

Subordinate Legislation Committee

Report (SLC(3)-02-09)

Date: 20 January 2009

Time: 8.45am

Venue: Committee Room 3, Senedd

Contents

The Committee met on 20 January 2009. At the meeting the following Committee Members were present: Mark Isherwood AM, Alun Davies AM, Joyce Watson AM, Janet Ryder AM, Mike German AM.

Following the changes in the Committee membership, Janet Ryder AM was elected as Chair.

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

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

SLC233 - The Controlled Drugs (Supervision of Management and Use) (Wales) Regulations 2008

Negative Procedure. Date made 16 December 2008. Date laid 18 December 2008. Coming into force date 9 January 2009

SLC234 - The Transmissible Spongiform Encephalopathies (Wales) (Amendment) (No.2) Regulations 2008

Negative Procedure. Date made 19 December 2008. Date laid 19 December 2008. Coming into force date 12 January 2009

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

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

SLC230 - The Transmissible Spongiform Encephalopathies (Wales) Regulations 2008

Negative Procedure. Date made 9 December 2008. Date laid 10 December 2008. Coming into force date 31 December 2008

The Committee considered the Government's response to the reporting points identified by Committee's Legal Advisers. Given that the point raised in respect of regulation 15(1)(c) could potentially affect issues relating to vires in connection with alleged offences, the Committee considered that the Government's proposed response in respect of this particular reporting point was not acceptable and was of the view that the defect should be corrected as soon as possible. The Members agreed that the Chair should write to the Minister to draw her attention to the views of the Committee.

SLC231 - The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2008

Negative Procedure. Date made 10 December 2008. Date laid 15 December 2008. Coming into force date 9 January 2009.

The Members noted that the Committee reported many Statutory Instruments under the Standing Order 15.2(vii) - the legislation contained inconsistencies between the meaning of its English and Welsh texts. Quite often these inconsistencies were significant and potentially could have very serious implications, as is the case with SLC231 - The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2008. The Members asked the Legal Adviser to report at the next meeting on the reasons as to why these inconsistencies occurred so frequently.

The Members also requested a paper on the distribution of the points reported under the Standing Order 15 in respect of the Statutory Instruments considered during the current Assembly year. The report is to be prepared before the beginning of the summer recess.

The Committee's Report under S.O.15.2 on Statutory Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure) is attached as Annexes 1-2 to this Report.

Janet Ryder AM
Chair, Subordinate Legislation Committee
20 January 2009

Annex 1

Subordinate Legislation Committee

(SLC(3)-01-09)

SLC230

Subordinate Legislation Committee Report

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

Title: The Transmissible Spongiform Encephalopathies (Wales) Regulations 2008

These Regulations revoke and remake with amendments the Transmissible Spongiform Encephalopathies (Wales) Regulations 2006. They enforce Regulation (EC) No 999/2001 (as amended) of the European Parliament and of the council laying down rules for the prevention, control, and eradication of certain transmissible spongiform encephalopathies and also implement Community Decision 2007/511 prohibiting the placing on the market of products derived from bovine animals born or reared within the UK before 1 August 1996 for any purpose and exempting such animals from certain controls and eradication measures laid down in Regulation No 999/2001.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument under Standing Order 15.2(vi) (drafting appears to be defective):-

Regulation 15(1)(c): the English text refers to the person in possession of or the supplier of certain animal protein or feedingstuffs. The Welsh text omits reference to the supplier.

Schedule 3 paragraph 5(6): The English text refers to an animal killed under this paragraph (i.e. paragraph 5). The Welsh text refers to an animal killed under this regulation. Sub-divisions within schedules are correctly referred to as paragraphs; an amendment to the Welsh text is required.

Schedule 6: the four sub-divisions of paragraph 3(2) of the Welsh text are referred to as (a) - (d); the correct references should be (a) - (ch).

Janet Ryder AM
Chair, Subordinate Legislation Committee
20 January 2009

Government have responded as follows:-

The Government will use the forthcoming Si amending the principal TSW Regulations to incorporate the new rules on sheep and goat milk to correct these errors, the new rules are expected in March 2009 and it is anticipated that the amending Si implementing those rules will be made in June 2009.

Annex 2

Subordinate Legislation Committee

(SLC(3)-02-09)

SLC231

Subordinate Legislation Committee Report

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

Title: The Assembly Learning Grants and Loans (Higher Education) (Wales) (No.2) Regulations 2008

These Regulations provide for financial support for students who are ordinarily resident in Wales taking designated higher education courses in respect of academic years beginning on or after 1 September 2009. They consolidate, with some changes, the Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008, as amended ("the 2008 Regulations").

Procedure: Negative

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

The English text of regulation 3(9) concludes with a reference to 1 September 2009, whilst the Welsh text refers to 2008. [Standing Order 15.2 (vii)]

The English text of regulation 10(2)(b) includes the expression "or is applying for an additional amount of fee loan under regulation 21(3) or 21(7)," whilst the Welsh text states "neu os yw'n ceisio am swm ychwanegol o fenthyciad at ffioedd o dan reoliad 21(6) neu 21(8)," [or is applying for an additional amount of fee loan under regulation 21(6) or 21(8)]. [Standing Order 15.2 (vii)]

The English text of paragraph 5(1)(a) of Schedule 6 includes the expression "in any case where the household income exceeds £39,793" whilst the Welsh text states "mewn unrhyw achos lle mae incwm yr aelwyd dros £39,780" [in any case where the household income exceeds £39,780]. [Standing Order 15.2 (vii)]

These Regulations come into force on 9 January 2009; it is therefore important that these discrepancies be rectified as soon as possible.

Janet Ryder AM
Chair, Subordinate Legislation Committee
20 January 2009

Government have responded as follows:-

The Assembly Government accepts the reporting points and it intends to bring forward amending legislation at the earliest opportunity which is likely to arise within the next four months and in any event before 1 September 2009, the start of the academic year to which the Regulations relate.