

CLA174

Constitutional and Legislative Affairs Committee Report

Title: The Conservation of Habitats and Species (Amendment) Regulations 2012

Procedure: Negative

These composite regulations amend the Conservation of Habitats and Species Regulations 2010 (S.I. 2010/490) (the “Habitats Regulations”). They place new duties on the Secretary of State and Welsh Ministers, Natural England, Countryside Council for Wales, the Environment Agency, Forestry Commission, Local Authorities and, in relation to the marine area, other competent authorities to take measures to preserve, maintain and re-establish habitat for wild birds. The regulations place a duty on competent authorities to use all reasonable endeavours to avoid any pollution or deterioration of these habitats. The regulations also place a duty on any competent authority, in exercising any of their functions, to have regard to the requirements of Directive 2009/147/EC (the “Wild Birds Directive”) and of Directive 92/43/EEC (the “Habitats Directive”).

The regulations also make a number of further amendments to the Conservation of Habitats and Species Regulations 2010 to ensure certain provisions of the Wild Birds and Habitats Directives are transposed clearly.

The regulations also amend section 15 of the National Parks and Access to the Countryside Act 1949 to make clear that local authorities are able to designate Local Nature Reserves for the purposes of re-establishing bird habitat.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 (ix) in respect of this instrument – that it is not made in both English and Welsh.

Merits Scrutiny

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

1. The Explanatory Memorandum states that the amendments are being introduced in response to correspondence received from the European Commission regarding gaps in the UK transposition of the Wild Birds Directive, and that the

Regulations have been made on a composite basis as they are required to be made urgently.

2. The Regulations are subject to the negative procedure. Welsh Ministers pursuant to the designation under Section 2(2) of the European Communities Act 1972 have a choice as to which Assembly procedure is to be followed. Whilst the Regulations do not amend any provision of an Assembly Act or Measure, they do make minor amendments to a piece of UK primary legislation.
3. Regulation 23 requires the Secretary of State to review the operation and effect of the 2010 Regulations and publish a report within five years after these Regulations come into force and within every five years after that. The Explanatory Memorandum is silent as to why it was not considered appropriate for the Welsh Ministers to carry out a review.

However, the Committee has been given to understand that, while the UK Government now requires review provisions in all new legislation which imposes a regulatory burden, Welsh Ministers have not adopted a similar policy. Consideration was given to whether a review provision should be included but it was decided not to do so on the basis that:

- there is no obligation on Welsh Ministers to adopt a review provision in relation to regulatory burdens;
- the NEF agenda/Environment Bill will provide for reviews of the legislation; and
- it is understood that neither of the other devolved administrations intend to insert a similar provision in their regulations.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

24 September 2012

The Government has responded as follows:

The Conservation of Habitats and Species (Amendment) Regulations 2012

These composite Regulations will apply to England and Wales and are subject to negative resolution procedure in the National Assembly for Wales and in both Houses of the UK Parliament. Because the Regulations will be subject to UK Parliamentary scrutiny, it is not

considered reasonably practicable for this instrument to be made or laid bilingually.