

## **Subordinate Legislation Committee**

### **Report (SLC(3) 08-07)**

**Meeting Date:** 23 October 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](mailto:assembly.bookings@wales.gsi.gov.uk)

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

[Legislation.com@wales.gsi.gov.uk](mailto: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 23 October 2007. At the meeting the following Committee Members were present: Dr Dai Lloyd AM (Chair), Alun Davies AM, Paul Davies AM, Irene James AM, Sandy Mewies AM, Janet Ryder AM, Karen Sinclair AM, Eleanor Burnham AM. Apologies were received from Andrew RT Davies AM (Jonathan Morgan AM substituted), Karen Sinclair AM.

The Committee reports to the Assembly as follows:

Subordinate Legislation for Consideration: Statutory Instruments and draft Statutory Instruments

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

### **Instruments reported under Standing Order 15.2:**

<b>SLC52</b>	<b>The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007</b> Negative Procedure. Date made 8 October 2007. Date laid 9 October 2007. Coming into force date 31 October 2007.
<b>SLC53</b>	<b>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.4) (Wales) Regulations 2007</b> Negative Procedure. Date made 15:58 hrs on 12 October 2007. Date laid 15 October 2007. Coming into force date 18:58 hrs on 12 October 2007.
<b>SLC54</b>	<b>The Government of Wales Act 2006 (Approved European Body of Accountants) Order 2007</b> Negative Procedure. Date made 15 October 2007. Date laid 16 October 2007. Coming into force date 1 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 - 3 to this Report.

The Committee, in accordance with Standing Order 15.6, has completed taking evidence on the appropriateness of the powers to be conferred by the NHS Redress (Wales) Measure 2007 on the Welsh Ministers to make orders and regulations. The Members expressed their views on a summary of the key issues emerging from the evidence they received. The Members' views will be summarised in the Committee's draft report, which will be discussed at the meeting 6 November 2007.

**Dr. Dai Lloyd AM**

**Chair**

**Subordinate**

**Legislation**

**Committee**

## **Annex 1**

### **Subordinate**

### **Legislation**

### **Committee**

*(SLC(3) 08-07)*

**SLC52**

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

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

#### **Title: The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007**

These Regulations primarily implement Council Directive 85/337/EEC on the assessment of the effects of certain public and private projects on the environment (“the EIA Directive”) in relation to two types of project in paragraph 1 of Annex II to that Directive: projects for the restructuring of rural land holdings, and semi-natural areas for intensive agricultural purposes. They also implement Council Directive 1992/43/EEC on the conservation of natural habitats and of wild flora and fauna (“the Habitats Directive”) insofar as those projects affect sites protected by that Directive.

#### **Procedure: Negative**

#### **Standing Order 15.2**

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

The English text of regulation 2(4) provides that “notifications required to be made by the Welsh Ministers to any person may only be made by an electronic communication if the intended recipient—”. The Welsh text, on the other hand, provides that “dim ond drwy gyfrwng cyfathrebiad electronig y caniateir i hysbysiadau, y mae'n ofynnol i Weinidogion Cymru eu rhoi, gael eu rhoi i unrhyw berson os yw'r derbynnydd arfaethedig—”. The context suggests that the “only” applies to the “if the intended recipient ...”, but the word order used in English has resulted in the Welsh text applying the “only” to the electronic communication, so as to exclude the use of other forms of communication. If the English text had read ““but notifications required to be made by the Welsh Ministers to any person may be made by an electronic communication only if the intended recipient—”, the Welsh text would have read “ond caniateir i hysbysiadau, y mae'n ofynnol i Weinidogion Cymru eu rhoi, gael eu rhoi drwy gyfrwng cyfathrebiad electronig i unrhyw berson dim ond os yw'r derbynnydd arfaethedig—”. This would appear more clearly to express the intention in both languages of permitting the use of electronic communications rather than excluding more conventional means of communication. [Standing Order 15.2(vi)].

The English text of regulation 13(3) uses the term “participate”, for which the Welsh equivalent should be “cymryd rhan”. However, the word “rhan” is missing. [Standing Order 15.2(vi)].

Regulation 18(a) contains a number of cross-references, of which the second is given as a reference to 13(5) in the English text and 13(2) in the Welsh text. As the context relates to consultation with EEA States, it appears that the English text is correct. [Standing Order 15.2(vii)].

The next cross-reference in regulation 18(a) is to 13(2)(b) in the English text and 13(5)(b) in the Welsh text. The context relates to “any authority or person who forwarded their opinion” suggests that neither is correct, and that the correct reference should be to 13(4)(b). This is supported by the correct use of that cross-reference in regulation 35(d). [Standing Order 15.2(vi)].

On the other hand, whilst the English regulation 18(a) contains a correct cross-reference to consulting any EEA State under regulation 13(5), but this is not reflected in regulation 35(c) which incorrectly refers to regulation 13(4). [Standing Order 15.2(vi)].

Regulation 28(3) contains a cross-reference to paragraph (2). However, the correct cross-reference in relation to the sufficiency of evidence would be to paragraph (1). [Standing Order 15.2(vi)].

Gender specific pronouns appear in the English text of regulations 29(3)(b) (“him”); the insertion made by regulation 36 of regulation 14(2) and (3) (“him”); paragraph 4 of Part 2 of Schedule 3 (“his”) and paragraph 3 of Schedule 5 (“his”). [Standing Order 15.2(viii)].

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

**23 October 2007**

## **Annex 2**

### **Subordinate**

### **Legislation**

### **Committee**

*(SLC(3) 08-07)*

**SLC53**

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

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

**Title: The Import and Export Restrictions (Foot- and -Mouth Disease) (No 4) (Wales) Regulations 2007**

- implementing in Wales European Commission Decision 2007/664/EC which further amends Commission Decision 2007/554/EC concerning certain protection measures against foot-and-mouth disease in the United Kingdom and revoking and remaking with amendments the Import and Export (foot-and-Mouth Disease) (No 3) (Wales) Regulations 2007. These Regulations were made and came in to force on 12 October 2007 and are to cease to have effect on 15 November 2007. They allow the export of fresh meat, minced meat and meat preparations with certain conditions (the products must meet the import restrictions of the importing country) but prohibit the import of live susceptible animals into Wales from another Member State. The Regulations also make it an offence for individuals to take out of Wales in personal luggage any of the products to which the Regulations apply.

**Procedure: Negative**

#### **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(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

**23 October 2007**

## **Annex 3**

**Subordinate**

**Legislation**

**Committee**

*(SLC(3) 08-07)*

**SLC54**

**Subordinate Legislation Committee Report**

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

**Title: The Government of Wales Act 2006 (Approved European Body of Accountants) Order 2007**

This Order provides that each of The Chartered Institute of Public Finance and Accountancy ("CIPFA") and The Chartered Institute of Management Accountants ("CIMA") is an approved European body of accountants for the purposes of paragraph 21(6) of Schedule 8 to the Government of Wales Act 2006.

### **Standing Order 15.2**

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

In the recital of the power relied upon to make the Order, the words "yn gwneud y Gorchymyn hwn" [make this Order] are missing from the Welsh text. Nevertheless, as this has no effect on the substance of the Order, no corrective action is considered necessary. [Standing Order 15.2(vi)].

**Dr Dai Lloyd AM**

Chair, Subordinate Legislation Committee

**23 October 2007**