

Subordinate Legislation Committee

Report (SLC(3) 23-08)

Date: 21 October 2008)

Time: 8.45am

Venue: Committee Room 1, Senedd

Contents

The Committee met on 21 October 2008. At the meeting the following Committee Members were present: Eleanor Burnham AM and Alun Davies AM. Apologies were received from Dr Dai Lloyd AM, Mark Isherwood AM and Joyce Watson AM. Chris Franks AM substituted for Dr Dai Lloyd AM.

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)

SLC206 - The Education (National Curriculum) (Foundation Stage) (Wales) (Amendment) Order 2008

Negative Procedure. Date made 3 October 2008. Date laid 7 October 2008. Coming into force date 28 October 2008

SLC207 - The Central Rating List (Wales) (Amendment) Regulations 2008

Negative Procedure. Date made 6 October 2008. Date laid 8 October 2008. Coming into force date 30 October 2008.

SLC208 - The Non-Domestic Rating (Communications Hereditaments) (Valuation, Alteration of Lists and Appeals and Material Day) (Wales) Regulations 2008

Negative Procedure. Date made 6 October 2008. Date laid 8 October 2008. Coming into force date 31 October 2008.

SLC209 - The Disqualification from Caring for Children (Wales) (Amendment) Regulations 2008

Negative Procedure. Date made 8 October 2008. Date laid 10 October 2008. Coming into force date 3 November 2008.

SLC210 - The Suspension of Day Care Providers and Child Minders (Wales) (Amendment) Regulations 2008

Negative Procedure. Date made 8 October 2008. Date laid 10 October 2008. Coming into force date 3 November 2008.

SLC211 - The Tax Credits (Approval of Child Care Providers) (Wales) (Amendment) Scheme 2008

Negative Procedure. Date made 8 October 2008. Date laid 10 October 2008. Coming into force date 3 November 2008.

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)

SLC189 - The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2008

Negative Procedure. Date made 5 August 2008. Date laid 8 August 2008. Coming into force date in accordance with regulation 1.

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

Other items of business

Due to the absence of the Chair Dr Dai Lloyd AM the Committee elected Alun Davies AM to act as Temporary Chair.

Alun Davies AM

Temporary Chair, Subordinate Legislation Committee

21 October 2008

Annex 1

Subordinate Legislation Committee

(SLC(3)-23-08)

SLC205

Subordinate Legislation Committee Report

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

Title: The Infant Formula and Follow-on Formula (Wales) (Amendment) Regulations 2008

- amending the Infant Formula and Follow-on Formula (Wales) Regulations 2007 ("the 2007 Regulations") to create transitional arrangements in relation to the enforcement of - labelling requirements for infant formula and follow-on formula, requirements in relation to the shape, appearance and packaging of infant formula and follow-on formula and make related consequential amendments. These amendments are necessary to give effect to the judgement of the High Court delivered on 20 February 2008 giving a declaration that the 2007 Regulations fail to comply with Commission Directive 2006/141/EC to the extent that the 2007 Regulations prohibit as of 11 January 2008 instead as from 31 December 2009, trade in infant formula and follow-on formula whose labelling satisfies the labelling requirements of the Infant Formula and Follow-on Regulations 1995 but does not satisfy the requirements of the 2007 Regulations.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument under Standing order 15.2 (vi) (failure to comply with statutory requirements).

Section 80(1) of the Government of Wales Act 2006 provides that a community obligation of the UK is also an obligation of the Welsh Ministers to the extent that it can be complied with by them in the exercise by them of any of their functions. One of the functions of the Welsh Ministers is the making of subordinate legislation.

Article 9 of Regulation (EC) No 178/2002 requires there to be open and transparent public consultation during the preparation and evaluation of the Regulations. Legal Advisers have been informed that no formal consultation was undertaken in respect of these Regulations (although a full 12 week consultation was undertaken in respect of the 2007 Regulations) as they do not impose any new legal requirements. It is understood that the Food Standards Agency is to notify all interested parties when the Regulations are made.

Given that the Regulations are intended to give effect to a judgement of the High Court it is considered that there should be have consultation in accordance with Article 9 of Regulations (EC) No 178/2002.

Government have responded as follows:-

The Government has noted the reporting point. The Food Standards Agency in Wales did consult affected stakeholders who were invited to comment on draft Regulations and were given four weeks to do so. A full 12 week consultation was not carried out because the Government was bound to make the Regulations in accordance with the court order. Had responses been received to a consultation, the Government would not have had discretion to amend the Regulations to take account of those responses.

Alun Davies AM
Temporary Chair, Subordinate Legislation Committee
21 October 2008