

Subordinate Legislation Committee

Report (SLC (3) 02-10)

Date: 21 January 2009
Time: 9.00am
Venue: Committee Room 2, Senedd

CONTENTS

The Committee met on 21 January 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, William Graham AM. Apologies were received from Alun Davies AM and Rhodri Morgan AM (Joyce Watson substituted).

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 and 15.3

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

SLC377 - The Food Additives (Wales) Regulations 2009

Negative Procedure. Date made 21 December 2009. Date laid 23 December 2009. Coming into force date 20 January 2010

SLC378 - The Food Enzymes (Wales) Regulations 2009

Negative Procedure. Date made 21 December 2009. Date laid 23 December 2009. Coming into force date 20 January 2010

SLC380 - The Preserved Counties of Powys and Mid Glamorgan (Changes in Area) Order 2010

Negative Procedure. Date made 11 January 2010. Date laid 13 January 2010. Coming into force date 1 April 2010

Instruments in respect of which the Assembly is invited to pay special attention under Standing Orders 15.2 and/or 15.3

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

SLC379 - The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2010

Negative Procedure. Date made 11 January 2010. Date laid 12 January 2010. Coming into force date 13 January 2010

SLC372 - The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

Negative Procedure. Date made 16 December 2009. Date laid 17 December 2009. Coming into force date 8 January 2010

The Committee postponed reporting on this Statutory Instrument till today to allow the Welsh Government time to consider a possible report under S.O. 15.3. However, having considered the points reported by the Committee the Welsh Government decided not to send its response.

The Committee's Reports under S.O.15.2 and S.O.15.3 on these Regulations are attached as Annexes 1-2.

Other Business

Committee Inquiries : Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters and Monitoring the outcome of the Committee's Reports on Statutory Instruments

The Committee took oral evidence from the School of Law, Swansea University, represented by Professor Tim Jones, School of Law. The Swansea University School of Law agreed to provide a note setting out examples of the practical impact of the use of exceptions in LCOs.

The Committee also took oral evidence from the Bangor University, represented by Dewi Llyr Jones, Lecturer in Law. Mr Jones agreed to provide a note on whether there was any correlation between the origin of legislation, i.e. from Whitehall or Brussels or drafted by the Welsh Government, and the number of reporting points that arose. Similarly, whether or not there was any correlation between the accuracy of legislation that has been consulted upon in draft and legislation that has not been subject to consultation.

Committee Correspondence

The Committee discussed the Minister for Health and Social Services Edwina Hart MBE AM's responses to the Chair's letters regarding SLC356 - The Welsh Health Specialised Services Committee (Wales) Regulations 2009 and the NHS Redress (Wales) Measure 2007

SLC356 - The Welsh Health Specialised Services Committee (Wales) Regulations 2009: The Members were concerned that whilst the Explanatory Memorandum to these Regulations gave an option for the Deputy Chief Executives of the LHB to attend the meetings of the Joint Committee instead of the Chief Executives themselves, the Regulations did not provide for such an option. Having considered the Minister's

response, the Committee agreed to request sight of the Standing Orders of the Joint Committee when such Orders are drafted.

NHS Redress (Wales) Measure 2007 – at the meeting on 25 November the Committee noted that thus far no regulations had been issued as a result of the NHS Redress Measure. The Chair wrote to the Minister to this effect and, having considered her response that the final draft statutory instrument issued as a result of the Measure was to follow an affirmative procedure and to be laid by mid May 2010, the Members decided to request to see this and other relevant legislation in early drafts.

Consideration of Draft Flood and Water Management Bill

As part of scrutiny of the Draft Flood and Water Management Bill conducted under SO 15.6 (ii) (the Committee may consider and report on “the appropriateness of provisions in Bills for 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 Environment, Sustainability and Housing Jane Davidson AM. The Minister agreed to confirm whether Schedule 7 of the Government of Wales Act 2006 would provide legislative competence to legislate in the areas covered by the Bill.

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 on the Draft Flood and Water Management Bill.

Janet Ryder AM
Chair, Subordinate Legislation Committee

21 January 2009

Annex 1

Subordinate Legislation Committee

(SLC(3)-02-10)

SLC372

Subordinate Legislation Committee Report

Title: The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

Procedure: Negative

The Environmental Impact Assessment Directive (EIA Directive), requires that before development consent is given, projects likely to have significant effects on the environment are made subject to an assessment with regard to their effects. The Town and Country Planning (Environmental Impact Assessment) (England and Wales) (Amendment) Regulations 2000 applied the requirements of the EIA Directive as transposed by the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 to applications for the review of old mineral permissions (ROMP) made on or after 15 November 2000 (together “the EIA Regulations”). The 2009 Regulations apply the requirements of the EIA Directive to ROMP applications in Wales made before 15 November 2000 which still remain to be determined at the date the Regulations come into force. These cases are otherwise known as stalled reviews.

Technical Scrutiny

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

1. Paragraph 4 of Schedule 3 [Notifications under regulation 11] “Scoping opinions of the relevant mineral planning authority”, erroneously refers to regulation 11 when it should refer to regulation 12 as regulation 12 refers to “Scoping opinions of the relevant mineral planning authority” whereas regulation 11 refers to “Screening Directions of the Welsh Ministers.” [S.O.15.2 Defective drafting]. This applies in both languages.

Schedule 3 (“Notifications”) of the Arrangement of Regulations is also erroneous as number 2 should refer to regulation 12, as it is this regulation, which refers to “Scoping opinions of the relevant mineral planning authority” and not regulation 11 which refers to “Screening

Directions of the Welsh Ministers.” [S.O. 15.2 Defective drafting]. This applies in both languages.

2. The definition provided for “sensitive areas”, in Regulation 2 (1) by section 29 (3) (nature conservation orders), of the Wildlife and Countryside Act 1981 (“the WCA 1981”) has erroneously been referred to as it has been repealed by the Countryside and Rights of Way Act 2000, ss. 75 (1), 102, Schedule 9, paragraph 2, Schedule 16, section 102. [S.O. 15.2 Defective drafting].

Merits Scrutiny

The following points have been identified for reporting under Standing Order 15.3(ii):

These regulations are being made in response to an adverse European Court of Justice (ECJ) judgement where the Court held that, by failing to make Reviews of Old Mineral Permissions lodged prior to 15 November 2000 subject to the requirements of the EIA Directive, the UK had failed to fulfil its obligations under the Directive.

The Regulations are likely to result in substantial costs for operators, possibly exceeding £100,000 in each case, of providing the environmental information that will be required as a result of the Regulations. There may also be substantial costs for operators of carrying out restoration and aftercare. The Regulations may also lead to loss of employment opportunities if operations are suspended or prohibited as a result of the regulations.

Failure to implement changes in response to the judgement is likely to result in the ECJ imposing substantial fines on the UK Government which could amount to several million pounds. There are also likely to be environmental benefits and greater transparency, about the future use of sites, for local residents.

The Regulations are voluminous and complex and involve very significant potential costs and benefits to the public purse, to operators and to the environment. They may also be of considerable interest to local residents across Wales who may consider themselves affected by mineral permissions.

Given the above, the Committee is of the view that the Regulations give rise to issues of public policy likely to be of interest to the Assembly. [S.O. 15.3(ii)].

The Committee notes that the Regulations do not implement the reporting point identified in our report SLC 192, in relation to regulation 9(3) of the Town and Country Planning (Environmental Impact Assessment) (Amendment) (Wales) Regulations 2008. On this

occasion the Committee is prepared to accept the reasons for this but expects this reporting point to be addressed at the earliest opportunity.

The Government was given an opportunity to respond to the points reported by the Committee under Standing Order 15.3(ii), but declined to do so on this occasion.

Janet Ryder AM

Chair, Subordinate Legislation Committee

21 January 2009

The Government has responded as follows:

The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

The Government accepts that the references to regulation 11 in the heading to paragraph 4 of Schedule 3 to the Regulations and in the Arrangement of Regulations, should be references to regulation 12. As these are minor typographical errors the Government considers it appropriate to correct them on publication.

The Government accepts the point raised by the Legal Advisers to the Committee concerning the erroneous reference to section 29 of the Wildlife and Countryside Act 1981 which is contained in the definition of “sensitive area” in regulation 2. The term “sensitive area” should have been removed from the Regulations as it is not used elsewhere in the Regulations. As the term is redundant it gives rise to no substantive legal consequences, nor to any effect which is prejudicial to any person. The Government will amend the Regulations to remove the defined term when it brings forward legislation later this year to amend the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999.

The Government is given to understand that the Committee may wish to invite the Assembly to pay special attention to this instrument under Standing Order 15.3. The Government would welcome the opportunity to respond to any points identified under Standing Order 15.3 prior to the Committee finalising its report.

Annex 2

Subordinate Legislation Committee

(SLC(3)-02-10)

SLC379

Subordinate Legislation Committee Report

Title: The Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) (Amendment) Regulations 2010

Procedure: Negative

These Regulations amend the Common Agricultural Policy Single Payment and Support Schemes (Cross Compliance) (Wales) Regulations 2004. The purpose of the amendments is:

- to make provision in Wales for the administration and enforcement of cross compliance under Council Regulation (EC) No 73/2009 (“the Council Regulation”) and Commission Regulation (EC) No 1122/2009 in relation to payment schemes under the common agricultural policy.
- to introduce additional standards of good agricultural and environmental condition relating to the abstraction of water for irrigation and the protection of landscape features. The Council Regulation requires the introduction of these additional standards.

Technical Scrutiny

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

These Regulations have been made in English only, as were the 2004 Regulations being amended. [Standing Order 15.2(ix)]

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument/draft instrument:

Janet Ryder AM

Chair, Subordinate Legislation Committee

21 January 2010

The Government has responded as follows:

**The Common Agricultural Policy Single Payment and Support Schemes
(Cross Compliance) (Wales) (Amendment) Regulations 2010**

"The principal 2004 Regulations will be revoked and remade, in English and in Welsh, during 2010. When this occurs, the amendment 2010 Regulations will be revoked".