



Constitutional and Legislative Affairs Committee

Report: CLA(4)-06-12 : 12 March 2012

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

CLA101 – The Local Authorities (Alteration of Requisite Calculations) (Wales) Regulations 2012

Procedure: Negative.

Date made: 22 February 2012.

Date laid: 27 February 2012.

Coming in to force date: 28 February 2012

CLA103 – The Residential Property Tribunal Procedures and Fees (Wales) Regulations 2012

Procedure: Negative.

Date made: 23 February 2012.

Date laid: 28 February 2012.

Coming in to force date: 21 March 2012

CLA104 – The Coleg Menai Further Education Corporation (Dissolution) Order 2012

Procedure: Negative.

Date made: 29 February 2012.

Date laid: 2 March 2012.

Coming in to force date: 1 April 2012

CLA107 – The National Health Service (Optical Charges and Payments) (Amendment)(Wales) Regulations 2012

Procedure: Negative.

Date made: 4 March 2012.

Date laid: 6 March 2012.

Coming in to force date: 1 April 2012

Affirmative Resolution Instruments

CLA103 – The Mobile Homes Act 1983 (Jurisdiction of Residential Property Tribunals) (Wales) Order 2012

Procedure: Affirmative.
Date made: not stated.
Date laid: not stated.
Coming into force date: 21 March 2012

CLA108 – The Welsh Language (Wales) Measure 2011 (Transfer of functions, Transitional and Consequential Provisions) Order 2012
Procedure: Affirmative.
Date made: not stated.
Date laid: not stated.
Coming into force date: 1 April 2012

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA105 – The Abergavenny Improvement Act 1854 (Repeal) Order 2012
Procedure: Negative.
Date made: 28 February 2012.
Date laid: 2 March 2012.
Coming in to force date: 26 March 2012

CLA106 – The Environmental Permitting (England and Wales) (Amendment) Regulations 2012
Procedure: Negative.
Date made: 28 February 2012.
Date laid before Parliament: 5 March 2012
Date laid before the National Assembly: 5 March 2012.
Coming into force date: 6 April 2012

CLA109 – The Local Election Survey (Wales) Regulations 2012
Procedure: Negative.
Date made: 4 March 2012.
Date laid: 6 March 2012.
Coming in to force date: 31 March 2012

CLA110 – The Isle of Anglesey Local Authorities (Change to the Years of Ordinary Elections) Order 2012
Procedure: Negative.
Date made: 6 March 2012.
Date laid: 6 March 2012.
Coming in to force date: 27 March 2012

Affirmative Resolution Instruments

None

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 – 4.

Other Business

Committee Correspondence

Proposal for a Directive of the European Parliament and of the Council on Public Procurement

The Committee noted the response of the Chairman of the House of Commons European Scrutiny Committee (Mr William Cash MP) dated 29 February 2012 to the Chair's letter dated 23 February 2012 expressing the Committee's concerns regarding the subsidiarity aspect of the proposed 'national oversight body' (Article 84.1 of the draft Directive). The Committee also noted that on 29 February 2012 that Committee discussed the EU Public Procurement directives and subsidiarity concerns, including the letter submitted by the National Assembly for Wales and agreed a draft reasoned opinion which quotes directly from that submission and also attaches it in full as an annex. It was also reported that the reasoned opinion had subsequently been approved by the House of Commons following a debate on the 6th March, and submitted to the European Commission.

Committee Inquiries: Inquiry into the establishment of a separate Welsh jurisdiction

The Committee took oral evidence from the Law Society, which was represented by Kay Powell, Solicitor and Policy Adviser to the Society; Michael Imperato of NewLaw Solicitors and Richard Owen, Deputy Head of the School of Law, Accounting and Finance, University of Glamorgan, both members of the Wales Committee of the Society. The Law Society agreed to provide additional statistics of transfers between jurisdictions under The Qualified Lawyers Transfer Scheme.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on the Inquiry into the establishment of a separate Welsh jurisdiction.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

12 March 2012

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA105

Constitutional and Legislative Affairs Committee Report

Title: The Abergavenny Improvement Act 1854 (Repeal) Order 2012

Procedure: Negative

This Order, made under section 58 of the Local Government (Wales) Act 1994, repeals section 28 (including to the extent that section 26 of that Act has effect in relation to section 28) of the Abergavenny Improvement Act 1954 on the grounds that the section has become obsolete and unnecessary and has been substantially superseded by the Food Act 1984.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3(ii) (political or legal importance or giving rise to issues of public policy likely to be of interest to the Assembly) the Assembly is invited to pay special attention to the following instrument.

Section 58 of the Local Government (Wales) Act 1994 conferred powers on the Secretary of State to repeal local Acts (or specified provisions thereof) where they appeared to be “spent, obsolete or unnecessary or ...have been substantially superseded [by other legislation dealing with the same subject-matter]”.

The power was transferred to the National Assembly by virtue of the National Assembly for Wales (Transfer of Functions) order 1999 and is now vested in the Welsh Ministers.

In so far as can be ascertained, this is the first occasion since the transfer of the power in 1999 and its subsequent vesting in the Welsh Ministers that the power has been exercised. In these circumstances the Assembly is invited to special attention to this Order under Standing Order 21(3)(ii)

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

12 March 2012

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA106

Constitutional and Legislative Affairs Committee Report

Title: The Environmental Permitting (England and Wales) (Amendment) Regulations 2012

The instrument amends the Environmental Permitting (England and Wales) Regulations 2010 (“the 2010 Regulations”). The amendments do the following:

- reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
- make it easier to transfer permits in certain situations;
- provide for the vesting of an environmental permit in the personal representative of a deceased operator;
- make relatively minor changes to certain exempt waste operations;
- make minor amendments relating to radioactive substances activities;
- make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
- make consequential amendments to the 2010 Regulations and to other legislation.

Procedure: Negative

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 save for Regulation 19, which makes minor amendments in both languages to Wales only Regulations.

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

Merits Scrutiny

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

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

12 March 2012

The Government has responded as follows:

The Environmental Permitting (England and Wales) (Amendment) Regulations 2012

"These composite Regulations amend some of the provisions in the Environmental Permitting (England and Wales) Regulations 2010 S.I. 2010.675 to:

- reduce regulatory requirements for those who operate certain anaerobic digestion installations or mobile plant and for those who burn waste-derived fuel that has ceased to be waste;
- make it easier to transfer permits in certain situations;
- provide for the vesting of an environmental permit in the personal representative of a deceased operator;
- make relatively minor changes to certain exempt waste operations;
- make minor amendments relating to radioactive substances activities;
- make minor amendments to the Environmental Damage (Prevention and Remediation) Regulations 2009 and the Environmental Damage (Prevention and Remediation) (Wales) Regulations 2009 to clarify the enforcement position of the Environment Agency; and
- make consequential amendments to the 2010 Regulations and to other legislation
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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.

Securing these changes via composite instruments made with the Secretary of State is consistent with the aim of simplification referred to above. 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."

Annex 3

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA109

Constitutional and Legislative Affairs Committee Report

Title: The Local Election Survey (Wales) Regulations 2012

Procedure: Affirmative

Section 1 of the Local Government (Wales) Measure 2011 (the Measure) imposes a duty on a local authority (a county council or a county borough council), in accordance with regulations, to conduct a survey after each ordinary election to the council of the county or county borough and to each community council (normally held concurrently every four years) in the local authority's area.

A local authority must conduct the survey by asking prescribed questions of councillors and unsuccessful candidates who have stood for election as councillors in the local authority's area.

These Regulations prescribe the questions that a local authority must ask when conducting a local election survey. The prescribed questions and the form in which they may be asked are set out in the Schedule to the Regulations.

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument –

Much of the information to be gathered by this survey is sensitive personal data within the meaning given to that term by section 2 of the Data Protection Act 1998. Although the Measure provides for anonymity, the small number of candidates for some authorities may make it relatively easy to recognise those with a particular combination of characteristics (age, gender, religion etc.). The form of questionnaire therefore includes a footnote that draws attention to the provision in section 1 of the Measure that there is no duty to complete the survey.

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

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

12 March 2012

Annex 4

Constitutional and Legislative Affairs Committee

(CLA(4)-06-12)

CLA110

Constitutional and Legislative Affairs Committee Report

Title: The Isle of Anglesey Local Authorities (Change to the Years of Ordinary Elections) Order 2012

Procedure: Negative

This Order provides that the ordinary elections of councillors to the Isle of Anglesey County Council will take place in 2013 instead of 2012. It also provides that the ordinary elections of councillors to the community councils in the Isle of Anglesey county will take place in 2013 instead of 2012.

The current term of office of existing councillors elected to the Isle of Anglesey County Council is accordingly extended by one year. The current term of office of existing community councillors elected to community councils in the Isle of Anglesey county is also accordingly extended by one year.

Technical Scrutiny

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

Merits Scrutiny

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

1. This Order has the effect of postponing elections in Anglesey by one year. Nevertheless, the enabling legislation provides that the negative procedure applies to this Order.
2. The Order also has the effect of putting Anglesey on a different electoral cycle from the other Welsh counties. Attention is therefore drawn in particular to the final paragraph of part 4 of the Explanatory Memorandum.

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

David Melding AM
Chair, Constitutional and Legislative Affairs Committee

12 March 2012