

Subordinate Legislation Committee

Report (SLC(3) 22-08)

Date: 14 October 2008
Time: 8.45am
Venue: Committee Room 1, Senedd

CONTENTS

The Committee met on 23 September 2008. At the meeting the following Committee Members were present: Dr Dai Lloyd AM, Eleanor Burnham AM, Mark Isherwood AM, Alun Davies AM, Joyce Watson AM.

The Committee reports to the Assembly as follows:

Instruments in respect of which the Assembly is invited to pay special attention under Standing Order 15.2

Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure)

SLC201 - The National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008

Negative Procedure. Date made 29 September 2008. Date laid 30 September 2008. Coming into force date 27 October 2008

The Committee invited the Assembly to pay special attention to this instrument on the grounds set out in Standing Order 15.2 (viii) (that it uses gender specific language). The Government accepted this point, but maintained that the amendments were drafted on this basis in order to ensure that doubt is not cast upon the existing provisions within both sets of Regulations (see Annex 1 – the Committee’s report and the Government’s response).

Notwithstanding the Government’s response the Committee is of the view that the reporting point is valid; instances of gender specific language have been reported by the present committee and its predecessors since 1999 and in the Second Assembly Standing Orders were amended to include gender specific language as a formal reporting point. Whilst noting the Government’s comments in respect of the amendment of pre-devolution legislation, the Committee is of the view that consideration should be given to the drafting of amendments such that non-gender specific language was used.

The Committee also noted that the National Health Service (General Ophthalmic Services) Regulations 1986 had been considerably amended and recommends that consideration be given to consolidation (which would also

allow for the regulations to be drafted using non-gender specific language throughout).

SLC204 - The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment)(No.2) Regulations 2008

Negative Procedure. Date made 01 October 2008. Date laid 02 October 2008. Coming into force date 27 October 2008.

The Committee's Reports under S.O.15.2 on Statutory Instruments subject to annulment pursuant to a resolution of the Assembly (Negative Procedure) are attached as Annexes 1 – 2 to this Report.

Other items of business

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

14 October 2008

Annex 1

Subordinate Legislation Committee

(SLC(3)-22-08)

SLC201

Subordinate Legislation Committee Report

Under Standing Order 15.2 the Assembly is invited to pay special attention to the following instrument.

Title: The National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008

These Regulations amend the National Health Service (General Ophthalmic Services) Regulations 1986 (“the 1986 Regulations”) and the National Health Service (Optical Charges and Payments) Regulations 1997 (“the 1997 Regulations”). The 1986 Regulations contain provision for the arrangements for general ophthalmic services under the NHS. The 1997 Regulations contain provision for a scheme of payments to be made by Local Health Boards and National Health Service Trusts by means of a voucher system in respect of the costs incurred by certain categories of persons in connection with sight tests and the supply, replacement and repair of optical appliances. Regulation 2 of these Regulations inserts a new definition into regulation 2 (1) of the 1986 Regulations (interpretation) and amends regulation 13 (sight tests-eligibility) to provide that a person who is receiving income-related employment and support allowance (or a member of that person’s family) will be entitled to receive an NHS sight test. Regulation 3 inserts a new definition into regulation 1 (citation, commencement and interpretation) of the 1997 regulations and amends regulation 8 (eligibility-supply of optical appliances) to provide that a person who is receiving income-related employment and support allowance (or a member of that person’s family) will be entitled to receive a voucher in respect of an optical appliance.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2 (viii) (that it uses gender specific language)

Regulation 2 (3) (b) (which amends the 1986 Regulations), sub-paragraph’s (o) and (p) respectively which are to be inserted, are both gender specific:-

Regulation 2 (3) (b) (o) reads “**he** is in receipt of income-related employment and support allowance” and (p) reads “**he** is a member of the same family as a person in receipt of income-related employment and support allowance”.

Regulation 3 (3) (b) (which amends the 1997 Regulations), sub-paragraph's (o) and (p) respectively which are to be inserted, are both gender specific:-

Regulation 3 (3) (b) (o) reads "**he** is in receipt of income-related employment and support allowance" and (p) reads "**he** is member of the same family as a person in receipt of income-related employment and support allowance".

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

14 October 2008

Government have responded as follows:-

The National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008

The Government accepts that the amendments to the National Health Service (General Ophthalmic Services) Regulations 1986 and the National Health Service (Optical Charges and Payments) 1997 that are made by these Regulations contain gender specific language.

However, the amendments were drafted on this basis in order to ensure that doubt is not cast upon the existing provisions within both sets of Regulations.

It is, of course, acknowledged that it is possible to make gender neutral amendments to pre-devolution instruments, but it is not possible to do so in every case, without major amendments to the text for which there was no time in the circumstances of the current instrument.

Both regulation 13(2) of the 1986 Regulations and regulation 8(3) of the 1997 Regulations contain lists of persons who are entitled to receive certain benefits under the NHS. Both sets of Regulations are drafted in gender-specific language (in accordance with the provisions of the Interpretation Act 1978) and to add an entry which refers to "he or she" to a list that contains only "he" would be likely to cause a lay reader to be confused about the application of the existing provisions.

Annex 2

Subordinate Legislation Committee

(SLC(3)-22-08)

SLC204

Subordinate Legislation Committee Report

Under Standing Order 15.2 the Assembly is invited to pay special attention to the following instrument.

Title: The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No 2) Regulations 2008

These Regulations amend the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 (“the principal Regulations”) by amending the definition of “family” contained in the principal Regulations and to provide that a person who is receiving income-related employment and support allowance will be entitled to full remission of an NHS charge and to full payment of NHS travelling expenses without the need to make a claim for such payment or remission.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2(vi) (defective drafting).

Regulation 2(2) of the Regulations amends the definition of “family” by reference to the meaning given in regulation 2 of the Employment and Support Allowance Regulations 2008. The Welsh text of the Regulations is a literal translation of the English text. However, as the Employment and Support Allowance Regulations concern non-devolved areas (social security) they were, consequently, made by the Secretary of State in English only. Where terms are defined in Assembly legislation by reference to nomenclature used in mono-lingual documents the practice has been to state that the Welsh term has the meaning given to the English term in the specific document.

It is acknowledged that this is a technical drafting error which is unlikely to mislead the reader and would not require immediate correction.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

14 October 2008

Government have responded as follows:-

The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2008

The Government acknowledges that the report raises an issue which is technical in nature and will not affect the use of the Regulations by the reader.

The Government does not agree with the reporting point.

The amendment contained in regulation 2(2) of these Regulations amends the definition of “family” in regulation 2 of the principal Regulations (The National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007) for which the reader is referred to the Social Security Contributions and Benefits Act 1992, the definition goes on to list exceptions to the general rule and this amendment adds another such exception.

The substantive definition has been translated into Welsh and it was considered that any addition or amendment to that definition should therefore also be in Welsh.

Additionally, the amendment refers the reader to, but does not quote directly from, the Employment and Support Allowance Regulations 2008.