

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
14 November 2011

Meeting time:
14:30

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



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Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA51 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2011

Negative Procedure. Date made 1 November 2011. Date laid 2 November 2011.
Coming into force date 30 November 2011

CLA54 – The RTM Companies (Model Articles) (Wales) Regulations 2011

Negative Procedure. Date made 5 November 2011. Date laid 8 November 2011.
Coming into force date 30 November 2011

Affirmative Resolution Instruments

CLA50 – The Incidental Flooding and Coastal Erosion (Wales) Order 2011
Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date 1 December 2011

3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA48 – The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 (Pages 1 – 13)
Negative Procedure. Date made 25 October 2011. Date laid 27 October 2011.
Coming into force date 21 November 2011

CLA49 – The Audit and Assessment Reports (Wales) (Amendment) Order 2011
(Pages 14 – 25)
Negative Procedure. Date made 31 October 2011. Date laid 1 November 2011.
Coming into force date 22 November 2011

Affirmative Resolution Instruments

None

4. Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Welsh Refugee Council (Pages 26 – 28)
CLA(4)-07-11(p2) – CLA GP6 – Welsh Refugee Council

Mr Mike Lewis, Chief Executive, Welsh Refugee Council
Ms Daisy Cole, Head of Influencing, PR & Child Policy

5. Date of the next meeting (Pages 29 – 30)

Papers to note:

CLA(4)-10-11- Report of the meeting 7 November 2011

6. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish.

7. Submission to the Commission on a Bill of Rights (Pages 31 – 49)

8. Consideration of the evidence submitted to Inquiry to date

Transcript

View the [meeting transcript](#).

Agenda Item 3.1

Constitutional and Legislative Affairs Committee

(CLA(4)-11-11)

CLA48

Constitutional and Legislative Affairs Committee Draft Report

Title: The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations revise the terminology in the Landfill Allowances Scheme (Wales) Regulations 2004 (the Regulations) to ensure consistency with other legislation under the Waste and Emissions Trading Act 2003 (the Act).

Technical Scrutiny

As these Regulations do not cite all the powers used to make the principal Regulations, it is necessary to be very careful to refer to the correct ones when making amendments. In this case no reference is made in the introductory paragraph to sections 12(2) and 15 of the Act, which are considered relevant to the changes made here to regulations 6 and 10 respectively of the principal Regulations.

The Assembly is invited to pay special attention to these Regulations under Standing Order 21.2 (vi).

Merits Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Legal Advisers

Constitutional and Legislative Affairs Committee

November 2011

The Government has responded as follows:

The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011

Section 12

The Government accepts the Committee's point about section 12(2) which should have been cited in the enabling powers. Section 12(2) is

the power under which the amendment to regulation 6(5)(b) of the principal regulations can be made. The amendments to the remainder of regulation 6 are made under section 12(1) of the Act

The Government acknowledges that the omission may produce ambiguity about whether an amendment to regulation 6(5)(b) of the principal regulations has been made. Although the Government considers it unlikely that the term “biodegradable municipal waste” could be interpreted as relating to anything other than the waste dealt with by waste disposal authorities under the landfill allowances scheme, the Government will make regulations to amend regulation 6(5)(b) of the principal regulations within six weeks.

Section 15

The Government believes that the amendments to regulation 10 of the principal regulations are authorised by section 11(1) and (2)(b) of the Act and that section 15 of the Act is concerned with information of a different character to that currently dealt with by regulation 10 of the principal regulations. The Government concludes that the citation of section 12 in the principal regulations was an error. The reasons which lead us to these conclusions are explained below.

There are two provisions in the Act which confer power to make provision about the maintenance of registers; sections 11 and 15.

Section 11(1) of the Act confers power to make provision for the purpose of carrying Chapter 1 of the Act into effect. By section 11(2)(b), those regulations can make provision for the maintaining of registers of matters relating to landfill allowances.

Section 15 of the Act is more specific and confers power to make regulations requiring the monitoring authority to maintain a register containing “monitoring information” of a description specified in the regulations. “Monitoring information” is information or evidence that is:

- acquired by the monitoring authority in carrying out its functions under the Act; or
- disclosed to the monitoring authority by another monitoring authority which has acquired the information or evidence in carrying out its own functions under the Act.

The Government interprets “acquired” and “disclosed” in section 15 to mean that the information or evidence in question is information or evidence which is initially in the possession of someone other than the monitoring authority and which is subsequently obtained by the monitoring authority during the course of carrying out its monitoring role under the landfill allowances scheme.

We reach this view because of the nature of the monitoring authority's role under the Act and thus the context in which information and evidence is likely to be acquired by, or disclosed to, a monitoring authority.

Broadly speaking, a monitoring authority's role is to monitor the operation of the landfill allowances scheme generally, to monitor the amount of biodegradable collected municipal waste sent to landfills in particular and to audit the performance of waste disposal authorities in complying with their duties under the Act.

To enable it to carry out this role, the Act allows regulations to require waste disposal authorities to make returns to the monitoring authority. The Act also allows regulations to permit the monitoring authority to require waste disposal authorities to produce records for inspection or removal and to supply information and evidence relating to the sending of biodegradable municipal waste to landfill. In addition to this, the Act allows regulations to permit the monitoring authority to obtain records kept by landfill operators, using force if necessary.

The Government believes that it is in this context that information or evidence will be "acquired" by the monitoring authority and thus it will be the same kind of information obtained in a similar context by another monitoring authority that will be "disclosed" to a monitoring authority.

Regulation 10 of the principal regulations does not relate to this kind of information. Instead, it concerns:

- (a) information that is brought into existence as a result of decisions made and published under the Act by the Welsh Ministers; that is to say, the allowances allocated to each waste disposal authority under section 4 of the Act and any alterations to those allocations made under section 5 of the Act; and
- (b) information which the monitoring authority itself creates; that is to say:
 - (i) the amount of biodegradable collected municipal waste sent to landfill by each waste disposal authority; and
 - (ii) the balance between that amount and the amount for which the waste disposal authority holds landfill allowances.

The information at (i) is the product of applying a statutory factor of 61% to the amount of collected municipal waste sent to landfill by a waste disposal authority. Part of the information needed to make this

calculation will be contained in a waste disposal authority's records and returns to the monitoring authority and those records and returns will be "acquired" by the monitoring authority in carrying out its functions under the Act. The Government does not consider that the resulting calculation is either "acquired by" or "disclosed to" the monitoring authority.

The information at (ii) is the product of subtracting the amount at (i) from the number of allowances held by the authority and published by the Welsh Ministers under section 4 and / or 5 of the Act. Again, the Government does not consider that the resulting calculation is information or evidence "acquired by" or "disclosed to" the monitoring authority.

For these reasons the Government considers that the provision made at regulation 10 of the principal regulations is authorised by section 11(1) and (2)(b) of the Act.

2011 No. 2555 (W.279)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Landfill Allowances Scheme
(Wales) (Amendment) Regulations
2011**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Waste and Emissions Trading Act 2003 (“WET Act”) establishes a system of targets for reducing the amount of biodegradable municipal waste that is sent to landfill in each region in the UK and in the UK as a whole. This gives effect to the UK’s obligations under article 5(2) of Council Directive 1999/31/EC on the landfill of waste (OJ No L 182, 17.7.1999, p. 1).

Biodegradable municipal waste is collected and disposed of by local authorities and the private sector. The targets apply to both.

As part of ensuring that the targets are met, the WET Act requires the Welsh Ministers to allocate allowances to local authorities in their capacity as waste disposal authorities. Local authorities are allowed to landfill one tonne of biodegradable municipal waste for every allowance they hold. The detailed rules about how the system of allowances works are set out in The Landfill Allowances Scheme (Wales) Regulations 2004 (S.I. 2004/1490 (W. 155)). That Scheme does not apply to waste disposed of by the private sector.

The term “biodegradable municipal waste” is used in the WET Act to refer to the waste covered by the Landfill Allowances Scheme and to refer to the wider category of waste covered by the targets. The WET Act is being amended to distinguish between the two. These amendments are being made by The Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 (S.I. 2011/2499) which come into force at the same time that these Regulations come into force. The distinction is made by introducing the term “biodegradable local authority collected municipal

waste” to refer to the waste covered by the Landfill Allowances Scheme. An associated amendment is made to introduce the term “local authority collected municipal waste” to distinguish municipal waste collected by local authorities from municipal waste that is not collected by local authorities.

These Regulations amend the Landfill Allowances Scheme (Wales) Regulations 2004 so that the new terms also apply in the 2004 Regulations. These are technical amendments that will have a neutral effect on local authorities and the business and voluntary sectors.

The Welsh Ministers’ Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result it was not considered necessary to carry out a regulatory impact assessment as to the likely costs and benefits of complying with these Regulations.

2011 No. 2555 (W.279)

**ENVIRONMENTAL
PROTECTION, WALES**

**The Landfill Allowances Scheme
(Wales) (Amendment) Regulations
2011**

Made 25 October 2011

Laid before the National Assembly for Wales

27 October 2011

Coming into force 21 November 2011

The Welsh Ministers make these Regulations in exercise of the powers conferred on the National Assembly for Wales by sections 11(1), (2)(b), (d), (f) and (3), 12(1) and (4), 24(1)(c) and 26(3) of the Waste and Emissions Trading Act 2003⁽¹⁾ and now exercisable by them⁽²⁾.

Title, commencement, application and interpretation

1.—(1) The title of these Regulations is the Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011.

(2) These Regulations come into force on 21 November 2011 and apply in relation to Wales.

(3) In these Regulations “the 2004 Regulations” means the Landfill Allowances Scheme (Wales) Regulations 2004⁽³⁾.

(1) 2003 c. 33. There are amendments to section 24 of the Act which are not relevant to these Regulations.

(2) These functions were transferred to the Welsh Ministers by section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(3) S.I. 2004/1490 (W. 155); amended by S.I. 2005/1820 (W. 148) Schedule 2 paragraphs 5 to 8 and S.I. 2011/971 (W. 141) regulation 3.

Amendment of the 2004 Regulations

2. The 2004 Regulations are amended as follows:

Amendment of regulation 2(1) (interpretation)

3. In regulation 2(1)(1)—

- (a) omit the definition of “the Assembly” (“*y Cynulliad*”);
- (b) omit the definition of “collected municipal waste” (“*gwastraff trefol prydadwy a gasglwyd*”);
- (c) in the appropriate places insert—
““biodegradable collected municipal waste” (“*gwastraff trefol pydradwy a gasglwyd*”) means biodegradable local authority collected municipal waste(2);
“collected municipal waste” (“*gwastraff trefol a gasglwyd*”) means local authority collected municipal waste(3);”;
- (d) omit the definitions of “waste collection authority” (“*awdurdod casglu gwastraff*”) and “waste disposal authority” (“*awdurdod gwaredu gwastraff*”).

Substituting “the Welsh Ministers” for “the Assembly”

4. In each place in which it occurs in regulations 2, 11, 15 and 16 for “the Assembly” (“*y Cynulliad*”) substitute “the Welsh Ministers” (“*Gweinidogion Cymru*”).

Substitution of the term “collected municipal waste”

5. In the following places for “municipal waste” (“*gwastraff trefol prydadwy*”) substitute “collected municipal waste” (“*gwastraff trefol prydadwy a gasglwyd*”)—

- (a) regulation 6(1)(b)(4) and (c);
- (b) in the second place where it occurs in regulation 14(2)(i);
- (c) regulation 14(2)(ii).

-
- (1) There are amendments to regulation 2(1) which are not relevant to these Regulations.
 - (2) For the meaning of “biodegradable local authority collected municipal waste” *see* section 21(2)(b) of the Act.
 - (3) For the meaning of “local authority collected municipal waste” *see* section 21(4) of the Act.
 - (4) There is an amendment to regulation 6(1)(b) which is not relevant to these Regulations.

Substitution of the term “biodegradable collected municipal waste”

6. In every place in which it occurs for “biodegradable municipal waste” (“*gwastraff trefol pydradwy*”) substitute “biodegradable collected municipal waste” (“*gwastraff trefol pydradwy a gasglwyd*”).

Substitution of regulation 8 (determining the amount of biodegradable municipal waste in an amount of waste)

7. For regulation 8 substitute—

“8. Determining the amount of biodegradable collected municipal waste in an amount of collected municipal waste

Sixty-one percent of an amount of collected municipal waste is deemed to be biodegradable collected municipal waste.”.

John Griffiths

Minister for Environment and Sustainable Development, one of the Welsh Ministers

25 October 2011

**Explanatory Memorandum to the Landfill Allowance Scheme (Wales)
(Amendment) Regulations 2011.**

This Explanatory Memorandum has been prepared by Department for Environment and Sustainable Development and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Landfill Allowance Scheme (Wales) (Amendment) Regulations 2011.

John Griffiths
Minister for Environment and Sustainable Development
25 October 2011

1. Description

- 1.1 This instrument amends the Landfill Allowance Scheme (Wales) Regulations 2004. The amendments introduce new terms to describe the waste covered by the Landfill Allowances Scheme. These amendments are being made to carry through identical but separate amendments being made to the Waste Emissions and Trading Act 2003.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 None.

3. Legislative background

- 3.1 This instrument is made under sections 11, 12, 24 and 26 of the Waste and Emissions Trading Act 2003.
- 3.2 This statutory instrument follows the negative procedure.

4 Purpose & intended effect of the legislation

- 4.1 The purpose of the legislation is to align the terminology used in the Landfill Allowances Scheme (Wales) Regulations 2004 with new terminology being introduced into the Waste and Emissions Trading Act 2003. The legislation is intended to have a neutral effect.
- 4.2 The 2003 Act is being amended by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011 which come into force on the same day as this legislation. The amendments to the 2003 Act introduce new terminology to distinguish between the range of municipal waste covered by the Landfill Allowances Scheme and the wider range of municipal waste covered by landfill reduction targets set under the Act.
- 4.3 The European Union Landfill Directive aims to prevent or reduce negative effects on the environment from landfilling of waste. The Landfill Directive also specifically states that measures should be taken to reduce the production of methane gas from landfills through the reduction of the landfill of biodegradable waste. Article 5(2) of the Landfill Directive requires member states to reduce the total amount of biodegradable municipal waste (BMW) landfilled to levels based on a 1995 baseline.
- 4.4 The UK transposed the requirements of article 5(2) of the Landfill Directive through the Waste Emissions and Trading Act 2003 and landfill targets are set for each UK administration under regulations made under

the Act (the Landfill (Scheme and Maximum Landfill Amount) Regulations 2011).

- 4.5 As part of ensuring that the landfill targets are met the Waste Emissions and Trading Act 2003 requires each UK administration to allocate landfill allowances to waste disposal authorities in their area. These allowances authorise authorities to send a maximum amount of biodegradable municipal waste to landfill each year.
- 4.6 At present the Waste Emissions and Trading Act 2003 allows each UK administration to allocate landfill allowances up to its own landfill target limit. This means that the Waste Emissions and Trading Act 2003 technically allows each administration to divide up its maximum limit between waste disposal authorities in its area.
- 4.7 Because private contractors also dispose of biodegradable municipal waste as defined by the Landfill Directive, allowing each administration to divide up the maximum limit solely between waste disposal authorities would be inconsistent with the UK's obligations to regulate all biodegradable municipal waste going to landfill in its area.
- 4.8 To address this inconsistency the 2003 Act is being amended to remove the power to allocate the total maximum limit solely between waste disposal authorities. These amendments are being made by the Secretary of State in the Waste and Emissions Trading Act 2003 (Amendment) Regulations 2011. Associated amendments are also being made by those Regulations so that the terms used in the Act to describe the waste covered by the Landfill Allowances Scheme are different to the terms used to describe the wider category of waste covered by the targets.
- 4.9 The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011 substitute the new terms in the 2004 Regulations so that the terminology used in the Regulations is consistent with the terminology used in the Act.
- 4.10 If these Regulations are not made the Act and the Regulations will use different terms to mean the same thing and this could produce legal and practical uncertainty.

5 Consultation

- 5.1 Consultation must be carried out before making regulations about the Landfill Allowances Scheme unless the regulations do not affect waste disposal authorities, landfill operators or other interested persons.
- 5.2 These Regulations are specifically designed to preserve existing arrangements and therefore to prevent any effect on waste disposal authorities, landfill operators or other interested persons. They make the technical changes necessary to prevent unintended consequences

arising from technical changes being made to the Waste and Emissions Trading Act 2003. Consultation is therefore not required under the Act.

- 5.3 In parallel to the regulations being laid the Welsh Government will notify local authorities, the Welsh Environmental Services Association and the Environment Agency to the legislation and the reasons for it; and to the fact that the legislation is not intended to affect the operation of the Landfill Allowances Scheme.

6 Regulatory Impact Assessment (RIA)

- 6.1 A regulatory impact appraisal has not been completed. This is a technical change designed to prevent confusion about how the law operates in relation to the Landfill Allowances Scheme. The legislation is not intended to have any impact on local authorities, the private or voluntary sectors or the public.

DRAFT SI REPORT

Constitutional and Legislative Affairs Committee

(CLA(4)-11-11)

CLA49

Constitutional and Legislative Affairs Committee Draft Report

Title: The Audit and Assessment Reports (Wales) (Amendment) Order 2011

Procedure: Negative

This Order amends the Audit and Assessment Reports (Wales) Order 2010 by providing that, in respect of financial years beginning on or after 1 April 2011, the date by which the report is to be sent the Welsh Ministers and the Welsh improvement authority concerned is to be 31 January in the financial year during which the audit was carried out or to which the assessment relates.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument – (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Audit and Assessment Reports (Wales) Order 2010 was made in English only despite being extremely short, and was the subject of an adverse report by the then Constitutional Affairs Committee for that reason. A copy of that report is annexed.

The current Order is made bilingually, but because it has been drafted as an amending order, the amendment to the 2010 Order is in English only and the substantive law is still in English only. Had the current Order revoked and replaced the 2010 Order, it would have replaced an English statement of the law with a bilingual item of legislation.

This example highlights the importance of having bilingualism rather than translation at the core of the legislative process. It also shows the need to have regard to earlier reports by this Committee and its predecessors when drafting legislation on the same subject.

**Legal Advisers
Constitutional and Legislative Affairs Committee**

November 2011

ANNEX

Constitutional Affairs Committee

CA(3)-01-11

CA508: The Audit and Assessment Reports (Wales) Order 2010

Procedure: Negative

Section 19 of the Local Government (Wales) Measure 2009 requires the Auditor General for Wales to issue an audit and assessment report in respect of a Welsh improvement authority. This Order amends section 19(3)(a) of the Measure in respect of the financial year beginning 1 April 2010 by extending the date by which the Auditor General for Wales must send copies of any report to the Welsh Ministers and the Welsh improvement authority concerned. The deadline is changed from 30 November 2010 to 31 January 2011.

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument:-

1. The Order has been made in English only. The Explanatory Memorandum contains the following statement: "The Minister for Social Justice and Local Government has further determined in this particular circumstance that it is not reasonable or practicable for the order to be made in English and Welsh.". However, the Order, including the Explanatory Note is only 392 words long, which is just over half the length of the accompanying letter which explains the breach of the 21 day rule, which letter has been translated. Moreover, save for the standard terminology used in Statutory Instruments, the terminology used in the Order is that used in the letter. In those circumstances it not apparent why it should be considered either not reasonable or practicable to make the Order bilingually.

[Standing Order 15.2(ix)]

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument.

**Legal Advisers
Constitutional Affairs Committee**

November 2010

The Government has responded as follows:

It is the Welsh Assembly Government's view that in this instance it was not reasonable or practicable to translate The Audit and Assessment Reports (Wales) Order 2010 given the time constraints faced in making the Order. The comments regarding the accompanying letter are noted. However, the Order required legal translation and checking which was not possible to accommodate within the given time frame.

2011 No. 2602 (W. 280)

**LOCAL GOVERNMENT,
WALES**

**The Audit and Assessment Reports
(Wales) (Amendment) Order 2011**

EXPLANATORY NOTE

(This note is not part of the Order)

Section 17 of the Local Government (Wales) Measure 2009 (“the Measure”) imposes a duty on the Auditor General for Wales to carry out an audit for the purposes of determining whether a Welsh improvement authority has discharged its duties under section 15 of the Measure.

Section 18 of the Measure places a duty on the Auditor General for Wales to carry out an assessment in respect of each financial year determining whether a Welsh improvement authority is likely to comply with the requirements of Part 1 of the Measure.

Section 19 of the Measure requires the Auditor General for Wales to issue an audit and assessment report in respect of a Welsh improvement authority and to send it to the Welsh Ministers and the Welsh improvement authority concerned.

This Order amends the Audit and Assessment Reports (Wales) Order 2010 by providing that, in respect of financial years beginning on or after 1 April 2011, the date by which the report is to be sent is to be 31 January in the financial year during which the audit was carried out or to which the assessment relates.

2011 No. 2602 (W. 280)

**LOCAL GOVERNMENT,
WALES**

**The Audit and Assessment Reports
(Wales) (Amendment) Order 2011**

Made 31 October 2011

Laid before the National Assembly for Wales
1 November 2011

Coming into force 22 November 2011

The Welsh Ministers, in exercise of the powers conferred on them by section 19(3)(b) of the Local Government (Wales) Measure 2009⁽¹⁾, make the following Order:

Title and commencement

1. The title of this Order is The Audit and Assessment Reports (Wales) (Amendment) Order 2011 and it comes into force on 22 November 2011.

**Amendment of the Audit and Assessment Reports
(Wales) Order 2010**

2.—(1) The Audit and Assessment Reports (Wales) Order 2010⁽²⁾ is amended as follows.

(2) For article 2 (date for copies of a report to be sent) there is substituted—

“In respect of financial years beginning on or after 1 April 2011 copies of a report issued in accordance with section 19(2) of the Measure must be sent by 31 January in the financial year during which the audit was carried out or to which the assessment relates.”.

(1) 2009 nawm 2.

(2) S.I. 2010/2853 (W.235).

Carl Sargeant

Minister for Local Government and Communities, one
of the Welsh Ministers

31 October 2011

Explanatory Memorandum to the Audit and Assessment Reports (Wales) (Amendment) Order 2011

This Explanatory Memorandum has been prepared by the Department of Local Government and Communities and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Audit and Assessment Reports (Wales) (Amendment) Order 2011. I am satisfied that the benefits outweigh any costs.

Carl Sargeant AM
Minister for Local Government and Communities
31 October 2011

1. Description

Section 19 of the Local Government (Wales) Measure 2009 requires the Auditor General for Wales to issue audit and assessment reports each year on the compliance by local authorities, National Park authorities and fire and rescue authorities (Welsh improvement authorities) with the improvement obligations contained in the Measure. This Order will change the date by which the Auditor General for Wales is required to send the reports from 30 November to 31 January each financial year.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

No matters of special interest.

3. Legislative background

The Order is made in exercise of the powers conferred on the Welsh Ministers by section 19 (3)(b) of the Local Government (Wales) Measure 2009 (“the Measure”).

Section 17 of the Measure imposes a duty on the Auditor General for Wales to carry out an audit for the purposes of determining whether a Welsh improvement authority has discharged its duties under section 15 of the Measure.

Section 18 of the Measure places a duty on the Auditor General for Wales to carry out an assessment in respect of each financial year determining whether a Welsh improvement authority is likely to comply with the requirements of Part 1 of the Measure.

Section 19(1) of the Measure requires the Auditor General for Wales to issue a report or reports in respect of each Welsh improvement authority:

- (a) certifying that the Auditor General has carried out an audit under section 17 in respect of the previous financial year;
- (b) stating whether as a result of the audit the Auditor General believes—
 - (i) that the authority has discharged its duties under section 15(1) to (7); and
 - (ii) that the authority has acted in accordance with any guidance issued under section 15(8);

- (c) certifying that the Auditor General has carried out an assessment under section 18 in respect of the financial year;
- (d) describing the extent to which information and documents provided to the Auditor General under section 33 have been taken into account in carrying out that assessment;
- (e) stating whether as a result of the assessment the Auditor General believes that the authority is likely to comply with the requirements of this Part during the financial year;
- (f) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending action that the authority should take in order to comply with the requirements of this Part or act in accordance with guidance issued under section 15(8) (whether in respect of that or a subsequent financial year);
- (g) if the Auditor General thinks it appropriate in the light of an audit or assessment, recommending that the Welsh Ministers should—
 - (i) provide assistance to the authority by exercising their power under section 28;
 - (ii) give a direction under section 29 and, if so, the type of direction;
- (h) stating whether, in the light of an audit or assessment, the Auditor General is minded to carry out a special inspection under section 21.

Section 19(2) and (3) provides that copies of the report must be sent to the authority concerned and the Welsh Ministers-

- (a) by 30 November in the financial year during which the audit was carried out or to which the assessment relates; or
- (b) by such other date as the Welsh Ministers may specify by order.

This instrument follows the negative resolution procedure.

4. Purpose & intended effect of the legislation

This Order amends the Audit and Assessment Reports (Wales) (Order) 2010 by providing that, in respect of financial years beginning on or after 1 April 2011, the date by which the report is to be sent is to be 31 January in the financial year during which the audit was carried out or to which the assessment relates.

It is intended that the Order will come into force on 22 November 2011.

5. Consultation

Consultation was commenced on 1 August 2011 for eight weeks. Please refer to the Regulatory Impact Assessment consultation paragraph below for further information.

PART 2 – REGULATORY IMPACT ASSESSMENT

6. Options

Option 1: Do Nothing

Under Section 19 of the Measure, the Auditor General for Wales must issue a report or reports in respect of each Welsh improvement authority and send it to the Welsh Ministers and the Welsh improvement authority concerned by 30 November. Without this Order the Auditor General would not be able to take account of the work of other relevant regulators in their reports in a timely manner.

Option 2: Make the Legislation

The Order will ensure that the Auditor General for Wales is under a statutory duty to send audit and assessment reports on all Welsh improvement authorities by 31 January each financial year.

a) Benefits

Current audit, inspection and assessment timetables for other regulators and assessment processes mean that findings from these cannot always be fully built into the Auditor General for Wales' reports if these need to be published by 30 November. Extending the publication date will, enable the Auditor General to incorporate the findings into the reports in a timely manner. The extended date would also give the Auditor General a more reasonable timeframe to include performance information from improvement authorities.

b) Costs

The cost of audit is met by individual Welsh Improvement authorities and is agreed between the individual Welsh Improvement authorities and Wales Audit Office ("WAO") on an annual basis. In addition monies to fund/part fund improvement inspections for Welsh Improvement authorities (which include All Wales and specific studies resulting from the improvement process, and funding of the WAO relationship manager and interim corporate assessment process) is provided for centrally. The Order will not increase the costs.

7. Consultation

The consultation was commenced on 1 August for 8 weeks. Three responses were received in relation to the formal consultation and these are detailed below:-

- **Flintshire County Council** – were content with the proposal commenting that the alteration to the revised date will enable more timely inclusion of other regulators' works and a more comprehensive overview of the Improvement Authorities' Improvement Plans.

- **Ceredigion County Council** - The Council acknowledged that extending the publication date for the Annual Improvement Report would give the WAO more time to incorporate the findings of other audits / inspections / assessments into the Report. However, it was concerned that a 31 January publication date would not allow it to address the recommendations and incorporate them in its financial planning for the new financial year.
- **North Wales Fire and Rescue Authority (FRA)** – The FRA commented that the annual Improvement / Risk Reduction publication deadline is different for FRAs. They would like to see this arrangement reviewed in relation to a later audit and assessment report date to maximise FRAs' ability to react in the current financially challenging environment.

Prior to the formal consultation, officials discussed the proposal with the 3 fire and rescue authorities and 2 of the 3 were supportive of the change in date and had no concerns in terms of their business planning arrangements.

The proposed Welsh Government response is set out below:-

Section 19(3)(b) of the Local Government (Wales) Measure 2009 provides Welsh Ministers with a power to specify a date by which the Auditor General for Wales should send copies of audit and assessment reports. In changing the date from 30 November to 31 January, the Auditor General will be in a position to take into account the work of relevant regulators which could mean an omission from his reports if the findings of, for example, CSSIW were omitted from them. We accept that changing the date by when the Auditor General for Wales publishes his audit and assessment reports to 31st January each year may compress the time available to local authorities to incorporate changes they deem necessary into their final budget. However, in most local authorities the budget development process begins when the draft revenue settlement is published in October – in many cases before the authority has published its own improvement report for the previous year. It extends into early March, by which time all local authorities are obliged to set budgets and council tax levels. In that sense, the exact point during that period when the Auditor General publishes his report is less relevant: budget-setting will begin before and continue after that point in all cases.

Following discussions with FRAs the Welsh Government is currently consulting on proposals to change the date by which FRAs are required to publish their improvement plans under Section 15 of the Measure.

Similarly the extended date would enable the findings of Operational Assurance of Service Delivery Peer Assessment to be built into fire and rescue authorities' audit and assessment reports.

The extended date would also give WAO a more reasonable timeframe to include performance information from Welsh improvement authorities.

8. Competition Assessment

Not applicable.

9. Post implementation review

This will be undertaken following the publication of the audit and assessment reports published under the new timeframe.

CLA GP6

Constitutional and Legislative Affairs Committee

Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Response from Welsh Refugee Council



Response by the Welsh Refugee Council to the Constitutional and Legislative Affairs Committee into the Granting of Powers to Welsh Ministers in UK Law

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Background on the Welsh Refugee Council

1. The Welsh Refugee Council was established in 1990 and now employs 32 staff and has 60 volunteers. Its head office is in Cardiff and it has offices in Newport, Swansea and Wrexham. In 2010/11 it provided 22,366 advice sessions to asylum seekers, and provided nearly 7,000 advice sessions to refugees. As well as providing advice services to asylum seekers and refugees it has an influencing role and function. It receives funding from the Welsh Government, UK Border Agency, Diana Fund, Children in Need, Community Fund and Lloyds TSB Charitable Trust.

Inquiry Response

2. We are pleased to respond to this inquiry. As is generally agreed Devolution is a process which most commentators, including ourselves, arguing that it has made significant benefits to the people of Wales. As Devolution has matured stating the obvious the complexity of law making has increased and we welcome how this process is being embedded into the thinking and practice of the National Assembly for Wales.
3. One of our many roles is to explain to Refugee Community Groups about how the process of influencing the political process is structured in Wales and strategies for influencing both the National Assembly for Wales and the Welsh

Government. We are therefore after a simple, clear and straight forward process free of nuance and subtext, which has clear outcomes within the process and is easily understood. Whether this is possible is a challenge and we would like any changes made to be measured against this framework. This is especially important if all sectors in civil society are to engage effectively with the law making processes.

4. If given a simple choice between Westminster legislation giving powers to Welsh Ministers or the National Assembly for Wales giving powers to Welsh Ministers, we would like one approach that is consistent. However we are aware that the devolutionary settlement does not allow this currently. However, whilst it may be good for the process to be clear to the citizen if one approach was adopted we do not want simplicity to replace effectiveness.
5. We are aware of the deficiencies in the powers of Welsh Ministers, which are articulated in provision about Welsh Ministers in the UK August 2011 and we do not intend amplifying them further in our submission.
6. Our specific concern in responding to this is to ensure a high level of monitoring between a UK Government function which is non-devolved such as immigration. We often see lack of clarity operationally between London and Cardiff in the interface of two competing jurisdictions. As an example the current UKBA Consultation on Family Migration takes no account that health is a devolved competency. It in fact suggests a challenge to Welsh Government Policy and Practice. We would therefore like Welsh Ministers to have a more robust scrutiny role when there is an interaction between UK and Welsh Legislation and Policy and Practice. This is especially important where Cross Party Support in Wales articulates a significantly different approach to broad social issues such as Child Safeguarding or the Protection of Vulnerable Adults. Immigration may also be considered to be one of these issues. As an example the National Assembly for Wales sees inclusion as a two way process between refugee and host community. Whereas UK Government sees integration as being the responsibility of the refugee solely.
7. As a significant example which currently concerns us UKBA and WLGA are developing proposals on 'Age Assessment' of asylum seeking children which has no involvement of Welsh Government, the Children's Commissioner or broader civil society. Under our current system of legislative scrutiny these arrangements can continue without any scrutiny, which affects Welsh children as evidenced by the commitments articulated in the recent Refugee Inclusion Strategy and Refugee Inclusion Action Plan. We would therefore like powers for Welsh Ministers to increase so they are able to monitor the level of protection required so that it is consistent with the Welsh Government policy framework.
8. Additionally we see inconsistencies in the way that London and Cardiff deal with the monitoring of International Conventions and again we would like consideration to be given to the scrutiny of International Treaties, so it is consistent up and down the M4 corridor. Welsh Ministers do after all have a range of responsibilities under International Treaties, though they are not

signatories directly per se, they will be responsible for delivering significant Treaty obligations in their own right.

9. In conclusion we welcome the opportunity to respond to this Inquiry and are happy to develop any points raised, if this is felt to be appropriate.

A Michael Lewis
CEO
29th September 2011

Agenda Item 5

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

Report: CLA(4)-10-11 : 7 November 2011

The Committee did not consider any statutory instruments.

Committee Correspondence

CLA43 – The Animal By-Products (Enforcement) (No. 2) (Wales) Regulations 2011

The Committee noted the Minister's response to the Chair's letter dated 14 October 2011 on the merits of The Animal By-Products (Enforcement) (No. 2) (Wales) Regulations 2011.

CLA31 – The National Curriculum (Assessment Arrangements on Entry to the Foundation Phase) (Wales) Order 2011 and CLA32 – The National Curriculum (End of Foundation Phase Assessment Arrangements and Revocation of the First Key Stage Assessment Arrangements) (Wales) Order 2011

The Committee noted the Minister's response to the Chair's letter dated 19 October 2011, which had asked that the Committee be informed in writing if the powers under Article 5 are used again in future. The Minister's response indicated that he felt that it was unnecessary to write separately to the Committee as he anticipated that the matter would be subject to consultation and, therefore, published on the Welsh Government's website.

The Committee agreed that due to the nature of this power (and bearing in mind that the Committee did not have the capacity to trawl the Government's website routinely for issues such as this), the Government should ensure that the Assembly was alerted to any future use. The Chair of the Committee was asked to write again to the Minister asking him to reconsider.

Absence of Welsh Versions of Statutory Instruments made jointly with UK Ministers

The Committee noted a letter from the First Minister regarding the absence of the Welsh versions of Statutory Instruments made jointly with UK Ministers. The Committee noted that it was under a requirement to report on instruments that were not made in Welsh.

The Committee agreed that the First Minister's response on the matter was not unhelpful but that the fundamental issue was that the UK Parliament does not scrutinise general statutory instruments in languages other than English. The Committee agreed to explore with colleagues in the UK Parliament what possibility there was for this general position to be relaxed to allow statutory instruments to be made bilingually.

Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

The Committee took oral evidence from Mr Richard Parry, Reader in social policy, School of Social and Political Science, University of Edinburgh.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the Granting of Powers to Welsh Ministers in UK Laws.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

7 November 2011

By virtue of paragraph(s) vi of Standing Order 17.42

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