

# 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 have been consultation in accordance with Article 9 of Regulations (EC) No 178/2002.

### **Legal Advisers**

**Subordinate Legislation Committee  
October 2008**

### **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.