

CLA(4)-19-12

CLA171

Constitutional and Legislative Affairs Committee Draft Report

Title: The Waste (England and Wales) (Amendment) Regulations 2012

Procedure: Negative

These composite regulations amend the Waste (England and Wales) Regulations to substitute regulation 13 and 14(2) to ensure the correct transposition of provisions of Directive 2008/98/EC (the revised Waste Framework Directive) relating to the separate collection of waste.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 (ix) in respect of this instrument – that it is not made in both English and Welsh.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 (ii) in respect of this instrument – that it gives rise to issues of public policy likely to be of interest to the Assembly.

1. The Waste (England and Wales) Regulations 2011 transposed provisions of the revised Waste Framework Directive relating to the separate collection of waste paper, metal, plastic and glass.

Regulation 13 (2) of those Regulations provided that co-mingled collection (being the collection together with each other but separately from other waste of waste streams intended for recycling) is a form of separate collection.

Judicial review proceedings were brought, challenging the transposition in particular in relation to the provision concerning co-mingled waste. The Welsh Ministers and Defra accepted that the original regulation 13 did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection, and that consequently the 2011 Regulations needed to be amended.

In December 2011 the proceedings were stayed until 13 June 2012 on the undertaking of the Welsh Ministers and Defra to consult on proposals to amend the 2011 Regulations.

The Explanatory Memorandum states that the instrument was laid before recess, in keeping with an agreement with the Claimants and Interested Parties, to extend the stay of proceedings in the judicial review from 13 June to 25 July, to allow the Welsh Ministers and Defra time to lay amending regulations before that date.

The Explanatory memorandum provides no further information as to whether the Claimants and Interested Parties in the litigation are satisfied that the Regulations as amended correctly transpose the revised Waste Framework Directive.

2. Regulation 2 (5) provides for the insertion of a new regulation 49 into the 2011 Regulations, which requires the Secretary of State to review the operation and effect of those Regulations in relation to England within 5 years after 1st October 2012 and within every 5 years after that. The Explanatory Memorandum is silent as to why in the event that it was not considered appropriate for the Welsh Ministers to carry out a review, this is the case.

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

24 September 2012

The Government has responded as follows:

The Waste (England and Wales) (Amendment) Regulations 2012

1. Under Standing Order 21.2 (ix) – That the regulations are not made in both English and Welsh.

These composite regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. It is therefore not considered reasonably practicable for this Instrument to be made bilingually.

2. Under Standing Order 21.3 (ii) – that it gives rise to issues of public policy likely to be of interest to the Assembly. The Explanatory Memorandum provides no further information as to whether the Claimants and Interested Parties in the litigation are satisfied that the Regulations as amended correctly transpose the revised Waste Framework Directive.

The Claimants and Interested Parties were provided with a draft of the regulations on 4 July 12. The Claimants indicated by letter on 13 July 12 that they were not content with the amending regulations, but gave no substantive reasons for their position. Substantive reasons were provided by letter on 16 August, after the regulations were laid. It would therefore at best, only have been possible to have indicated in the Explanatory Memorandum, the bare fact that the Claimants were not satisfied.

In any event it would not have been appropriate to make legislation subject to approval by the Claimants or the Interested Parties .The purpose of the legislation was to correct what we acknowledged was a defect in the original regulation 13 , which did not properly implement the requirements of the revised Waste Framework Directive in relation to separate collection . The fact that the Claimants were not content with the amendments was relevant to the ongoing judicial review, but not to the making of this legislation.

3. Under Standing Order 21.3 (ii) – That it gives rise to issues of public policy likely to be of interest to the Assembly. The Explanatory Memorandum is silent as to why in the event that it was not considered appropriate for Welsh Ministers to carry out a review.

The current UK Government’s policy is to include a clause in all regulations that requires a review in a specified timescale. The Welsh Government does not have a similar policy in Wales. Welsh Ministers are able to review the regulations at any time. Consequently, the inclusion of the review provision in the instrument, was relevant only to England.