



Constitutional and Legislative Affairs Committee

Report: CLA(4)-13-11 : 28 November 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

CLA58 – The Substance Misuse (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 1 November 2011

Date laid: 14 November 2011

Coming into force date: 5 December 2011

Affirmative Resolution Instruments

None

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA57 – The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 6 November 2011

Date laid before Parliament: 14 November 2011.

Date laid before the National Assembly for Wales: 14 November 2011.

Coming into force date: 5 December 2011

Affirmative Resolution Instruments

CLA59 – The Carers Strategies (Wales) Regulations 2011

Procedure: Affirmative.

Date made: 2011.

Date laid: not stated.

Coming into force date: 1 January 2012

CLA60 – The Planning Permission (Withdrawal of Development Order or Local Development Order) (Compensation) (Wales) Order 2012

Procedure: Affirmative.

Date made: not stated.

Date laid: not stated.

Coming into force date: 31 January 2012

The Committee agreed the Reports under S.O.21.2 and S.O.21.3 on these statutory instruments, which are attached as Annexes 1 – 3.

Other Business

Committee Correspondence

CLA46 – The Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011

The Committee noted the Minister's response to the Chair's letter dated 18 October 2011 on the merits of the Local Inquiries, Qualifying Inquiries and Qualifying Procedures (Standard Daily Amount) (Wales) Regulations 2011.

Consideration of Future Committee Inquiries

Committee Inquiries: A Welsh Jurisdiction

The Committee agreed to conduct an Inquiry into the establishment of a separate Welsh Jurisdiction. The Committee also agreed terms of reference for the Inquiry.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

28 November 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA57

Constitutional and Legislative Affairs Committee Report

Title: The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations provide for the simplification of the provisions relating to strategy groups and the preparation of strategies in the Crime and Disorder (Formulation and Implementation of Strategy) (Wales) Regulations 2007 with effect from 5th December 2011.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument.

1. The Order is required to be made jointly by Welsh Ministers and the Secretary of State by section 6(9) of the Crime and Disorder Act 1998. It will therefore be laid before Parliament and has therefore been prepared in English only.

[Standing Order 21.2(ix) – that it has not been made in both English and Welsh]

Merits Scrutiny

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

28 November 2011

The Government has responded as follows:

The Crime and Disorder (Formulation and Implementation of Strategy) (Wales) (Amendment) Regulations 2011

As indicated in the report, these amending Regulations have been prepared in English only. It is practice to prepare statutory instruments in English only when instruments are joint and are to be laid in Parliament. For that reason the Regulations to be amended, ie those made in 2007, were also prepared in English only.

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA59

Constitutional and Legislative Affairs Committee Report

Title: The Carers Strategies (Wales) Regulations 2011

Procedure: Affirmative

These Regulations made under the Carers Strategies (Wales) Measure 2010:-

- apply to Local Health Boards and Local Authorities and in part to Velindre NHS Trust and the Welsh Ambulance Services NHS Trust;
- require Local Health Boards in Wales and Local Authorities which fall within their area to work together in preparing and publishing a strategy setting out how they will work together to assist and include carers in arrangements for those they care for; and
- make provision for consultation in preparing strategies, the content of strategies, providing appropriate information and advice, consultation with carers or persons cared for, submission of draft strategies to Welsh Ministers, and the preparation of joint strategies.

Technical Scrutiny

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

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument.

(1) These Regulations are the first to be made under the Carers Strategies (Wales) Measure 2010. [Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of a public policy likely to be of interest to the Assembly].

(2) Regulation 9(7) states that the Carers strategy must be published in both Welsh and English “*unless it is not reasonably practicable to do so*”.

Given the detailed provisions in the Regulations regarding the preparation of the strategies, and that such strategies are intended to cover a three year period, there do not appear to be any circumstances in which it would not be reasonably practicable to publish them bilingually.

Furthermore, the qualification in Regulations 9(7) runs counter to the principle set out in section 156(1) of the Government of Wales Act 2006 which states:-

“(1) The English and Welsh texts of—

(a) any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or

(b) any subordinate legislation which is in both English and Welsh when it is made,

are to be treated for all purposes as being of equal standing”.

The principle is that the texts are only of equal standing if enacted or made bilingually. Whilst the current regulations relate to strategies rather legislation, unless the draft submitted for approval (under regulation 9(3)) or amendment (under regulation 9(6)) is submitted bilingually, the draft approved will constitute the strategy, and any translation will be exactly that.

[Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of a public policy likely to be of interest to the Assembly.]

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

28 November 2011

The Government has responded as follows:

The Carers Strategies (Wales) Regulations 2011

Merits scrutiny

No response is offered on the observation that these regulations are the first to be made under the Carers Strategies (Wales) Measure 2010.

On the language question, the Committee’s draft report highlights that authorities must publish strategies in English and Welsh “*unless not reasonably practicable to do so*”.

The report points out that this is not consistent with the requirement for legislation to be made bilingually, to which section 156 of the Government of Wales Act 2006 applies. In the case of legislation, a failure to ensure that a Welsh enactment is passed in both English and Welsh will mean that if the enactment is subsequently translated into a second language, the second language text will not have equal status with the text of the language in which the enactment was passed.

As the strategies to be prepared by “designated authorities” are not legislation, and not one of the enactments mentioned in section 156, they would not stand to benefit from the effect of that section in any event.

Section 156 is the provision which gives effect to the principle that when legislation is passed in both English and Welsh, then both texts have equal standing. It does not establish a principle that legislation requiring publication of documents by public authorities must include a requirement that they are produced in both English and Welsh and through a process which guarantees equal status to both languages.

All the public authorities affected by these regulations are subject to a duty to have a Welsh Language Scheme under section 5 of the Welsh Language Act 1993. They will need to observe the requirements of their own schemes.

The draft report notes that, given the nature of the strategy, there do not appear to be any circumstances in which it would not be reasonably practicable to publish the strategy bilingually. It is agreed that circumstances when it would not be reasonably practicable to publish the strategy bilingually are likely to be very few.

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA60

Constitutional and Legislative Affairs Committee Report

Title: The Planning Permission (Withdrawal of Development Order or Local Development Order (Compensation) (Wales) Order 2012

Procedure: Affirmative

This draft Order amends Section 108 of the Town and Country Planning Act 1990 (“TCPA”) as it applies in Wales. The Welsh Government intends to commence sections 61A to 61D of the TCPA (inserted by sections 40 and 41 of the Planning and Compulsory Purchase Act 2004) to enable local planning authorities to introduce, after consultation, local development orders which would remove the requirement for planning permission for developments as specified in a local development order. Section 107 of the TCPA provides for compensation to be payable where planning permission granted by a local planning authority is subsequently revoked or modified. Section 108 of that Act extends the entitlement to compensation to circumstances where planning permission granted by a development order is withdrawn. This draft order extends the entitlement to compensation to certain circumstances where planning permission granted by a local development order is withdrawn and restricts in other circumstances the entitlement to compensation on withdrawal of planning permission granted by a development order or local development order. A further amendment confers power on the Welsh Ministers to prescribe certain matters in relation to the entitlement to compensation.

Technical Scrutiny

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

Merits Scrutiny

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

This draft order forms part of a suite of instruments. Paragraph 3.3 of the explanatory memorandum provides that:-

Further instruments subject to negative procedure will be made in due course and laid before the National Assembly for Wales giving full effect to provisions relating to local development orders and in exercise of powers conferred by section 108 of the 1990 Act, as amended by this instrument.

Whilst this instrument only provides for compensation arrangements where planning permission granted by a local development order is withdrawn, local development orders are a new addition to the current development management system. A local development order is an order made by a local planning authority through which permitted development rights (i.e. reducing the need to seek planning permission), additional to those granted nationally by the Welsh Government, are granted to certain types of development (specified in the order) within a certain area (also specified in the order).

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

28 November 2011