

Y Pwyllgor Materion Cyfansoddiadol a Deddfwriaethol

Constitutional and Legislative Affairs Committee

Rt Hon Carwyn Jones AM
First Minister
Welsh Government
Tŷ Hywel
Cardiff Bay
CF99 1NA



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Bae Caerdydd / Cardiff Bay
Caerdydd / Cardiff
CF99 1NA

4 July 2011

Dear First Minister

CA581 - The Waste (Miscellaneous Provisions) (Wales) Regulations 2011

The Committee on Statutory Instruments considered the above regulations at its meeting on 22 June 2011.

The Committee agreed to report to the Assembly under Standing Order 21.3 (ii) that the regulations raised issues of political or legal importance. However, the Committee also asked me to write to you to draw to your attention to one particular aspect of our report.

In her letter of 28 March 2011 to the Presiding Officer, the then Minister for Business and Budget explained that the Welsh Ministers had discretion over whether the Regulations should be made by the negative or the affirmative procedure. The Minister offered the following explanation for the use of the negative procedure in this case:

"...The Wales Regulations do not substantially affect the provisions of an Act of Parliament or Assembly Measure, they do not amend any provision of an Act or Measure, and provide only for consequential updatings of subordinate legislation to reflect changes in Directive terminology and objectives. It was concluded, therefore, that it would not be appropriate to make the Wales Regulations under the affirmative procedure."

The Committee commends this as an important and useful statement of criteria for deciding whether future legislation, under these or similar powers, should be made by the affirmative or negative procedure. It also builds on other statements by the Government on criteria for deciding which scrutiny procedure is appropriate for subordinate legislation including when Ministers are seeking new or amended powers through legislation made by the National Assembly.

The Committee would be grateful if explanatory memorandums, relating to the use of these or similar powers in future, could set out briefly, as a matter of special interest to the Committee, how the criteria have been used in judging whether the negative or affirmative procedures should be used. I would be grateful for your confirmation of this.

I am copying this to the Counsel General for information.

Yours sincerely

A handwritten signature in black ink that reads "David Melding". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

David Melding AM
Chair
Constitutional and Legislative Affairs Committee