

# Subordinate Legislation Committee

(SLC(3)-13-07)

SLC77

## Subordinate Legislation Committee Report

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

**Title: The Official Feed and Food Controls (Wales) Regulations 2007**

- providing for the execution and enforcement of the feed and food elements of Regulation (EC) No 882/2004 on official feed and food. They revoke and re-enacting with changes the Official Feed and Food Controls (Wales) Regulations 2006 ("the 2006 Regulations").

### Procedure: Negative

The Assembly is invited to pay special attention to this instrument under Standing Order 15.2 on the grounds set out in Standing Order 15.2(vi) (defective drafting) and Standing Order 15.2(vii) (inconsistencies between the Welsh and English texts):

In the English text of regulation 2(1), the definition of "feed authority" refers to the authority required by section 67(1) of the Agriculture Act 1970 to enforce that Act within its area or district. Section 67(1) applies to England; in relation to Wales the correct reference is to section 67(1A). [Standing Order 15.2(vi)]

The English text of regulation 2(4)(a) refers to sections 2 and 7 of the Public Health (Control of Disease) Act 1984. The Welsh text refers to section 2 only. Given that section 7 refers to the London port health authority and that no reference was made to section 7 in the 2006 Regulations it would appear that the reference to section 7 is erroneous. [Standing Order 15.2(vi)]

The English text of regulation 3(4) refers to "the food authority" whereas the Welsh text refers to "the feed authority". As this provision is concerned with the designation of an authority as a competent authority in relation to relevant food law, it is assumed that the English text is correct. [Standing Order 15.2(vi) and(vii)]

The English text of regulation 3(5) deals with the designation of the Food Standards Agency as a competent authority pursuant to Article 31 of Regulation 882/2004 and that the designation extends only to "operations" in respect of which the Agency executes and enforces the Food Hygiene (Wales) Regulations 2006. The Welsh text includes a reference to "primary production and associated operations". [Standing Order 15.2(vii)]

Regulation 20 sets out penalties. Paragraph (1) of the English text refers to "paragraph (8) of regulation 18" whereas the Welsh text refers to "this Part of the Regulations". [Standing Order 15.2(vii)]

The English text of regulation 27(1)(a) prohibits the introduction into Wales of specified feed which fails to comply with "Feed safety requirements". The Welsh text refers to "feed safety requirements" but additionally includes words equivalent to "and those requirements". [Standing Order 15.2(vii)]

Regulation 30(1) provides that an authorised officer must serve notify the operator of a feed or food business if it proposed that a consignment of feed or food is to be placed under official detention. The Welsh text includes a provision that the authorised officer must first hear from the operator; the English text does not refer to this requirement. [Standing Order 15.2(vii)]

Where the Welsh text of regulation 33(1) refers to an action to be undertaken by the Welsh Ministers the word "ganddynt" should replace "ganddo". [Standing Order 15.2(vi)]

The Welsh text of regulation 27(a) and (b) refers to the "area or district" of a food authority; the English text refers only to the food authority's "area". [Standing Order 15.2(vi)]

Regulation 39 deals with offences and penalties. Paragraph (1) sets out four instances where a person is guilty of an offence. The Welsh text omits the paragraph lettered (c) and (d) in the English text. [Standing Order 15.2(vi) and (vii)]

Paragraph (2) of regulation 39 provides that a person guilty of an offence "under this Part of these Regulations..." whereas the Welsh text refers to a person "guilty of an offence under the Import Provisions...". [Standing Order 15.2(vi)]

In Schedule 1 the Welsh text entry relating to Regulation 852/2004 omits wording equivalent to "as read with Regulation 2073/2005". [Standing Order 15.2(vii)]

The Welsh text of Schedule 4 is set out in three columns and so does not accord with the wording of regulation 3(1) which introduces this Schedule. Further the Welsh text setting out the provisions of Regulation 882/2004 in respect of which the Agency is designated omits reference to articles 27 and 28. Likewise the provision in respect of which the feed authority is designated omits reference to articles 27 and 28.

The Welsh text of Schedule 5 is set out in three columns and so does not accord with the wording of regulation 3(3) which introduces this Schedule. Further the entries which set out the provisions of Regulation 882/2004 in respect of which the Agency is designated as competent authority omits reference to Articles 27 and 28 and refers to Article 31(1) and (2) whereas the English text refers to Article

31. Likewise the provisions in respect of which the food authority is designated, in the Welsh text omits reference to Articles 27 and 28. [Standing Order 15.2(vi) and (vii)]

The drafting lawyer has been notified of numerous errors which are to be found in the footnotes. These are capable of correction on publication.

These Regulations relate to the requirement to comply with feed and food legislation (whether European or domestic) and to circumstances where a person may be involved in legal proceedings. Given that many of the reporting points identified are in respect of provisions which relate to compliance or enforcement the Government may wish to consider revoking and remaking these Regulations.

The Government accepts the points raised in the report and will now take steps to issue new Regulations early in 2008, which will replace the Official Feed and Food Controls (Wales) Regulations 2007

### **Legal Advisers**

Subordinate Legislation Committee

### **November 2007**