

Subordinate Legislation Committee

Report (SLC(3) 04-07)

Meeting Date: 25 September 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

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.comm@wales.gsi.gov.uk

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

CONTENTS

The Committee met on 25 September 2007. At the meeting the following Committee Members were present: Dr Dai Lloyd AM (Chair), Paul Davies AM, Irene James AM, Sandy Mewies AM, Janet Ryder AM, Karen Sinclair AM, Eleanor Burnham AM, Andrew RT Davies AM. Apologies were received from Alun Davies 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 not reported under S.O.15.2:

SLC38	The Commons Registration (General) (Amendment) (Wales) Regulations 2007 Negative Procedure. Date made 4 September 2007. Date laid 6 September 2007. Coming into force date 1 October 2007.
SLC40	The Nutrition and Health Claims (Wales) Regulations 2007 Negative Procedure. Date made 6 September 2007. Date laid 07 September 2007. Coming into force date 1 October 2007.
SLC42	The Plant Health (Wales) (Amendment) Order 2007 Negative Procedure. Date made 14 September 2007. Date laid 17 September 2007. Coming into force date 10 October 2007.
SLC43	The Plant Health (Phytophthora ramorum) (Wales) (Amendment) Order 2007 Negative procedure. Date made 14 September 2007. Date laid 17 September 2007. Coming into force date 12 October 2007.

Instruments reported under Standing Order 15.2:

SLC31	The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007 Negative Procedure. Date made 12 August 2007. Date laid 14 August 2007. Coming into force date 6 September 2007.
SLC33	The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2007 Negative Procedure. Date made 16 August 2007. Date laid 17 August 2007. Coming into force date 7 September 2007.
SLC37	The Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2007 Negative Procedure. Date made 28 August 2007. Date laid 29 August 2007. Coming into force date 24 September 2007.
SLC39	The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales)

	<p>Regulations 2007 Negative Procedure. Date made 6 September 2007. Date laid 7 September 2007. Coming into force date 28 September 2007.</p>
SLC41	<p>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.3) (Wales) Regulations 2007 Negative Procedure. Date made 13 September 2007. Date laid 14 September 2007. Coming into force date 8 p.m. on 13 September 2007.</p>

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 to this Report.

The Committee considered the proposed NHS Redress (Wales) Measure 2007 and agreed to call for and consider evidence regarding the delegated powers contained in the proposed Measure.

Dr. Dai Lloyd AM
Chair
Subordinate Legislation Committee

Annex 1

Subordinate Legislation Committee

(SLC(3) 04-07)

SLC31

Subordinate Legislation Committee Report

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

Title: The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007

Section 15 of the Commons Act 2006 (“the 2006 Act”) provides a revised basis for seeking registration of land as a town or village green. These Regulations set out the procedure for dealing with such applications.

Standing Order 15.2

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

In the final paragraph of Form 45 in the Schedule, the Welsh text contains a sentence commencing “Caiff ar Awdurdod” for which there is no equivalent in the English text. Whilst the omission has no legal effect, readers of the Welsh text are provided with additional information. [Standing Order 15.2(vii)]

The reported point has been accepted by the Welsh Assembly Government’s legal adviser. They propose doing nothing for the time being to correct the error as the additional sentence in the Welsh text of form 45 only really summarises regulation 6(2) and the existence of that additional sentence appears therefore to have no additional or adverse legal consequences. The Regulations are “Interim” Regulations and will remain in force only until the remainder of Part 1 of the Commons Act 2006 is brought into force.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

25 September 2007

Annex 2

Subordinate Legislation Committee

(SLC(3) 04-07)

SLC33

Subordinate Legislation Committee Report

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

Title: The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2007

This Order amends the definition of excepted hereditaments in the Non-Domestic Rating (Small Business Relief) (Wales) Order 2006 by deleting the reference to certain self-catering properties, to enable those premises to qualify for relief on the same basis as other businesses.

Procedure: Negative

Standing Order 15.2

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

Article 2 has effect from 1 April 2007, being the start of the current rating year. This retrospective effect is not specifically authorised by the enabling legislation. The amendment in question confers a benefit rather than imposing a liability, and takes effect during the current tax year. In those circumstances the matter is reported for information rather than as a criticism. [Standing Order 15.2(iv)]

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

25 September 2007

Annex 3

Subordinate Legislation Committee

(SLC(3) 04-07)

SLC37

Subordinate Legislation Committee Report

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

Title: The Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2007

These Regulations, which apply in relation to Wales, make provision for the Welsh Ministers to charge fees for activities required under Commission Regulation (EC) No. 1003/2005, Regulation (EC) No. 2160/2003 and the Animal By-Products (Wales) Regulations 2006.

Procedure: Negative

Standing Order 15.2

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

The cross-references in regulation 3(2) are incorrect. In paragraph (a), the reference to “paragraph (2)(a) and (b)” should be to “paragraphs (1) (a) and (b)”. In paragraph (b) the reference to “paragraph (2)(c) to (g)” should be to “paragraphs (1) (c) to (g)” in the English text and that to “mharagraffau (2) (c) i (g)” should be to “mharagraffau (1) (c) i (e)” in the Welsh text. [Standing Orders 15.2(vi) and (vii)]

The Committee was told that the Government is of the view that amending legislation is desirable and will take the opportunity to amend the legislation before February 2008 when the legislation will be amended to extend charging powers to cover activities in relation to the laying flock national control plan.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

25 September 2007

Annex 4

Subordinate Legislation Committee

(SLC(3) 04-07)

SLC39

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 and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007

Implementing in Wales Council Directives 85/337/EC and 94/43/EEC in so far as they relate to the extraction of minerals by marine dredging.

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(vi) (defective drafting):-

Regulation 13(8)(d)(iii) contains a requirement that the decision notice sent by the Welsh Ministers to the applicant and other specified persons must state, inter alia, any conditions imposed when permission is granted. The provision states that conditions are imposed under paragraph (6)(a) of this regulation. This cross-reference is incorrect and should be to paragraph (7)(a).

The Welsh Ministers have been informed of minor formatting and typographical points which may be corrected on publication of the instrument or by issue of a correction slip.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

25 September 2007

Annex 5

Subordinate Legislation Committee

(SLC(3) 04-07)

SLC41

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 3) (Wales) Regulations 2007

- implementing in Wales European Commission Decision 2007/608/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 Foot-and-Mouth Disease (Export Restrictions) (Wales) Regulations 2007. These Regulations were made and came in to force on 13 September 2007 are to cease to have effect on 15 October 2007.

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 and complexity 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

25 September 2007