

Constitutional and Legislative Affairs Committee

(CLA(4)-01-12)

CLA68

Constitutional and Legislative Affairs Committee Draft Report

Title: The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (S.I. 2008/3100) by adding five new fuels to, and amending the specification of one other fuel, in the list of fuels declared to be authorised fuels for the purposes of Part III of the Clean Air Act 1993.

Technical Scrutiny

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

(1) The newly substituted paragraph 36 at sub-paragraph (c) of the English version does not refer to the “cushion shaped briquettes” being unmarked whereas the Welsh text does refer to the “cushion shaped briquettes” being unmarked. It is unclear which the correct version is.

[Standing Order 21.2 (vii)-that there appear to be inconsistencies between the meaning of its English and Welsh texts] and [Standing Order 21.2 (vi) that its drafting appears to be defective or it fails to fulfil its statutory requirement].

(2) Regulation 3 (Saving) of the English text refers to paragraph 36 of the Schedule of the Smoke Control Areas (Authorised Fuels) (Wales) Regulations 2008 (“2008 Regulations”), whereas although the Welsh version refers to paragraph 36, it does not refer to the Schedule of the 2008 Regulations, and so it is unclear as to where paragraph 36 originates in the Welsh text.

[Standing Order 21.2(vii) – that there appear to be inconsistencies between the meaning of its English and Welsh texts] and [Standing Order 21.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements.

Merits Scrutiny

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

**Legal Advisers
Constitutional and Legislative Affairs Committee**

December 2011

The Government has responded as follows:

The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2011

Response to the issues that have been raised by the Legal Advisers to the Constitutional and Legislative Affairs Committee

Point 1

There is, as the draft report says, a difference between the Welsh and English texts of the newly substituted paragraph 36 at sub-paragraph (c). This is contained in regulation 2(dd) of the Welsh text and the corresponding regulation 2(f) of the English text.

The Welsh text incorrectly states that the briquettes are unmarked but then goes on to correctly describe the marking on the briquette. The Welsh text is, therefore, ambiguous but does contain words indicating that marking is present. The English text is correct and unambiguous, and correctly reflects the purpose and intended effect as set out in the Explanatory Memorandum. Given the description of the marking in the Welsh text, taken in combination with the English text, there is no doubt as to which text is correct: the error is clearly with the Welsh text of the newly substituted paragraph 36(c). Therefore, it is appropriate, in order to remove the ambiguity, for the Welsh text to be corrected on publication by the deletion of the words “heb eu marcio”, and this will be done.

Point 2

There is, as the draft report says, a difference between regulation 3 of the Welsh and English texts. However, despite the inconsistency, the legal effect of the Welsh text is clear, and is the same as the English text. This is because there is no paragraph 36 in the main body of the Regulations being amended, only in the sole Schedule to those Regulations (to which the English text clearly refers). Accordingly, it is appropriate for the error to be corrected on publication and this will be done.

