease) Act 1984. The Welsh text refers to section 2 only. Given that section 7 refers to the London port health authority and that no reference was made to section 7 in the 2006 Regulations it would appear that the reference to section 7 is erroneous. [Standing Order 15.2(vi)]
- The English text of regulation 3(4) refers to “the food authority” whereas the Welsh text refers to “the feed authority”. As this provision is concerned with the designation of an authority as a competent authority in relation to relevant food law, it is assumed that the English text is correct. [Standing Order 15.2(vi) and(vii)]
- The English text of regulation 3(5) deals with the designation of the Food Standards Agency as a competent authority pursuant to Article 31 of Regulation 882/2004 and that the designation extends only to “operations” in respect of which the Agency executes and enforces the

Food Hygiene (Wales) Regulations 2006. The Welsh text includes a reference to “primary production and associated operations”. [Standing Order 15.2(vii)]

- Regulation 20 sets out penalties. Paragraph (1) of the English text refers to “paragraph (8) of regulation 18” whereas the Welsh text refers to “this Part of the Regulations”. [Standing Order 15.2(vii)]
- The English text of regulation 27(1)(a) prohibits the introduction into Wales of specified feed which fails to comply with “Feed safety requirements”. The Welsh text refers to “feed safety requirements” but additionally includes words equivalent to “and those requirements”. [Standing Order 15.2(vii)]
- Regulation 30(1) provides that an authorised officer must serve notify the operator of a feed or food business if it proposed that a consignment of feed or food is to be placed under official detention. The Welsh text includes a provision that the authorised officer must first hear from the operator; the English text does not refer to this requirement. [Standing Order 15,2(vii)]
- Where the Welsh text of regulation 33(1) refers to an action to be undertaken by the Welsh Ministers the word “ganddynt” should replace “ganddo”. [Standing Ordr 15.2(vi)]
- The Welsh text of regulation 27(a) and (b) refers to the “area or district” of a food authority; the English text refers only to the food authority’s “area”. [Standing Order 15.2(vi)]
- Regulation 39 deals with offences and penalties. Paragraph (1) sets out four instances where a person is guilty of an offence. The Welsh text omits the paragraph lettered (c) and (d) in the English text. [Standing Order 15.2(vi) and (vii)]
- Paragraph (2) of regulation 39 provides that a person guilty of an offence “under this Part of these Regulations...” whereas the Welsh text refers to a person “guilty of an offence under the Import Provisions...”. [Standing Order 15.2(vi)]
- In Schedule 1 the Welsh text entry relating to Regulation 852/2004 omits wording equivalent to “as read with Regulation 2073/2005”. [Standing Order 15.2(vii)]
- The Welsh text of Schedule 4 is set out in three columns and so does not accord with the wording of regulation 3(1) which introduces this Schedule. Further the Welsh text setting out the provisions of Regulation 882/2004 in respect of which the Agency is designated omits reference to articles 27 and 28. Likewise the provision in respect of which the feed authority is designated omits reference to articles 27 and 28.
- The Welsh text of Schedule 5 is set out in three columns and so does not accord with the wording of regulation 3(3) which introduces this Schedule. Further the entries which set out the provisions of Regulation 882/2004 in respect of which the Agency is designated as competent authority omits reference to Articles 27 and 28 and refers to Article 31` (1) and (2) whereas the English text refers to Article 31. Likewise the provisions in respect of which the food authority is

designated, in the Welsh text omits reference to Articles 27 and 28.
[Standing Order 15.2(vi) and (vii)]

The drafting lawyer has been notified of numerous errors which are to be found in the footnotes. These are capable of correction on publication.

These Regulations relate to the requirement to comply with feed and food legislation (whether European or domestic) and to circumstances where a person may be involved in legal proceedings. Given that many of the reporting points identified are in respect of provisions which relate to compliance or enforcement the Government may wish to consider revoking and remaking these Regulations.

The Government accepts the points raised in the report and will now take steps to issue new Regulations early in 2008, which will replace the Official Feed and Food Controls (Wales) Regulations 2007.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

4 December 2007

Annex 3

Subordinate Legislation Committee

(SLC(3) 13-07)

SLC78

Subordinate Legislation Committee Report

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

Title: The Export and Movement Restrictions (Foot and Mouth Disease) (Wales) Regulations 2007

-implementing in Wales Commission Decision 2007/746/EC which further amends Commission Decisions 2007/709/EC, 2007/746/EC and 2007/554/EC. In relation to Wales, the principle effect of the Regulations is that Wales will no longer be under restriction for movement and exports of animal products including germplasm. Whilst exports of live animals are still not permitted imports of live animals will be permitted and movements of animals and animal products between listed areas will be permitted under certain conditions.

The Regulations were made and came into force on 20 November 2007 at the times specified in the Regulations. Regulations 5 to 9 (which relate to the export of meat, meat products and milk) and regulations 11 to 14 (relating to the export of hides and skins, animal products, exemptions and endorsement of documents) cease to have effect on 15 December 2007; the remainder of the Regulations cease to have effect on 31 December 2007. The Import and Export Restrictions (Foot-and-Mouth disease) (No 6) (Wales) Regulations 2007 are revoked.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing order 15.2(ix) (that it is not made in both English and Welsh).

The Presiding Officer was advised that due to the length of the Regulations and the need to introduce them in Wales immediately, the Minister for Rural Affairs deemed it would not be reasonably practicable for them to be made bilingually in the timescale but that a Welsh translation would be available in due course.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

4 December 2007

Annex 4

Subordinate Legislation Committee

(SLC(3) 13-07)

SLC80

Subordinate Legislation Committee Report

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

Title: The Plant Health (Import Inspection Fees) (Wales) (Amendment) (No. 2) Regulations 2007

These Regulations amend the Plant Health (Import Inspection Fees) (Wales) (No. 2) Regulations 2006 (“the principal Regulations”). The principal Regulations implement Article 13d of Council Directive 2000/29/EC, which requires Member States to charge fees to cover the costs occasioned by the documentary checks, identity checks and plant health checks of certain imports of plants, plant products and other objects from third countries.

Procedure: Negative

1. The principal Regulations were made in reliance on section 29(4) of the Government of Wales Act 1998 as well as section 56(1) of the Finance Act 1973. Section 29 of the 1998 Act has now been replaced by section 59 of the Government of Wales Act 2006, so that section 59(5) of the 2006 Act should have been cited as a power relied upon to make these Regulations. However, as the power exists, even if it has not been recited, remedial action is not required. The footnote assists in directing the reader to the relevant provision. [Standing Order 15.2(v)]

2. The English text of the new regulation 3(a) includes the words “Schedule 1 that are listed in” that do not appear in the Welsh text. The Schedule 1 referred to is that to the principal Regulations, but the absence of the words referred gives the Welsh text the incorrect meaning of the first column of Annex V, Part B of the Directive. The inconsistent cross-reference needs to be resolved at the earliest opportunity. [Standing Order 15.2(vii)]

The Government has indicated that it accepts the above mentioned reporting point and has also indicated that it anticipates the Regulations will be amended early in 2008.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

4 December 2007