

Constitutional and Legislative Affairs Committee Report

CLA144

Title: The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

These Regulations revoke and replace certain provisions in the Nitrate Pollution Prevention (Wales) Regulations 2008 (“the principal Regulations”), which relate to the designation of nitrate vulnerable zones. The principal Regulations implement, in Wales, Council Directive 91/676/EEC concerning the protection of waters against pollution by nitrates from agricultural sources. The provision made by these Regulations relates to the review by the Welsh Ministers of the designation of nitrate vulnerable zones in 2009 by the principal Regulations. Provision is made by these Regulations for the Environment Agency to make recommendations to the Welsh Ministers to publish and notify their decisions following those recommendations, and for appeals to be made to the Welsh Ministers and determined by a person appointed by them.

Procedure: Negative

Technical Scrutiny

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

Merits Scrutiny

The following point is identified for reporting under Standing Order 21.3 in respect of this instrument at this stage:-

These Regulations (at regulation 9(4) illustrate a significant change in the drafting style of Statutory Instruments made by Welsh Ministers. When the National Assembly was established in 1999, sub-paragraphs were initially lettered (a), (b), (c), (d), (e), etc. in both language texts of Statutory Instruments. By 2000, they were lettered (a), (b), (c), (ch), (d), etc. in the Welsh text as it was considered that using the Welsh alphabet more faithfully reflected the equal status of the two languages. That practice has continued until now. It means, for example, that sub-paragraph (ch) in Welsh corresponds to sub-paragraph (d) in the English text, whilst paragraph (d) in the Welsh text corresponds to (e) in English.

When the Assembly acquired the competence to make primary legislation by way of measures under the Government of Wales Act 2006, it was decided to revert to the initial practice of using the English alphabet for the lettering of sub-paragraphs in both language

texts. The principal explanation was that as Members would routinely be proposing and debating amendments to draft Measures, it would be less confusing to refer to paragraphs (the third level of sub-division in primary legislation) labelled in the same way in both language texts.

That approach has been continued in relation to Bills introduced during the current Assembly.

The Welsh Government has now decided to extend that approach to statutory instruments, even though they are not capable of being amended in the same way as Bills. Although this ensures a consistent approach in all legislation currently before the Assembly, it is inconsistent with the practice in relation to statutory instruments for the last twelve years or so.

This matter is drawn to the attention of the Assembly under Standing Order 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

21 May 2012

The Government has responded as follows:

The Nitrate Pollution Prevention (Wales) (Amendment) Regulations 2012

As reported by the Constitutional and Legislative Affairs Committee, the Welsh Government confirms that the lettering of sub-paragraphs in the Welsh text of statutory instruments will in future use the English alphabet. The reason for using the English alphabet in the Welsh text of bilingual legislation is that we think it removes the potential for confusion to arise in legal proceedings and Assembly debate, particularly where both texts are being referred to by means of simultaneous translation. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use.

As recognised in the Committee's report, the change ensures a consistent approach to the lettering of paragraphs and sub-paragraphs in all bilingual legislation before the Assembly, since the practice in respect of draft Measures and now carried on in respect of Bills, was determined by the Presiding Officer under the Third Assembly. The intention behind the change is to promote the use of Welsh legislative text by removing a barrier to its effective use, albeit a relatively minor one.