

## Constitutional Affairs Committee

### Report (CA (3) 10-10)

**Date:** 25 March 2010  
**Time:** 9.00am  
**Venue:** Committee Room 2, Senedd

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The Committee met on 25 March 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, William Graham AM, Rhodri Morgan AM and Alun Davies AM. There were no apologies. There were no substitutions.

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)**

##### **CA417 - The Federation of Maintained Schools and Miscellaneous Amendments (Wales) Regulations 2010**

Negative Procedure Date made 7 March 2010. Date laid 9 March 2010. Coming into force date 12 April 2010

##### **CA420 - The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2010**

Negative Procedure. Date made 4 March 2010. Date laid 10 March 2010. Coming into force in accordance with regulation 1(2)

##### **CA422 - The National Health Service (Primary Medical Services) (Miscellaneous Amendments) (Wales) Regulations 2010**

Negative Procedure. Date made 10 March 2010. Date laid 11 March 2010. Coming into force date 1 April 2010.

##### **CA423 - The National Health Service (Charges to Overseas Visitors) (Amendment) (Wales) Regulations 2010**

Negative Procedure. Date made 10 March 2010. Date laid 11 March 2010. Coming into force date 1 April 2010.

The Committee noted that these Regulations contained potential merits reporting points under the Standing Order 15.3(ii), but as the CA429 - The National Health Service (Charges to Overseas Visitors) (Miscellaneous Amendments) (Wales) Regulations 2010 (on the agenda for the meeting 22 April 2010) revokes this statutory instrument, the Committee did not invite the Assembly to pay special attention to

these Regulations. However, the general position in respect of this and related pieces of legislation remained unclear (the legislation conveyed a unilateral decision by the UK Government to revoke a bilateral agreement on health care provisions with the Isle of Man), the Committee decided to write to the Minister seeking clarification of the Assembly Government's position.

### **Instruments in respect of which the Assembly is 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)**

##### **CA418 - The Accounts and Audit (Wales) (Amendment) Regulations 2010**

Negative Procedure. Date made 4 March 2010. Date laid 10 March 2010. Coming into force date in accordance with regulation 2

##### **CA421 - The Valuation Tribunal for Wales Regulations 2010**

Negative Procedure. Date made 9 March 2010. Date laid 11 March 2010. Coming into force date in accordance with regulation 1(2)

##### **CA424 - The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010**

Negative Procedure. Date made 11 March 2010. Date laid 12 March 2010. Coming into force date 2 April 2010.

##### **CA425 - The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010**

Negative Procedure. Date made 11 March 2010. Date laid 12 March 2010. Coming into force date 9 April 2010.

The Committee agreed Reports under S.O.15.2 and S.O.15.3 on these Regulations, which are attached as Annexes 1- 3.

### **Other Business**

#### **Committee Inquiries: Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters**

The Committee took oral evidence from the panel which consisted of Jane Davidson AM, Minister for Environment, Sustainability and Housing, Welsh Assembly Government and Jocelyn Davies AM, Deputy Minister for Housing and Regeneration, Welsh Assembly Government.

##### **CA425 -The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010**

The Committee agreed to report (see Annex 4) on these Regulations under Standing Orders 15.2 and also 15.3(ii) (on the grounds “that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.”). It was noted that the way in which the use of the Welsh language has been treated in legislation on this subject had twice before been the subject of adverse reports by this Committee and its predecessor (SLC 67 and SLC313). Bearing in mind the persistency of the issue, at the meeting on 18 March 2010 it was agreed to invite the Minister responsible, Gwenda Thomas AM, to attend the Committee to assist with the scrutiny of this legislation.

Although the Minister was unable to attend, the Committee took oral evidence from Keith Blake, Member of the General Enforcement Team and Rob Wilkins, Team Leader, General Enforcement of the Food Standards Agency Wales and Mark Partridge, Deputy Director of the Legal Services Department of the Welsh Government. The Committee agreed to invite the Deputy Minister for Social Services Gwenda Thomas AM to attend a future meeting to seek further clarification of some issues.

## **Committee Correspondence**

### **Response of the Minister for Children, Education & Lifelong Learning to the Committee’s Report on The School Funding (Wales) Regulations 2010 (CA397)**

The Committee noted the response from the Minister for Children, Education & Lifelong Learning of the Welsh Government Leighton Andrews to the Committee’s report on CA397 – The School Funding (Wales) Regulations 2010.

### **Response from the Minister for Rural Affairs Elin Jones AM to the Chair’s letter regarding CA390 - The Scallop Fishing (Wales) Order 2010**

The Committee noted the response from the Minister for Rural Affairs Elin Jones AM to the Committee’s report on The Scallop Fishing (Wales) Order 2010. Whilst the Committee noted the Minister’s explanation that the fishermen rely on computerised GPS systems to identify their location, it was decided that the Chair should still write to the Counsel General to draw his attention to the importance of the use of maps in statutory instruments where appropriate.

## **Proposed Welsh Language (Wales) Measure**

The Committee noted the substantial subordinate legislation provisions contained within the proposed Measure and decided to invite the Minister for Heritage Alun Ffred Jones AM to give evidence at the meeting 20 May 2010.

## **Proposed Mental Health (Wales) Measure**

The Committee noted the substantial subordinate legislation provisions contained within the proposed Measure and decided to invite the Minister for Health and Social Services Edwina Hart MBE AM to give evidence at the meeting 27 May 2010.

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 Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters.

**Janet Ryder AM**  
Chair, Constitutional Affairs Committee

**25 March 2010**

## **Annex 1**

### **Constitutional Affairs Committee**

**(CA(3)-10-10)**

**CA418**

### **Constitutional Affairs Committee Report**

**Title: The Accounts and Audit (Wales) (Amendment) Regulations 2010**

**Procedure:** Negative

These Regulations amend the Accounts and Audit (Wales) Regulations 2005 (“the 2005 Regulations”). The 2005 Regulations make provision with respect to the accounts and audit of local government bodies in Wales whose accounts are required to be audited in accordance with Part 2 of the Public Audit (Wales) Act 2004 (“the 2004 Act”) (other than local probation boards). These Regulations come into force on 31 March 2010 and thus have effect in relation to accounts for the 2009/2010 financial year subject to an exception concerning a confidentiality agreement for senior employees and relevant police officers. Amendments include a new requirement for the disclosure of the individual remuneration details of senior employees and relevant police officers, changes to the process of signing and approval of accounts, and additional requirements for reporting senior officer remuneration.

### **Technical Scrutiny**

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

- i) Regulation 2 (4) (b) of the Regulations incorrectly contains a reference to regulation 7A (3) when it should in fact contain a reference to regulation 7A (4), as regulation 7A (4) is the correct regulation which contains the meanings for “senior employee”, “relevant police officer” and “remuneration”. (Standing Order 15.2 (vi) defective drafting or it fails to fulfil statutory requirements).
- ii) Regulation 8 of the Regulations refers to the title of regulation 7A as “statement of remuneration, when the correct title of regulation 7A is “declaration of remuneration”. (Standing Order 15.2 (vi) defective drafting 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, Constitutional Affairs Committee

**25 March 2010**

**Government's response:**

**The Accounts and Audit (Wales) (Amendment) Regulations 2010**

"The Government accept that two errors have been made but are satisfied that it would be proper to treat the errors as minor typographical/clerical errors which may be corrected on publication."

## **Annex 2**

### **Constitutional Affairs Committee**

**(CA(3)-10-10)**

**CA421**

### **Constitutional Affairs Committee Report**

**Title: The Valuation Tribunal for Wales Regulations 2010**

**Procedure: Negative**

These Regulations create a single valuation tribunal for Wales (“VTW”). The VTW replaces four tribunals and the valuation tribunal service for Wales.

#### **Technical Scrutiny**

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

1. The English text of regulation 42(5)(a) relates to a “decision that was wrongly made as a result of clerical **error**”. The Welsh text refers to “penderfyniad a wnaed yn anghywir oherwydd **penderfyniad** clerigol” [decision that was wrongly made as a result of clerical **decision**]. The context suggests that the English is correct. [Standing Order 15.2(vii)]

#### **Merits Scrutiny**

Under Standing Order 15.3 the Assembly is not invited to pay special attention to this instrument.

**Janet Ryder AM**

Chair, Constitutional Affairs Committee

**25 March 2010**

The Government has responded as follows:

### **The Valuation Tribunal for Wales Regulations 2010**

#### **Technical Scrutiny**

"The Government accept that an error has been made in the Welsh version of these Regulations as indicated in the report but are satisfied

that it would be proper to treat the error as a minor typographical/clerical error which may be corrected on publication."

## **Annex 3**

### **Constitutional Affairs Committee**

**(CA(3)-10-10)**

**CA424**

### **Constitutional Affairs Committee Report**

**Title: The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010**

**Procedure: Negative**

These Regulations are made under the Adoption and Children Act 2002 and the Children Act 1989. They make provision for the review by an independent panel in three types of case.

#### **Technical Scrutiny**

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

1. In the English text the enabling section states that these Regulations are made using certain powers including section 118 (1) and (5) to (7) of the Care Standards Act 2000. However, the Welsh text states that the powers used to make these Regulations include section 118 (1) and (5) to (8) of the Care Standards Act 2000. There is a discrepancy in the enabling powers relied upon between the Welsh and English texts. [Standing Order 15.2(vi)]

#### **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, Constitutional Affairs Committee

**25 March 2010**

The Government has responded as follows:

#### **Technical Scrutiny**

**The Independent Review of Determinations (Adoption and Fostering) (Wales) Regulations 2010**

The reporting point is agreed. The English text quotes the correct powers. A typographical error to the Welsh text has led to section 118(1) and (5) to (8) being quoted when sections 118(1) and (5) to (7) should be quoted. The error will be corrected upon publication.

## **Annex 4**

### **Constitutional Affairs Committee**

**(CA(3)-10-10)**

**CA425**

### **Constitutional Affairs Committee Report**

**Title: The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010**

**Procedure: Negative**

These Regulations amend the Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007 (S.I. 2007/3165) (W.276), (“the principal Regulations”). They—

(a) provide for the execution and enforcement in relation to Wales of Commission Regulation (EU) No. 115/2010 laying down the conditions for use of activated alumina for the removal of fluoride from natural mineral waters and spring waters (OJ No. L 37, 10.2.2010 p.13); and

(b) implement, in relation to Wales, Article 7.1 to 3 and 6 of Council Directive 98/83/EC relating to the quality of water intended for human consumption (OJ No. L330, 3.11.98, p.32).

They also make further amendments to the principal Regulations in relation to the use of Welsh language descriptions.

### **Technical Scrutiny**

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

1. Regulation 10(2) purports to substitute a revised Welsh term for the previous Welsh term in the Welsh text of various provisions in the principal Regulations. However, the reference to regulation 8(2)(d) in the current Welsh text is incorrect as the wording in question appears in regulation 8(2)(ch). The subsequent reference to regulation 10(2)(d) is incorrect as regulation 10(2) is not divided into sub-paragraphs. [Standing Order 15.2(vi)]

### **Merits Scrutiny**

Under Standing Order 15.3 the Assembly is invited to pay special attention to the following instrument.

2. Under Standing Order 15.3(ii) the Assembly is invited to pay special attention to this instrument on the grounds “that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.”

The way in which the use of the Welsh language is treated in legislation on this subject has twice before been the subject of adverse reports by this Committee and its predecessor (SLC 67 and SLC313).

3. In SLC67 we reported that - “In paragraph (b) of the definition of “drinking water” in regulation 2(1), the Welsh text provides for labelling in English or Welsh, whilst the English text provides for labelling in English only. Similar discrepancies occur in regulations 8, 9, 10, 11, 12, 14. As regulation 20 creates offences in relation to these regulations, the use of the specified Welsh terms without the English equivalent will be an offence according to the English text, but not according to the Welsh text. It is essential that the discrepancy is corrected as quickly as possible. [Standing Order 15.2(vii)]”.

4. In SLC313 we reported that “Regulation 5(2) substitutes a new regulation 8(1)(h) in the principal Regulations. This provision prohibits the use of descriptions other than those specified for natural mineral water. The descriptions specified are in English only in both the English and Welsh texts. Consequently, the use of a corresponding Welsh term would be a breach of regulation 8, and render a person using such a description open to prosecution and a fine of up to £5,000 under regulation 20 of the principal Regulations.

5. On that occasion, the Government responded as follows - “The Government notes the comments about the new regulation 8(1)(h), but believes that as these Regulations are made directly from a recast EU Directive, it is possible under EU Law to use only the English language when dealing with labelling requirements, but not possible to use only the Welsh language. As the information in the description may be viewed as being health related, it is important to ensure that as many consumers as possible (as well as enforcement officers) understand that information. In addition, the inclusion of the Welsh language equivalents to the mandatory English language terminology would not provide a clear food label solution for the consumer. Therefore these Regulations do not require amendment.”

6. Paragraph 5 of the Explanatory Memorandum to the current Regulations sets out the discretion given to Member States by European legislation to permit the use of other languages. However, the Welsh Government has chosen not to exercise that discretion by permitting the use of Welsh terms. Instead, as previously explained, it has prohibited in regulation 8 of the principal Regulations the use of any description other than the prescribed English term. Indeed, these regulations go further by removing Welsh terms from the Welsh text of

regulation 8, and elsewhere in the regulations where Welsh terms are used as descriptions of types of water.

7. Moreover, they re-enact regulation 20 which makes it an offence to contravene regulation 8. Accordingly the Committee does not accept the statement in the Explanatory Memorandum that bilingual labelling may also be used as this is contrary to the explicit provisions of the Regulations. The Explanatory Memorandum makes it clear that a discretion exists, but the Government has once again chosen to persist with a clear prohibition of the use of any term other than the prescribed English terms. A provision to permit the use of corresponding Welsh terms in addition to the prescribed English terms could easily have been included, but the Government has chosen not to do so despite the previous adverse reports from this Committee.

8. The Government response set out below was noted, and oral evidence was received from officials. The Committee was seriously concerned that despite the issue having been raised three years ago, legislation was still being made that obstructed the use of the Welsh language, and that discussions were to take place with the Commission to seek clarification on a provision in a 2000 Directive. The Committee agreed to seek further evidence from the Deputy Minister after the Easter recess and to ask her to bring forward revising regulations at the earliest opportunity.

**Janet Ryder AM**

Chair, Constitutional Affairs Committee

**25 March 2010**

The Government has responded as follows:

### **Technical Scrutiny**

#### **The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) (Amendment) Regulations 2010**

As noted by the Subordinate Legislation Committee, the references to "8(2)(d)" and "10(2)(d)" which appear in regulation 10(2) of the English and Welsh text of the regulations are incorrect. These incorrect references will be corrected on publication, to appear as "8(2)(ch)" and "10(2)" respectively.

### **Merits Scrutiny**

**Reply to the Merit Scrutiny of The Natural Mineral Water, Spring Water And Bottled Drinking Water (Wales) (Amendment) Regulations 2010 by the Constitutional Affairs Committee.**

As detailed in the explanatory memorandum to the regulations the Food Standards Agency policy, for all food labelling, is that the use of the prescribed English language wording is mandatory, it being an official community language. Bilingual labelling **may also be used**, at the discretion of the food producer, as long as the integrity of the mandatory English language element of the label is not compromised. There is some doubt, however, that the legislation reflects this entirely.

The wording of Article 16 of the European Directive 2000/13/EU on the approximation of the laws of the Member States relating to the labelling, presentation and advertising of foodstuffs, indicates that there is no reason to preclude the labelling particulars from being indicated in several languages as long as they are also given in the relevant official language of the Community. There is no intention to prohibit the use of Welsh terms, but we are concerned that the interpretation of Article 16(2) and 16(3) (when read together) could mean that only official community languages (of which Welsh is not an “official community language”) are allowed to be used.

To aid transparency and following clarification from the EU Commission, officials will explore amending the 2007 principal Regulations by adding for example a new “catch all” regulation to state clearly that nothing in the 2007 regulations will preclude the labelling particulars from being indicated in the Welsh (or other) language. We intend to clear this approach with the European Commission in order to head off possible infraction procedures and to ensure that it properly reflects their views. We have started the process and will complete it as soon as possible.