

Constitutional Affairs Committee Draft Report

CA593

Title: The Reporting of Prices of Milk Products (Wales) Regulations 2011

Procedure: Negative

These Regulations revoke and replace the Reporting of Prices of Milk Products (Wales) Regulations 2005. They require a sample of milk processors to provide information on the prices at which they sell milk products after processing, to the Welsh Assembly Government, for onward transmission by the Department for Environment, Food and Rural Affairs to the European Commission.

Technical Scrutiny

Under Standing Orders 21.2 the Assembly is invited to pay special attention to the following instrument:-

Regulation 4 (1) provides that any person who fails to comply with a notice served by Welsh Ministers under regulation 2 (1) is guilty of an offence. Regulation 3 (1) rather than regulation 2 (1) provides for the Welsh Ministers to serve such a notice. Regulation 2 (1) does not exist.

(Standing Order 21.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements)

Merits Scrutiny

For points identified for reporting under Standing Order 21.3 in respect of this instrument see CLA(4)-01-11(p1).

Legal Advisers

Constitutional Affairs Committee

April 2011

The Government has responded as follows:

The Reporting of Prices of Milk Products (Wales) Regulations 2011

The Government considers the technical scrutiny point of the CAC to be a typographical error and one appropriate for amendment on publication which will take place by the end of May 2011. Support for the Government's response is as follows:

1. The explanatory note to the Regulations makes it clear that failure to comply with the notice requirements contained in the Regulations is an

offence and that such notices must be served under regulation 3. Whenever there is ambiguity in the body of the Regulations, the explanatory notes though not legally binding would be used to assist the reader in reaching an interpretation.

2. There is no regulation 2(1) in the Regulations. Taken in the context that notices are served under regulation 3 and that it is an offence under regulation 4 to fail to comply with such a notice, it is unlikely that the incorrect citation of regulation 2(1) can mean anything other than that it is a typographical error which should have cited regulation 3(1).

3. Bennion's publication is the recognised legal authority on statutory interpretation. An example given in Bennion's of when it is accepted practice for the courts to apply a construction to statutory instruments in order to rectify any error and to give practical effect to the legislator's intention is when there is a typographical error.

Summary of Government's response

The insertion of regulation 2(1) in place of what should have read regulation 3(1) is a clear typographical error which can be appropriately amended on publication. This is supported by the reasons stated in 1 – 3 above.