

Subordinate Legislation Committee

Report (SLC (3) 03-10)

Date: 28 January 2009
Time: 9.00am
Venue: Committee Room 2, Senedd

CONTENTS

The Committee met on 28 January 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, William Graham AM, Alun Davies AM and Rhodri Morgan AM. There were no apologies.

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)

SLC381 - The Private Water Supplies (Wales) Regulations 2010
Negative Procedure. Date made 13 January 2010. Date laid 14 January 2010. Coming into force date 4 February 2010

SLC382 - The Control of Salmonella in Turkey Flocks (Wales) Order 2010
Negative Procedure. Date made 13 January 2010. Date laid 15 January 2010. Coming into force date 5 February 2010

SLC383 - The M4 Motorway (Junction 24, Coldra Interchange, Newport) (40 MPH Speed Limit) Regulations 2010
Negative Procedure. Date made 14 January 2010. Date laid 15 January 2010. Coming into force date 15 February 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)

SLC373 - The Assembly Learning Grants (European University Institute) (Wales) Regulations 2009
Negative Procedure. Date made 17 December 2009. Date laid 21 December 2009. Coming into force date 21 January 2010

SLC375 - The Official Feed and Food Controls (Wales) Regulations 2009

Negative Procedure. Date made 21 December 2009. Date laid 22 December 2009. Coming into force date 25 January 2010

SLC376 - The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009

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

Having considered the Welsh Government's response to the points reported by the Committee, Members noted that they were accepted by the government, who intended to bring forward amending legislation at the earliest opportunity. Bearing in mind that one of the points was urgent as it involved a discrepancy between the English and Welsh texts, which involved possible lengths of imprisonment by way of penalty, the Committee resolved to write to the Minister for clarification of the term "at the earliest opportunity".

SLC381 - The Private Water Supplies (Wales) Regulations 2010

Negative Procedure. Date made 13 January 2010. Date laid 14 January 2010. Coming into force date 4 February 2010

The Committee's Reports under S.O.15.2 on these Regulations are attached as Annexes 1-4.

Other Business

Committee Inquiries : Inquiry into the Monitoring the outcome of the Committee's Reports on Statutory Instruments

The Committee took oral evidence from the Legal Services Department, Welsh Assembly Government, represented by Jeff Godfrey, Director of Legal Services Department; Elisabeth Jones, Deputy Director of Legal Services Department and Alun Jenkins, Head of Legislation Management Team.

Committee Correspondence

The Committee discussed the Deputy Minister for Social Services' and Counsel General's responses to the Chair's letters regarding SLC357 - The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2009 and Regulatory Impact Assessment Code for Subordinate Legislation.

SLC357 - The Materials and Articles in Contact with Food (Wales) (Amendment) Regulations 2009: The Committee considered these Regulations 9 December 2009 and noted a discrepancy between the Explanatory Memorandum (EM) and Explanatory Note (EN). The EM

stated that a Regulatory Impact Assessment had not been not produced, as the legislation imposed no significant impact on Wales, while the EN contradicted this, stating that a regulatory impact assessment had been prepared. Although the Committee agreed not to invite the Assembly pay special attention to the Regulations, the Chair wrote to the Deputy Minister asking for clarification. The Committee noted the Deputy Minister's response, which accepted that the Explanatory Note was incorrect. The error had been corrected prior to publication.

Regulatory Impact Assessment Code for Subordinate Legislation:

The Committee considered the Welsh Ministers' Regulatory Impact Assessment Code for Subordinate Legislation and the supplementary guidance issued to staff in relation to the Code in November 2009. The Committee found the Welsh Code comprehensive and asked the Counsel General whether it was the Government's intention to review the Code's operation and, if so, what the likely timescale were.

The Committee noted the Counsel General's response and that the Welsh Government intended to monitor the operation of the Code and review it periodically.

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 submitted thus far on the 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.

Janet Ryder AM
Chair, Subordinate Legislation Committee

28 January 2009

Annex 1

Subordinate Legislation Committee

(SLC(3)-03-10)

SLC373

Subordinate Legislation Committee Report

Title: The Assembly Learning Grants (European Union Institute) (Wales) Regulations 2009

Procedure: Negative

These Regulations provide for support for one eligible student taking a designated higher education course at the European University Institute in respect of an academic year beginning on or after 1 September 2010. Grants for living and other costs, a disabled student's allowance and a grant for dependants are available for the eligible student. These Regulations set out the eligibility criteria for the grants; the application procedure and the method for calculating the amount of grant payable. The Regulations also set out the arrangements for payment of the grants and recovery of any overpayments. These Regulations revoke the Assembly Learning Grants (European Institutions) (Wales) Regulations 2008 to the extent set out in regulations 4 and 5.

Technical Scrutiny

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

Regulation 28 of the English version of the text states, "The contribution calculated in accordance with regulation 27 must be applied in accordance with regulation 29. Whereas regulation 28 of the Welsh version of the text states the contribution calculated in accordance with regulation 33 must be applied in accordance with regulation 27," when there is no regulation 33 within the Regulations. [S.O. 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts] and [S.O. 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements].

Merits Scrutiny

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

Janet Ryder AM
Chair, Subordinate Legislation Committee

28 January 2009

The Government has responded as follows:

**The Assembly Learning Grants (European University Institute)
(Wales) Regulations 2009**

"The Assembly Government accepts the reporting point and it intends to correct the error at the earliest opportunity which is likely to arise within the next 6 months and in any event before 1 September 2010 (The English text is correct. The Welsh text will be amended to follow the English text)".

Annex 2

Subordinate Legislation Committee

(SLC(3)-03-10)

SLC375

Subordinate Legislation Committee Report

Title: The Official Feed and Food Controls (Wales) Regulations 2009

Procedure: Negative

These Regulations provide for the execution and enforcement of the feed and food elements of Regulation (EC) No. 882/2004 on official feed and food, animal health and animal welfare controls (“Regulation 882/2004”) and Regulation (EC) No. 669/2009 implementing Regulation (EC) No. 882/2004 of the European Parliament and of the Council as regards the increased level of official controls on imports of certain feed and food of non-animal origin and amending Decision 2006/504 (“Regulation 669/2009”). It designates the competent authorities and creates relevant offences and penalties. It provides for the execution and enforcement on official controls of high risk feed and food of non-animal origin (non POAO) from third countries, which are imported into the community. It revokes and replaces the Official Feed and Food Controls (Wales) Regulations 2007 (S.I. 2007/3294).

Technical Scrutiny

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

(i) Regulation 2(4) (a) refers to functions under the Food Safety Act 1990 assigned by an order under section 7 of the Public Health (Control of Disease) Act 1984 to a Port Health Authority. Section 7 of the Public Health (Control of Disease) Act 1984 relates to a Port Health District and Authority for the Port of London and is therefore not relevant to these Regulations [S.O. 15.2 (vi) defective drafting].

(ii) Regulation 32 (2) of the English text states that “If an authorised officer of an enforcement authority proposes to take any of the measures referred to in Article 19 (1) (a) or (b) of Regulation 882/2004 in respect of feed or food he or she must serve a notice to that effect on the feed or food business operator..”. Regulation 32 (2) of the Welsh text, on the other hand, refers to “Erthygl 19 (1) (a) a (b)”, which means Article 19 (1) (a) and (b). [S.O. 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts].

(iii) Regulation 41 (1) (a) (Offences and Penalties), refers to “any person who contravenes or fails to comply with any of the specified provisions..”. It does not state what those specified provisions are. [S.O. 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements].

Merits Scrutiny

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

Janet Ryder AM
Chair, Subordinate Legislation Committee

28 January 2010

The Government has responded as follows:

The Official Feed and Food Controls (Wales) Regulations 2009

"The Assembly Government accepts the reporting points and it intends to bring forward amending legislation at the earliest opportunity".

Annex 3

Subordinate Legislation Committee

(SLC(3)-03-10)

SLC376

Subordinate Legislation Committee Report

Title: The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009

Procedure: Negative

These Regulations, which apply in relation to Wales implement Commission Decision 2004/374/EC suspending the placing on the market and import of jelly mini-cups containing the food additives E400, E401, E402, E403, E404, E405, E406, E407, E407a, E410, E412, E413, E414, E415, E417 and/or E418. These jelly mini-cups combine several risk factors due to their consistency, shape, size and manner of ingestion, giving rise to the risk that they remain blocked in the throat and provoke choking. The risk also originates from the chemical and physical properties of the additives. In addition, warning through labelling would not be sufficient to protect human health, especially with regard to children.

Technical Scrutiny

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

The following points are reported under Standing Order 15.2(vi) (defective drafting).

- The title of the Regulations in English includes the words “Jelly Mini-Cups” i.e. the plural form of the noun is used.. In Welsh the equivalent words “Jeli Cwpan Fach” utilise the singular noun in the translation of “Cups”. In contrast, in regulation 2 and thereafter throughout the Regulations where the expression “mini-cups” is used in the English text in the Welsh text the words “cwpanau bach” are used i.e. in these instances the plural noun is used. It is considered that the Regulations require correction to ensure consistency throughout.
- In regulation b 2 (3)(c) reference is made to metropolitan counties. As there are no such counties in Wales this reference is inappropriate.

Regulation 3(5) sets out the penalties for contravention of regulations 3(1) or 3(3). The English text provides that a person may be imprisoned for a period not exceeding 3 months; the Welsh text provides that the term is one exceeding 3 months. [Standing Order 15.2 (vii)]

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

28 January 2010

The Government has responded as follows:

The Food (Jelly Mini-Cups) (Emergency Control) (Wales) Regulations 2009

"The Assembly Government accepts the reporting points and it intends to bring forward amending legislation at the earliest opportunity".

Annex 4

Subordinate Legislation Committee

(SLC(3)-03-10)

SLC381

Subordinate Legislation Committee Report

Title: The Private Water Supplies (Wales) Regulations 2010

Procedure: Negative

These Regulations implement Council Directive 98/83/EC on the quality of water intended for human consumption (OJ No. 330, 5.12.1998, p. 32) in relation to private water supplies. A “private supply” is defined in section 93(1) of the Water Industry Act 1991 as a supply that is provided otherwise than by a water undertaker or a licensed water supplier.

Technical Scrutiny

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

(1) Regulation 12 requires a local authority to keep records in respect of every private supply in its area in accordance with Schedule 4. Regulation 13 requires every local authority to provide this information to the Chief Inspector of Drinking Water for Wales and the Welsh Ministers, if requested, by 31st July 2010 and by 31st January each following year. Schedule 4, which relates directly to Regulation 12 and 13, states that “a local authority must, before [], record the number of private supplies in its area...” A date is not specified in the Schedule and therefore causes uncertainty. [S.O. 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements].

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument at this stage.

Janet Ryder AM

Chair, Subordinate Legislation Committee

28 January 2010

The Government has responded as follows:

The Private Water Supplies (Wales) Regulations 2010

The Government accepts the above and will be making Regulations to amend the Private Water Supplies (Wales) Regulations 2010.