

# Subordinate Legislation Committee

## SLC(3) 20-08 (p5)

**Date:** 29 September 2008

**Time:** 2.30pm

**Venue:** Committee Room 2, Senedd

### Monitoring the points reported by the Committee under Standing Orders 15.2 - 15.6

#### Purpose

1. The Committee is invited to consider the results of the review of the outcomes of its reports on statutory instruments under Standing Orders 15.2 - 15.6 in respect of the statutory instruments which came before the Committee since the beginning of the Third Assembly (May 2007 to July 2008).

#### Background

2. In accordance with the Committee's decision made at the meeting 15 July 2008, this report reviews the outcomes of its reports on statutory instruments under Standing Orders 15.2 - 15.6 on an annual basis. It also presents a summary of the points raised in respect of the statutory instruments considered by the Committee since the beginning of the Third Assembly. It is expected that the distribution of the reported errors may help identify any emerging patterns and will help the Committee monitor the effectiveness of its scrutiny work.

3. As agreed, the Chair wrote to the Counsel General and Leader of the House, Carwyn Jones AM, to request an update on the intended action outlined in the Welsh Assembly Government's responses to the Committee's reports where actions were outstanding. The Counsel General has responded (see paper SLC(3)-20-2008(p3) to note).

#### Committee Reports under Standing Order 15.2-15.6

3. Standing Order 15 sets out grounds on which the Committee are to invite the National Assembly to pay special attention to statutory instruments or draft statutory instruments required by any enactment to be laid before the Assembly. The grounds are as follows:

##### Standing Order 15.2:

- (i) that there appears to be doubt as to whether it is intra vires;
- (ii) it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made;
- (iii) the enactment which gives the power to make it contains specific provisions excluding it from challenge in the courts;
- (iv) it appears to have retrospective effect where the authorising enactment does not give express authority for this;
- (v) that for any particular reason its form or meaning needs further explanation;
- (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements;
- (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts;
- (viii) that it uses gender specific language;
- (ix) that it is not made or to be made in both English and Welsh;
- (x) that there appears to have been unjustifiable delay in publishing it or laying it before the Assembly;
- (xi) that there appears to have been unjustifiable delay in sending notification under section 4(1) of the Statutory Instruments Act 1946 (as modified).

##### Standing Order 15.3:

- (i) that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment;
- (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;
- (iii) that it is inappropriate in view of the changed circumstances since the enactment under which it is made or is to be made was itself passed or made;

(iv) that it inappropriately implements European Union legislation; or

(v) that it imperfectly achieves its policy objectives.

### **Standing Order 15.6:**

(i) any other subordinate legislation laid before the Assembly;

4. During the reporting period (June 2007 - July 2008) the Committee considered 180 items of subordinate legislation and reported on 53 statutory instruments under Standing Orders 15.2, 15.3 or 15.6, of which nine did not require any action on the part of the Welsh Assembly Government. This is comparable to the work of the Legislation Committee of the Second Assembly which considered 171 statutory instruments and identified reporting points on 60. This suggests an improvement in the quality of legislation in the Third Assembly.

5. The Committee's reports on these statutory instruments / draft statutory instruments / other relevant subordinate legislation are available on the Committee's website:

English:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm>

Welsh:

<http://www.cynulliadcymru.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-sleg-home/bus-committees-third-sleg-agendas-2.htm>

### **Reasons for Reporting**

6. The reasons why the Committee invited the Assembly to pay special attention to the submitted legislation were as follows:

there appeared to be inconsistencies between the meaning of the English and Welsh texts - 58 cases (SO15.2(vii))

drafting appeared to be defective or the legislation failed to fulfil its statutory requirements - 56 cases (SO15.2(vi));

legislation was not made or was not to be made in both English and Welsh - 11 cases (SO15.2(ix));

the form or meaning needed further explanation - 6 cases (SO15.2(v));

legislation used gender specific language - 5 cases (SO15.2(viii));

legislation appeared to have retrospective effect where the authorising enactment did not give express authority for this - 2 cases (SO15.2(iv));

legislation appeared to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made - 1 case (SO15.2(ii));

legislation imposed a charge on the Welsh Consolidated Fund - 1 case (SO15.3(i));

legislation imperfectly achieved its policy objectives - 1 case (SO15.3(v)).

7. The Committee did not invite the Assembly to pay special attention to the submitted legislation on the grounds of the Standing Orders 15.2(i), 15.2(iii), 15.2(x), 15.2(xi), 15.3(ii), 15.3(iii), 15.3(iv) or 15.6.

8. The Table in Annex 1 shows the distribution of the points reported by the Committee.

### **Monitoring Welsh Assembly Government responses to Committee reports**

9. Of the 53 reports on statutory instruments under Standing Orders 15.2, 15.3 or 15.6, nine did not require any action on the part of the Welsh Assembly Government. In respect of the remainder, the Committee secretariat identified that corrective action have been taken by the Welsh Assembly Government in respect of 17 statutory instruments. Nine statutory instruments have been revoked and therefore corrective actions are no longer required (regulations on import, export and movement in respect of Foot and Mouth disease) as they have been subsequently revoked. These are all listed in Annex 3.

10. The Committee secretariat identified 18 statutory instruments which required corrective action by the Welsh Assembly Government where the action was still outstanding (see Annex 2). The Counsel General's response informs the Committee that action has been taken on four of these and the action proposed on in respect of the 14 items which are still outstanding.

### **Action for the Committee**

9. The Committee is invited to comment on the report and agree that the Chair should inform the Counsel General about the established distribution of the points reported under Standing Orders 15.2-15.6 in order to improve the quality of legislation drafting.

**Annex 1****Subordinate Legislation - Points Reported By The Committee Under Standing Orders 15.2 - 15.3**

	SLC NO	15.2 (i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	15.3 (i)	(ii)	(iii)	(iv)	(v)
1	SLC4					2		3									
2	SLC13						1		1								
3	SLC15						1										
4	SLC18						4										
5	SLC20						2	1									
6	SLC21						2	3									
7	SLC22							2	1								
8	SLC23							1									
9	SLC24						5	1	2								
10	SLC26									1							
11	SLC30									1							
12	SLC31							1									
13	SLC33				1												
14	SLC36									1							
15	SLC37						1	1									

16	SLC39						1										
17	SLC41								1	1							
18	SLC52						5	1									
19	SLC53									1							
20	SLC54						1										
21	SLC56									1							
22	SLC61									1							
	SLC NO	15.2 (i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	15.3 (i)	(ii)	(iii)	(iv)	(v)
23	SLC67							2									
24	SLC75					1											
25	SLC76							1									
26	SLC77						8	8									
27	SLC78									1							
28	SLC80					1		1									
29	SLC87									1							
30	SLC92									1							
31	SLC93																1
32	SLC94					1											
33	SLC95						2										

34	SLC101						1	1									
35	SLC102					1	4	10									
36	SLC105						1	2									
37	SLC108						1	3									
38	SLC114												1				
39	<a href="#">SLC122</a>						1	1									
40	SLC127	1															
41	SLC128							1									
42	SLC129						1										
43	SLC133							2									
44	SLC135							2									
45	SLC141						1										
46	SLC149							1									
47	<a href="#">SLC154</a>									1							
48	SLC157						1	1									
49	SLC158						5	1									
	SLC NO	15.2 (i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)	(xi)	15.3 (i)	(ii)	(iii)	(iv)	(v)
50	SLC162						1	1									
51	SLC166						3	3									

52	SLC170						2	2									
53	SLC177						1	1									
	<b>TOTAL</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>6</b>	<b>56</b>	<b>58</b>	<b>5</b>	<b>11</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>

## Annex 2

### Statutory Instruments identified by the Committee secretariat which require corrective actions by the Welsh Assembly Government

#### Environment, Sustainability and Housing

No.	Name of Statutory Instrument/draft Statutory Instrument with reporting points	Date of Meeting
SLC39	The Environmental Impact Assessment and Natural Habitats (Extraction of Minerals by Marine Dredging) (Wales) Regulations 2007	25 September 2007
SLC52	The Environmental Impact Assessment (Agriculture) (Wales) Regulations 2007	23 October 2007

#### Rural Affairs

No.	Name of Statutory Instrument/draft Statutory Instrument with reporting points	Date of Meeting
SLC37	The Zoonoses and Animal By-Products (Fees) (Wales) Regulations 2007	25 September 2007
SLC67	The Natural Mineral Water, Spring Water and Bottled Drinking Water (Wales) Regulations 2007	27 November 2007
SLC75	The Materials and Articles in Contact with Food (Wales) Regulations 2007	4 December 2007
SLC76	The Animals and Animal Products (Import and Export) (Wales) (Amendment) Regulations 2007	27 November 2007
SLC77	The Official Feed and Food Controls (Wales) Regulations 2007	4 December 2007

SLC80	The Plant Health (Import Inspection Fees) (Wales) (Amendment) (No.2) Regulations 2007	4 December 2007
SLC128	The Meat (Official Controls Charges) (Wales) Regulations 2008	15 April 2008
SLC149	The Transmissible Spongiform Encephalopathies (Wales) (Amendment) Regulations 2008	13 May 2008
SLC157	The Food Labelling (Declaration of Allergens) (Wales) Regulations 2008	03 June 2008

### Children, Education, Lifelong Learning and Skills

No.	Name of Statutory Instrument/draft Statutory Instrument with reporting points	Date of Meeting
SLC20	The Assembly Learning Grant (Further Education) Regulations 2007	2 October 2007
SLC21	The Education Maintenance Allowances (Wales) Regulations 2007	2 October 2007
<a href="#">SLC122</a>	The Assembly Learning Grant (Further Education) Regulations 2008	08 April 2008
SLC158	The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2008	03 June 2008
SLC162	The Assembly Learning Grants (European Institutions) (Wales) (Amendment) Regulations 2008	10 June 2008
SLC177	The Education (National Curriculum) (Foundation Stage) (Wales) Order 2008	15 July 2008

### Social Justice and Local Government

No.	Name of Statutory Instrument/draft Statutory Instrument with reporting points	Date of Meeting
SLC170	The Local Authorities (Conduct of Referendums) (Wales) Regulations 2008	17 June 2008

### Annex 3

### Statutory Instruments in respect of which corrective actions have been taken by the Welsh Assembly Government

No.	Name of Statutory Instrument/draft Statutory Instrument with reporting points	Date of Meeting
SLC13	The Transmissible Spongiform Encephalopathies (Wales) (Amendment) Regulations 2007	18 September 2007
SLC18	The Food (Suspension of the use of E 128 Red 2G as Food Colour) (Wales) Regulations 2007	18 September 2007
SLC22	The Assembly Learning Grants and Loans (Higher Education) (Wales) (Amendment) Regulations 2007	2 October 2007
SLC23	The Education (Fees and Awards) (Wales) Regulations 2007	2 October 2007
SLC24	The Assembly Learning Grants (European Institutions) (Wales) Regulations 2007	2 October 2007
SLC36	The Foot-and-Mouth Disease (Export Restrictions) (Wales) Regulations 2007	18 September 2007
SLC101	The Street Works (Fixed Penalty) (Wales) Regulations 2008	05 February 2008
SLC102	The Street Works (Registers, Notices, Directions and Designations) (Wales) Regulations 2008	05 February 2008
SLC105	The Control of School Premises (Wales) Regulations 2008	19 February 2008
SLC108	The Childcare Act 2006 (Provision of Information) (Wales) Regulations 2008	19 February 2008
SLC141	The Rice Products from the United States of America (Restriction on First Placing on the Market) (Wales) Regulations 2008	22 April 2008
<a href="#">SLC154</a>	The Plastic Materials and Articles in Contact with Food (Wales) Regulations 2008	13 May 2008
SLC166	The Education (National Curriculum) (Attainment Targets and Programmes of Study) (Wales) Order 2008	17 June 2008



SLC127	<b>The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2008</b>	<b>08 April 2008</b>
SLC129	<b>The Street Works (Inspection Fees) (Wales) (Amendment) Regulations 2008</b>	<b>15 April 2008</b>
SLC133	<b>The Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) Order 2008</b>	<b>15 April 2008</b>
SLC135	<b>The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008</b>	<b>15 April 2008</b>

### **Statutory Instruments which do not did not require any action on the part of the Welsh Assembly Government**

<b>No.</b>	<b>Name of Statutory Instrument/draft Statutory Instrument with reporting points</b>	<b>Date of Meeting</b>
SLC4	<b>The Traffic Management (Guidance on Intervention Criteria) (Wales) Order 2007</b>	<b>26 June 2007</b>
SLC15	<b>The Marketing of Vegetable Plant Material (Wales) (Amendment) Regulations 2007</b>	<b>18 September 2007</b>
SLC31	<b>The Commons (Registration of Town or Village Greens) (Interim Arrangements) (Wales) Regulations 2007</b>	<b>25 September 2007</b>
SLC33	<b>The Non-Domestic Rating (Small Business Relief) (Wales) (Amendment) Order 2007</b>	<b>25 September 2007</b>
SLC54	<b>The Government of Wales Act 2006 (Approved European Body of Accountants) Order 2007</b>	<b>23 October 2007</b>
SLC93	<b>The Environmental Noise (Identification of Noise Sources) (Wales) Regulations 2007</b>	<b>29 January 2008</b>
SLC114	<b>The Rent Repayment Orders (Supplementary Provisions) (Wales) Regulations 2008</b>	<b>4 March 2008</b>
SLC94	<b>The Education (Information About Individual Pupils) (Wales) Regulations 2007</b>	<b>15 January 2008</b>
SLC95	<b>The Education (Pupil Information) (Wales) (Amendment) Regulations 2007</b>	<b>15 January 2008</b>

### **Statutory Instruments in respect of which corrective actions are no longer required**

**as they have been subsequently revoked**

<b>SLC26</b>	<b>The Import and Export Restrictions (Foot-And-Mouth Disease) (Wales) Regulations 2007</b>	<b>18 September 2007</b>
<b>SLC30</b>	<b>The Import and Export Restrictions (Foot-And-Mouth Disease) (No 2) (Wales) Regulations 2007</b>	<b>18 September 2007</b>
<b>SLC41</b>	<b>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.3) (Wales) Regulations 2007</b>	<b>25 September 2007</b>
<b>SLC53</b>	<b>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.4) (Wales) Regulations 2007</b>	<b>23 October 2007</b>
<b>SLC56</b>	<b>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.5) (Wales) Regulations 2007</b>	<b>06 November 2007</b>
<b>SLC61</b>	<b>The Import and Export Restrictions (Foot-and-Mouth Disease) (No.6) (Wales) Regulations 2007</b>	<b>13 November 2007</b>
<b>SLC78</b>	<b>The Export and Movement Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007</b>	<b>4 December 2007</b>
<b>SLC87</b>	<b>The Export and Movement Restrictions (Foot-and-Mouth Disease) (No.2) (Wales) Regulations 2007</b>	<b>15 January 2008</b>
<b>SLC92</b>	<b>The Export Restrictions (Foot-and-Mouth Disease) (Wales) Regulations 2007</b>	<b>15 January 2008</b>