



October 2009

Dear Sir/Madam

Monitoring the outcome of the Subordinate Legislation Committee's Reports

The National Assembly for Wales Subordinate Legislation Committee is currently undertaking a review of Statutory Instruments (SIs) laid before the Assembly by the Welsh Assembly Government.

Under Standing Order 15.2 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 instrument set out under Standing Order 15.2. Details of Standing Order 15.2 are attached at Annex 1.

Since the beginning of the Third Assembly, the Subordinate Legislation Committee has scrutinised 327 statutory instruments as required under Standing Order 15 and reported on 90 statutory instruments under Standing Orders 15.2, 15.3 or 15.6. Details of the reporting points made by the Committee are attached at Annex 2.

The Committee's reports and Government responses on Statutory Instruments / draft Statutory Instruments / other relevant subordinate legislation are available on the Committee's website:

English:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm>

Welsh:

<http://www.cynulliadcymru.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm>

The Committee would welcome your opinion to assist this review. Areas which the Committee would particularly like to receive your views include:

- Any concerns you may have about Welsh Government drafting of regulations and the reporting points identified by the Committee?
- Are there any areas where reporting points are unacceptable?

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- A number of reporting points identify inconsistencies between the translation of Welsh and English text, how should this issue be dealt with?

Please could you send your electronic response to:

legislation.committee@wales.gsi.gov.uk

Alternatively written responses can be sent to:

Subordinate Legislation Committee, Legislation Office, National Assembly for Wales,
Cardiff Bay, CF99 1NA.

When preparing your submission, please keep the following in mind:

- your response should address the issues before the Committee. Please reference your response using the title applied above;
- please indicate whether you are responding on behalf of an organisation, or as an individual;
- the National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed by Assembly Members at Committee meetings;
- **if you do not want your response or name published, it is important that you clearly specify this in your submission and your reasons for this.** However you should be aware that it may not be given the same weight by the Committee when considering the evidence. You should also be aware that the information you have provided in your response to this consultation, including company information, may be published or disclosed in accordance with the Freedom of Information Act 2000 (FOIA);
- please indicate whether or not you would be prepared to give oral evidence to the Committee.

The Committee welcomes any response in English and Welsh and will be considering responses in the Autumn term. Please can you ensure any response is received by 16th November, it may not be possible to consider any responses received after this date.

If you have any queries, please contact Bethan Davies, Committee Clerk on 029 2089 8120 or Olga Lewis, Deputy Clerk on 029 2089 8155.

Yours sincerely,



Janet Ryder AM

Chair

Subordinate Legislation Committee

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Annex 1 - Standing Orders

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.

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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.

Review of Statutory Instruments with reporting points during the Third Assembly (May 2007 to September 2009)

SLC No.	Name of Regulation with reporting point	Date of Meeting	Reporting Point
13	The Transmissible Spongiform Encephalopathies (Wales) (Amendment) Regulations 2007	18 th September 2007	15.2 (vi) – Incorrect cross referencing, inconsistent translation, incorrect numbering, incorrect translation. 15.2 (viii) – contains gender specific language.
15	The Marketing of Vegetable Plant Material (Wales) (Amendment) Regulations 2007	18 th September 2007	15.2 (vi) - Incorrect title given to Regulations.
18	The Food (Suspension of the use of E 128 Red 2G as Food Colour) (Wales) Regulations 2007	18 th September 2007	15.2 (vi) - Incorrect referencing.
20	The Assembly Learning Grant (Further Education) Regulations 2007	2 nd October 2007	15.2 (vi) – defective drafting and 15.2 (vii) – inconsistencies between the Welsh and English texts.
21	The Education Maintenance Allowances (Wales) Regulations 2007	2 nd October 2007	15.2 (vi) – incorrect cross referencing and 15.2 (vii) – inconsistencies between the Welsh and English texts.
22	The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2007	2 nd October 2007	15.2 (vii) – inconsistencies between the Welsh and English texts and 15.2 (viii) use of gender specific language.
23	The Education (Fees and Awards) (Wales) Regulations 2007	2 nd October 2007	15.2 (vii) – inconsistencies between the Welsh and English texts.
24	The Assembly Learning Grants (European Institutions)	2 nd October 2007	15.2 (vi) – incorrect cross referencing.

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	(Wales) Regulations 2007		
26	The Import and Export Restrictions (Foot-And-Mouth Disease) (Wales) Regulations 2007	18 th September 2007	15.2 (ix) – no welsh version provided.
30	The Import and Export Restrictions (Foot-And-Mouth Disease) (No.2) (Wales) Regulations 2007	18 th September 2007	15.2 (ix) – no welsh version provided.
36	The Foot-and-Mouth Disease (Export Restrictions) (Wales) Regulations 2007	18 th September 2007	15.2 (ix) – no welsh version provided.
37	The Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2007	25 th September 2007	15.2 (vi) – incorrect referencing.
39	The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007	25 th September 2007	15.2 (vi) – defective drafting.
41	The Import and Export Restrictions (Foot-and-Mouth Disease) (No.3) (Wales) Regulations 2007	25 th September 2007	15.2 (ix) – no welsh version provided.
52	The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007	23 rd October 2007	15.2 (vi) several drafting errors; 15.2 (vii) – inconsistencies in the Welsh and English texts and 15.2(viii) – use of gender specific language.
53	The Import and Export	23 rd October	15.2 (ix) – no welsh version provided.

	Restrictions (Foot-and-Mouth Disease) (No.4) (Wales) Regulations 2007	2007	
56	The Import and Export Restrictions (Foot-and-Mouth Disease) (No.5) (Wales) Regulations 2007	6 th November 2007	15.2 (ix) – no welsh version provided.
61	The Import and Export Restrictions (Foot-and-Mouth Disease) (No.6) (Wales) Regulations 2007	13 th November 2007	15.2 (ix) – no welsh version provided.
67	The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007	27 th November 2007	15.2 (vii) – several inconsistencies between the Welsh and English texts.
75	The Materials and Articles in Contact with Food (Wales) Regulations 2007	4 th December 2007	15.2 (v) – use of incorrect verb and meaning was therefore unclear; 15.2 (viii) – use of gender specific language.
76	The Animals and Animal Products (Import and Export) (Wales) (Amendment) Regulations 2007	27 th November 2007	15.2 (ix) – no welsh version provided.
77	The Official Feed and Food Controls (Wales) Regulations 2007	4 th December 2007	Numerous drafting errors and several inconsistencies between the Welsh and English texts – points reported under 15.2 (vi) and (vii).
78	The Export and Movement Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007	4 th December 2007	15.2 (ix) – no welsh version provided.
80	The Plant Health (Import Inspection Fees) (Wales) (Amendment) (No.2) Regulations 2007	4 th December 2007	15.2 (v) – incorrect power referred to and 15.2 (vii) further inconsistencies between the Welsh and English texts.
87	The Export and	15 th	15.2 (ix) – no welsh version

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	Movement Restrictions (Foot-and-Mouth Disease) (No.2) (Wales) Regulations 2007	January 2008	provided.
92	The Export Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007	15 th January 2008	15.2 (ix) – no welsh version provided.
101	The Street Works (Fixed Penalty) (Wales) Regulations 2008	5 th February 2008	15.2 (vi) – defective drafting in the Welsh text and 15.2 (vii) inconsistencies between the Welsh and English texts.
102	The Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008	5 th February 2008	15.2 (vi) – defective drafting in the Welsh text and 15.2 (vii) inconsistencies between the Welsh and English texts.
108	The Childcare Act 2006 (Provision of Information) (Wales) Regulations 2008	19 th February 2008	15.2 (vi) – defective drafting in the Welsh text and 15.2 (vii) inconsistencies between the Welsh and English texts.
122	The Assembly Learning Grant (Further Education) Regulations 2008	8 th April 2008	15.2 (vi) – defective drafting in the Welsh text and 15.2 (vii) inconsistencies between the Welsh and English texts.
127	The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2008	8 th April 2008	15.2 (ii) – The Regulations make use of a superfluous power and the government have agreed to issue a correction slip.
128	The Meat (Official Control Charges) (Wales) Regulations 2008	15 th April 2008	15.2 (vii) – several inconsistencies between the Welsh and English texts.
129	The Street Works (Inspection Fees) (Wales) (Amendment) Regulations 2008	15 th April 2008	15.2 (vi) – there is defective drafting in that it amends a monetary amount incorrectly as the amount stated has already been amended by subsequent regulations. The government agreed to revoke the regulations.
133	The Civil Enforcement of	15 th April 2008	15.2 (vii) – two inconsistencies between the Welsh and English

	Parking Contraventions (Approved Devices) (Wales) Order 2008		texts.
135	The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008	15 th April 2008	15.2 (vii) – two inconsistencies between the Welsh and English texts.
141	The Rice Products from the United States of America (Restriction of First Placing on the Market) (Wales) Regulations 2008	22 nd April 2008	15.2 (vi) – defective drafting and incorrect cross-referencing.
154	The Plastic Materials and Articles in Contact with Food (Wales) Regulations 2008	13 th May 2008	15.2 (ix) – no welsh version provided.
157	The Food Labelling (Declaration of Allergens) (Wales) Regulations 2008	3 rd June 2008	15.2 (vi) – defective drafting and 15.2 (vii) inconsistencies between the Welsh and English texts.
158	The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008	3 rd June 2008	15.2 (vi) – several defective drafting points and 15.2 (vii) inconsistencies between the Welsh and English texts.
162	The Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2008	10 th June 2008	15.2 (vi) and 15.2 (vii) – there are inconsistencies in the Welsh and English texts and there is incorrect referencing.
166	The Education (National Curriculum) (Attainment Targets and	17 th June 2008	15.2 (vi) and (vii) – Error made with the commencement provision and unclear as to whether part of the regulations had been commenced. Also inconsistencies between the

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	Programmes of Study) (Wales) Order 2008		Welsh and English texts.
170	The Local Authorities (Conduct of Referendums) (Wales) Regulations 2008	17 th June 2008	15.2 (vi) and (vii) – Defective drafting and two inconsistencies between the Welsh and English texts.
177	The Education (National Curriculum) (Foundation Stage) (Wales) Order 2008	15 th July 2008	15.2 (vi) and (vii) – there is defective drafting in the Welsh text which means that one of regulation objectives is not achieved and does not mirror its English counterpart.
182	The Shrimp Fishing Nets (Wales) Order 2008	23 rd September 2008	15.2 (vi) and (vii) – defective drafting and inconsistencies in the Welsh and English text, which if unchanged would lead to failure of the policy objective.
189	The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2008	29 th September 2008	15.2 (vi) – defective drafting – incorrect cross referencing making part of the regulations unclear.
190	The School Milk (Wales) Regulations 2008	23 rd September 2008	15.2 (vi) – defective drafting – incorrect cross referencing making part of the regulations unclear.
200	The Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008	6 th October 2008	15.2 (ix) – Only partial translation of the English text into Welsh.
212	The Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2008	4 th November 2008	15.2 (vi) – defective drafting – the paragraph numbers are incorrect and lead to lack of clarity.
214	The Plant Health (Wales) (Amendment) Order 2008	11 th November 2008	15.2 (vi) – defective drafting – the title of the Regulations in the Welsh text is incorrect.
216	The Non-Domestic Rating Contributions	18 th November 2008	15.2 (i) – There is a typographical error in relation to dates which if unchanged would lead to the

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	(Wales) (Amendment) Regulations 2008		regulations being intra vires.
224	The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2008	13 th January 2009	15.2 (vi) – There are numerous errors in the schedule relating to classes of fireplaces which are exempt.
226	The Assembly Learning Grants (European Institutions) (Wales) (Amendment) (No.2) Regulations 2008	13 th January 2009	15.2 (vii) – there is inconsistency between the Welsh and English texts in relation to the total amount available under the grant.
228	The Nitrate Pollution Prevention (Wales) Regulations 2008	13 th January 2009	15.2 (vi) – two minor drafting errors.
230	The Transmissible Spongiform Encephalopathies (Wales) Regulations 2008	20 th January 2009	15.2 (vi) and (vii) – there are inconsistencies between the Welsh and English texts and also defective drafting with incorrect cross-references to paragraphs.
231	The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2008	20 th January 2009	15.2 (vii) – there are inconsistencies between the Welsh and English texts which include differences in the amounts relating to household income and incorrect cross-referencing to paragraph numbers.
255	The Products of Animal Origin (Third Country Imports) (Wales) (Amendments) Regulations 2009	17 th March 2009	15.2 (vii) – the Welsh and English texts refer to different European legislation, one of which is irrelevant.
259	The Plastic Materials and Articles in Contact with Food (Wales) Regulations 2009	24 th March 2009	15.2 (vi) and (ix) – there is defective drafting and a failure to provide a Welsh version of the regulations.
263	The National Health Service (Amendments relating to Optical Charges and Payments)	24 th March 2009	15.2 (vi) – defective drafting in the Welsh text where some words have been omitted.

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	(Wales) Regulations 2009		
272	The Eggs and Chicks (Wales) Regulations 2009	27 th April 2009	15.2 (v) – phrase used on two occasions is not sufficiently clear, and 15 (vi) – defective drafting in relation to a definition and incorrect reference to European legislation.
274	The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009	27 th April 2009	15.2 (vi) and (vii) – there is defective drafting and inconsistencies between the Welsh and English texts. The English text refers to “Local Authority” while the Welsh refers to “Local Education Authority”.
283	The Purity Criteria for Colours, Sweeteners and Miscellaneous Food Additives (Wales) Regulations 2009	11 th May 2009	15.2 (vi) and (vii) – there is defective drafting and inconsistencies between the Welsh and English texts. The English text refers to the correct European legislation but the Welsh reference is incorrect.
295	The Swine Vesicular Disease (Wales) Regulations 2009	22 nd June 2009	15.2 (vii) – There is an inconsistency between the Welsh and English translation which could lead to alternative interpretations of an offence created by the regulations.
296	The Products of Animal Origin (Disease Control) (Wales) (Amendment) Regulations 2009	22 nd June 2009	15.2 (vi) – there is a minor drafting error relating to one word.
299	The Contaminants in Food (Wales) Regulations 2009	22 nd June 2009	15.2 (vii) – there are inconsistencies between the Welsh and English texts. The English text refers to the correct European legislation but the Welsh reference is incorrect.
304	The Marketing of Fresh Horticultural Produce (Wales) Regulations 2009	6 th July 2009	15.2 (ix) - The Regulations contain the text of labels that it proposes to publish in English only.
305	The Meat (Official Control Charges) (Wales) Regulations 2009	6 th July 2009	15.2 (vi) - There are a couple of defective drafting points and under 15.2 (v) – a confusing translation of the word “Secretary” in Welsh and English.
310	The National Health Service (Restructuring of National Health Service Bodies:	23 rd September 2009	15.2 (vi) – omission of a date in the English text.

	Consequential Amendments) (Wales) Order 2009		
311	The Welsh College of Horticulture (Dissolution) Order 2009	23 rd September 2009	15.2 (vi) and (vii) – there is a drafting error in describing a piece of land and also an inconsistency in that description between the Welsh and English texts.
312	The National Health Service (General Medical Services Contracts) (Prescription of Drugs Etc) (Wales) (Amendment) Regulations 2009	23 rd September 2009	15.2 (ix) – the Regulations were not made in Welsh.
321	The School Teacher Appraisal (Amendment) (Wales) Regulations 2009	23 rd September 2009	15.2 (v) and (vi) – the title of the Regulations are misleading and there are some minor drafting errors.