

# Subordinate Legislation Committee

## Report (SLC(3) 11-09)

**Date:** 27 April 2009

**Time:** 16.00

**Venue:** Committee Room 3, Senedd

### Contents

The Committee met on 27 April 2009. At the meeting the following Committee Members were present: Janet Ryder AM, Alun Davies AM, Mike German AM and Joyce Watson AM. Apologies were received from Mark Isherwood AM. William Graham AM substituted.

The Committee reports to the Assembly as follows:

### **Instruments and draft instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2**

#### **Draft Instruments subject to approval pursuant to a resolution of the Assembly (Affirmative Procedure)**

SLC267 - The Traffic Management Permit Scheme (Wales)

Affirmative Procedure. Date made...2009. Date laid ... 2009. Coming into force date ...2009.

SLC268 - The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009

Affirmative Procedure. Date made...2009. Date laid ... 2009. Coming into force date 1 June 2009.

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

SLC269 - The Local Health Boards (Establishment and Dissolution) (Wales) Order 2009

Negative procedure. Date made 24 March 2009. Date laid 25 March 2009. Coming into force date 1 June 2009

SLC270 - The Local Health Boards (Constitution, Membership and Procedures) (Wales) Regulations 2009

Negative procedure. Date made 24 March 2009. Date laid 25 March 2009. Coming into force date 1 June 2009

SLC271 - The Wildlife and Countryside Act 1981 (Variation of Schedule 4) (Wales) Order 2009

Negative procedure. Date made 24 March 2009. Date laid 26 March 2009. Coming into force date 23 April 2009

SLC273 - The Education (Admission of Looked After Children) (Wales) Regulations 2009

Negative procedure. Date made 31 March 2009. Date laid 1 April 2009. Coming into force date 22 April 2009

SLC275 - The Education Maintenance Allowances (Wales) (Revocation) Regulations 2009

Negative procedure. Date made 30 March 2009. Date laid 1 April 2009. Coming into force date 24 April 2009

SLC276 - The Education (Infant Class Sizes) (Wales) (Amendment) Regulations 2009

Negative procedure. Date made 31 March 2009. Date laid 1 April 2009.

Coming into force date 22 April 2009

SLC277 - The Merthyr Tydfil and Powys (Areas) Order 2009

Negative procedure. Date made 5 April 2009. Date laid 7 April 2009. Coming into force date in accordance with article 1

SLC278 - The Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009

Negative procedure. Date made 11 April 2009. Date laid 15 April 2009. Coming into force date 6 May 2009

### **Instruments and Draft instruments in respect of which the Assembly is invited to pay special attention under Standing Order 15.2**

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

SLC272 - The Eggs and Chicks (Wales) Regulations 2009

Negative procedure. Date made 25 March 2009. Date laid 27 March 2009. Coming into force date 17 April 2009

SLC274 - The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009

Negative procedure. Date made 31 March 2009. Date laid 1 April 2009. Coming into force date 22 April 2009

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.

## **Other Business**

### **Consideration of Apprenticeships, Skills, Children and Learning Bill**

As part of scrutiny of the Apprenticeships, Skills, Children and Learning 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 Deputy Minister for Skills John Griffiths AM.

The Committee agreed to consider a draft report and the evidence received in relation to the Bill at its next meeting.

### **Proposed Children and Families (Wales) Measure**

The Committee considered the Proposed Children and Families (Wales) Measure, which was laid on 2 March 2009. The Members noted that this Measure contains a number of provisions which confer on the Welsh Ministers a power to make legislation in relation to certain functions under the Proposed Measure and that the power in each case is to be exercised by the Welsh Ministers by statutory instrument. The Proposed Measure covered the portfolios of three Ministers: Deputy Minister for Health and Social Services Gwenda Thomas AM, Minister for Children, Education, Lifelong Learning and Skills Jane Hutt AM and Minister for Social Justice and Local Government Dr Brian Gibbons AM.

The Committee decided to scrutinise the draft Measure under SO 15.6 (ii) ("the appropriateness of provisions in proposed Assembly Measures that grant powers to make subordinate legislation to the Welsh Ministers" ) and invite the Minister for Social Justice and Local Government Dr Brian Gibbons AM to give evidence the Committee.

### **Proposed Local Government (Wales) Measure 200-: Update**

The Members noted that the Legislation Committee 4 in the course of its Stage 2 scrutiny of the Proposed Measure carried out the Recommendations (1) and (3) which were made by the Subordinate Legislation Committee after the consideration of the Proposed Local Government (Wales) Measure 200- under Standing Order 15.6(ii) in its report on the appropriateness of provisions granting powers to the Welsh Ministers to make subordinate legislation as provided in the Proposed Local Government (Wales) Measure 200-.

### **Enhancing the Scrutiny of Subordinate Legislation: Inquiry into the scrutiny of subordinate legislation and delegated powers - consideration of the Final Report**

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to deliberate on the conclusions and recommendations of the Inquiry report.

**Janet Ryder AM**  
**Chair, Subordinate Legislation Committee**  
**27 April 2009**

## **Annex 1**

### **Subordinate Legislation Committee**

(SLC(3)-11-09)""

**SLC272**

#### **Subordinate Legislation Committee Report**

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

**Title: The Eggs and Chicks (Wales) Regulations 2009**

The Regulations implement EC marketing standards relating to the production, marketing and grading of eggs, and will enable enforcement in Wales of both existing and new Community legislation relating to eggs for hatching and consumption, and to farmyard poultry chicks.

**Procedure: Negative**

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

Regulation 3 (1) the definition of "chicks" should refer to the meaning given to it by Article 1(2) of Commission Regulation (EC) No 617/2008, rather than 618/2008 - 15.2 (vi)

Regulation 3 (4) (b) should refer to Commission Regulation (EC) No 617/2008 rather than 617/2007 - 15.2 (vi)

Regulation 5 (11) the phrase "the clock is stopped" does not make it sufficiently clear, whether it is intended that when calculating the 28 day time limit under regulation 5 (2), that any period that the Welsh Ministers give to an applicant to take any action specified in a notice under regulation 5 (4) is to be excluded - 15.2 (v)

Regulation 8 (11) the phrase "the clock is stopped" does not make it sufficiently clear whether it is intended that when calculating the 28 day time limit under regulation 8 (2), that any period that the Welsh Ministers give to an applicant to take any action specified in a notice under regulation 8 (4) is to be excluded - 15.2 (v)

**Janet Ryder**  
**Chair, Subordinate Legislation Committee**  
**27 April 2009**

### **The Government has responded as follows:**

The Government accepts the reporting points.

In relation to the points reported in respect of Regulation 3(1) and Regulation 3(4)(b) we propose to correct the errors identified immediately on publication of the legislation.

In relation to the points reported in respect of Regulation 5(11) and Regulation 8(11) legal services have received instructions to revoke and remake these regulations in order to implement new controls in relation to Salmonella in eggs. We propose to amend the wording reported within the forthcoming new set of regulations.

## **Annex 2**

### **Subordinate Legislation Committee**

("S"LC(3)-11-09)

**SLC274**

### **Subordinate Legislation Committee Report**

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

#### **Title: The Education (Admission Appeals Arrangements) (Wales) (Amendment) Regulations 2009**

These Regulations amend the Education (Admission Appeals Arrangements) (Wales) Regulations 2005 ("the 2005 Regulations"). The 2005 Regulations prescribe matters relating to appeals brought against a decision to refuse a child admission to a school. Two amendments are being made. The first is minor which is intended to clarify the matters that should be taken into account by an appeal panel when considering appeals against decisions made on the basis of infant class size legislation. The second substitutes a new Schedule 2 in the 2005 Regulations, which makes provision for appeals in cases where decisions are made about children entering the sixth form, or receiving education after they have ceased to be of compulsory school age. The new Schedule removes reference to the Council on Tribunals which has been replaced by the Administrative Justice and Tribunals Council.

#### **Procedure: Negative**

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

The English text consistently refers to "local authority" whilst the Welsh text (with the exception of regulation 2 (5) and (11), which refers to "awdurdod addysg lleol", which means "local education authority") refers to "awdurdod lleol". Both the specific enabling provisions cited (sections 94 and 95 of the School Standards and Framework Act 1998) and the 2005 Regulations refer consistently to "local education authority", which is therefore the term that should have been used in these Regulations. [Standing Order 15.2 (vi)].

The English text of regulation 2 (5) and (11) refers to "local authority" whilst the Welsh text of regulation 2 (5) and (11) refers to "awdurdod addysg lleol", which means "local education authority". [Standing Order 15.2 (vii)].

These Regulations come into force on 22 April 2009; it is therefore important that the above discrepancy be rectified as soon as possible.

**Janet Ryder**  
**Chair, Subordinate Legislation Committee**  
**27 April 2009**

**The Government has responded as follows:-**

The Government will make an amending set of regulations to address the points raised within 3 months. However, the Government does not believe that the use of the term local authority affects the understanding of the Regulations.