



Constitutional and Legislative Affairs Committee

Report: CLA(4)-03-11 : 7 July 2011

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA11 - The Disabled Persons (Badges for Motor Vehicles) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 22 June 2011.

Date laid: 29 June 2011.

Coming into force date: 1 August 2011

CLA12 - The Plastic Kitchenware (Conditions on Imports from China) (Wales) Regulations 2011

Procedure: Negative.

Date made: 28 June 2011.

Date laid: 30 June 2011.

Coming into force date: 1 July 2011

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Affirmative Resolution Instruments

CLA10 - The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Procedure: Affirmative.

Date made: Not stated.

Date laid: Not stated.

Coming into force date: In accordance with regulation 1(b).

The Committee agreed the Report under S.O.21.2 and S.O.21.3 on this statutory instrument, which is attached as Annex 1. The Committee expressed concern that the Instrument had been made in English only. The Committee agreed that there needed to be a clearer rationale to explain why joint Statutory Instruments should not be made in both

Welsh and English. It was particularly important for instruments made by affirmative resolution, or which were significant in other ways, to be made in both English and Welsh. The Committee agreed to ask the Chair to write to Ministers to convey the Committee's views and to seek further clarification.

Other Business

Supplementary Legislative Consent Motion: Localism Bill

The Committee considered the third Legislative Consent Memorandum (LCM) in relation to the Localism Bill, which had been referred to it by the Business Committee under Standing Order 29.4. The Memorandum related to further government amendments to the Bill in connection with tenants' deposits and the licensing of houses in multiple occupation (HMOs).

The Legislative Consent Motion in relation to this memorandum was due to be considered by the Assembly in plenary on Tuesday 12th July, but the LCM had not been laid until the day before the Committee's meeting. The Committee nevertheless received oral advice from its legal advisers.

The proposed amendments in relation to tenants' deposits would give landlords 30 days rather than 14 days to comply with existing requirements, would remove the loophole that emerged from recent litigation that permitted them in practice to comply at any time before a court hearing on the subject. It also clarifies what a tenant can do when the tenancy has already ended, but the deposit was not protected

The amendment in relation to HMOs would exclude tenants' co-operatives from the licensing requirements for HMOs under the Housing Act 2004.

The amendments make small, but significant, amendments to Wales and England legislation, rather than to legislation that relates only to Wales. They do not confer any powers on ministers, but change the wording of legislation. The Committee therefore saw no reason to raise concerns regarding the LCM.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

7 July 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-03-11)

CLA10

Constitutional and Legislative Affairs Committee Report

Title: The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

Procedure: Affirmative

These draft Regulations will apply to both England and Wales.

The Regulations amend some of the provisions relating to the regulation of radioactive substances in the Environmental Permitting (England and Wales) Regulations 2010 S.I.2010/675 in order to provide a more modern, transparent and user-friendly system for the regulation of radioactive substances which present a very low risk to people and the environment, while at the same time maintaining the necessary level of protection.

These draft Regulations also transpose provisions of the IPPC Directive (Directive 2008/1/EC) and the Water Framework Directive (Directive 2000/60/EC) that have been inserted by the Carbon Capture and Storage Directive (Directive 2009/31/EC) (“CSS Directive”).

Technical Scrutiny

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

1. These Regulations have not been made bilingually.

[21.2(ix) – that it is not made or to be made in both English and Welsh].

Merits Scrutiny

Under Standing Order 21.3 the Assembly is invited to pay special attention to the following instrument:-

1. Parts of these Regulations transpose provisions of the CSS Directive. The transposition deadline of the CSS Directive was 25th June 2011. These Regulations have failed to be implemented in England and Wales within the time frame set by the CSS Directive.

2. The explanatory memorandum prepared by the Department of Energy and Climate states that the provisions implementing Article 32 and 37 of the CSS Directive will come into force on the day after the day on which the regulations are made. It states that the short time period is justifiable in this case, in order that the draft Regulations can be brought into force as soon after the transposition deadline for the Directive as possible and in light of the high level of awareness of the proposed change among those affected.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

7 July 2011

The Government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) Regulations 2011

These composite Regulations amend some of the provisions relating to the regulation of radioactive substances in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 and transpose certain Articles of the Carbon Capture and Storage Directive (Directive 2009/31/EC) ("CCS Directive").

The Environmental Permitting regime streamlines the procedural parts of a raft of highly technical and complex legislation. It has enabled the simplification of the operation of the permitting system that industry and regulators work with without in any way compromising environmental or human health standards. This has brought much needed simplification to the complexity that industry and regulators in England and Wales previously faced. Due to the scale of the legislation, amendments are occasionally required. Securing these changes via composite instruments made with the Secretary of State is consistent with that aim of simplification. The composite instrument also minimises the inconvenience and potential confusion for those affected by the Regulations, especially as the Environment Agency (a regulator) is a cross border body. These composite Regulations apply to England and Wales and are subject to approval by the National Assembly for Wales and by Parliament. Accordingly, it is not considered reasonably practicable for this Instrument to be laid in draft, or made, bilingually.

The Government regrets that these amendments were not made in time to meet the transposition deadline for the CCS Directive. Issues arising from the internal pre-legislative clearance process impacted on the timetable for these Regulations to come into force.