

Subordinate Legislation Committee

Report (SLC(3) 07-08)

Meeting Date: 8 April 2008
Meeting Time: 8.15am
Meeting Venue: Committee Room 2, Senedd

The following Committee Members were present: Dr Dai Lloyd AM, Eleanor Burnham AM, Andrew RT Davies AM, Alun Davies AM. Apologies were received from Irene James AM. Sandy Mewies AM substituted for Irene James AM.

Also present were the Deputy Minister for Skills John Griffiths AM and the officials representing the Welsh Assembly Government Strategy Unit: Policy Lead for the Measure Mark Leighfield, Grace Martins, senior lawyer, Further and Higher Education Team, and Zenny Saunders, Head of Legislation Team.

The Committee reports to the Assembly as follows:

Instruments and draft instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2

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

SLC126 - The National Health Service (Optical Charges and Payments) and (General Ophthalmic Services) (Amendment) (Wales) Regulations 2008 Negative Procedure. Date made 3 March 2008. Date laid 4 March 2008. Coming into force date 28 March 2008.

SLC130 - The Removal and Disposal of Vehicles (Amendment) (Wales) Regulations 2008 Negative Procedure. Date made 6 March 2008. Date laid 10 March 2008. Coming into force date 31 March 2008.

SLC136 - The Environmental Offences (Fixed Penalties) (Miscellaneous Provisions) (Wales) Regulations 2008 Negative Procedure. Date made 9 March 2008. Date laid 10 March 2008. Coming into force date 7 April 2008.

SLC137 – The National Health Service (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008 Negative Procedure. Date made 10 March 2008. Date laid 11 March 2008. Coming into force date 1 April 2008.

SLC139 - The Meat Products (Wales) (Amendment) Regulations 2008

Negative Procedure. Date made 11 March 2008. Date laid 12 March 2008.
Coming into force date 6 April 2008.

SLC140 - The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2008
Negative Procedure. Date made 12 March 2008. Date laid 14 March 2008.
Coming into force date 7 April 2008.

SLC142 - The Local Authorities (Model Code of Conduct) (Wales) Order 2008
Negative Procedure. Date made 20 March 2008. Date laid 25 March 2008.
Coming into force date 18 April 2008.

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)

SLC122 - The Assembly Learning Grant (Further Education) Regulations 2008
Negative Procedure. Date made 26 February 2008. Date laid 29 February 2008. Coming into force date 1 April 2008.

SLC127 - The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2008
Negative Procedure. Date made 3 March 2008. Date laid 5 March 2008.
Coming into force date 31 March 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

The Committee scrutinised the "Proposal for a Learning and Skills (Wales) Measure 2008" as set out in the Welsh Assembly Government's consultation document of 15 January 2008. The Chair stated that the Members had the opportunity to consider the Deputy Minister's paper before the meeting and invited the Members to ask questions. John Griffiths AM, Deputy Minister for Skills answered the Members' questions, providing further information on the subordinate legislation provisions of the Measure and explaining the rationale behind the choice of procedure applying to these provisions.

In autumn 2007 the Committee considered Proposed NHS Redress Measure. The Committee's report on the proposed Measure was laid before the National Assembly in November 2007. The Committee had reserved the right to look again at the proposed Measure when it was being considered at Stage 2 and therefore Members returned to this issue.

The Committee received an update on the outcome of Stage 2 consideration of the Proposed NHS Redress (Wales) Measure 2007. Members were content that the recommendations of the Committee in relation to the subordinate legislation provisions of the proposed Measure had been taken into proper consideration at Stage 2. Although the Government did not agree with the Committee's recommendation that the first set of regulations should follow the super affirmative procedure, the Committee agreed that it would be helpful to develop the concept of this procedure for potential use in future legislation.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

8 April 2008

Annex 1

Subordinate Legislation Committee

(SLC(3)-07-08)

SLC122

Subordinate Legislation Committee Report

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

Title: The Assembly Learning Grant (Further Education) Regulations 2008

These Regulations provide for the payment of a means tested grant to help meet the costs of studying, to students in post compulsory education who are ordinarily resident in Wales and who are taking designated further education courses during the academic year beginning on or after 1 September 2008.

Procedure: Negative

The following points have been identified for reporting under Standing Order 15.2.

1. The definitions of “period of full time study” and “period of part-time study” in regulation 2 both finish with the expression “the first day of the academic year of the course in question. The Welsh equivalent of the second of these (“cyfnod o astudio rhan-amser”) correctly uses the expression “ddiwrnod cyntaf blwyddyn academaidd y cwrs o dan sylw”, but the equivalent of the first (“cyfnod o astudio llawnamser”) uses “ddiwrnod cyntaf y flwyddyn academaidd o dan sylw” without reference to the course. [Standing Order 15.2(vii)]
2. In regulation 14(3) the expression “In this paragraph” is used to introduce defined terms. However, they have been defined because they are used not just in that paragraph, but the whole of that regulation. It should therefore read “In this regulation”. [Standing Order 15.2(vi)]

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

8 April 2008

Welsh Assembly Government response:

Memorandum on behalf of the Minister for Children, Education, Lifelong Learning and Skills in respect of the Assembly Learning Grant (Further Education) Regulations 2008

Background

The Assembly Learning Grant (Further Education) Regulations 2008 have been made under the Negative Assembly Procedure.

These Regulations are made under section 22 of the Teaching and Higher Education Act 1998.

The Instrument was made on 26 March 2008 by the Minister for Children, Education and Lifelong Learning.

The Department with responsibility for these Regulations is the Department for Children, Education, Lifelong Learning and Skills (the Department).

The purpose of these Regulations is to provide for the payment of a means tested grant to help meet the costs of studying, to students in post compulsory education who are ordinarily resident in Wales and who are taking designated further education courses during the academic year beginning on or after 1 September 2008.

These Regulations have a coming into force date of 1 April 2008.

On 6 March 2008, the Legal Advisor to the Subordinate Legislation Committee (SLC) notified the Welsh Assembly Government of drafting issues in relation to this Instrument.

Standing Order 15 Issues Identified In Draft SLC Report;

The issues identified relate to Standing Order 15.2 on the grounds of defective drafting (Standing order 15.2(vi)) and inconsistencies between the meaning of its Welsh and English texts (Standing order 15,2(vii)):

1. In regulation 14(3) the expression "In this paragraph" is used to introduce defined terms. However, they have been defined because they are used not just in that paragraph, but the whole of that regulation. It should therefore read "In this regulation". [Standing Order 15.2(vi)]

2. The definitions of “period of full time study” and “period of part-time study” in regulation 2 both finish with the expression “the first day of the academic year of the course in question. The Welsh equivalent of the second of these (“cyfnod o astudio rhan-amser”) correctly uses the expression “ddiwrnod cyntaf blwyddyn academaidd y cwrs o dan sylw”, but the equivalent of the first (“cyfnod o astudio llawnamser”) uses “ddiwrnod cyntaf y flwyddyn academaidd o dan sylw” without reference to the course. [Standing Order 15.2(vii)]

Response on behalf of the Minister for Children, Education, Lifelong Learning and Skills to the Draft SLC Report;

1. In regulation 14(3), contains definitions which apply to the formula used in the regulation but incorrectly states that those definitions apply to that paragraph it should state that they apply to the regulation. It is arguable that the defective provision is clearly an error since it is clear that the definitions are of the terms used in the formula prescribed in regulation 14(2) and those terms are not used elsewhere in the regulations. Therefore, the incorrect use of “paragraph” does not give rise to any unintentional misinterpretation. Notwithstanding the above, the Department intends to make amendments to deal with the defective drafting within the next twelve months when the regulations for academic year beginning on or after 1 September 2009 are made.
2. In regulation 2, in the definition of “cyfnod o astudio llawnamser” the Welsh text mistakenly omits the words “y cwrs”. However, an application for financial support must necessarily relate to attendance of a course and clearly the reference to contact hours elsewhere in the definition is also in relation to a course. Therefore, the absence of the words “y cwrs” does not give rise to any unintentional misinterpretation. Notwithstanding the above, the Department intends to make amendments to deal with the defective drafting within the next twelve months when the regulations for academic year beginning on or after 1 September 2009 are made.

Simon Brindle, Director of Higher Learning Group, under the authority of the Minister for Children, Education, Lifelong Learning and Skills one of the Welsh Ministers.

Annex 2

Subordinate Legislation Committee

(SLC(3) 07-08)

SLC127

Subordinate Legislation Committee Report

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

Title: The Local Authorities (Capital Finance and Accounting) (Wales) (Amendment) Regulations 2008

- providing for the amendment of the Local Authorities (Capital Finance and Accounting) (Wales) Regulations 2003 ("The LA (CFA) Wales 2003 Regulations") (which deal with the calculation of minimum revenue provision) replaces the requirement that local authorities undertake detailed calculations with a new duty to make prudent provision; (ii) amends certain provisions of regulation 24C of the LA (CFA) Wales 2003 Regulations, which is concerned with premiums and discounts on loans taken out by local authorities that are repaid early, so that they mirror equivalent provisions in regulation 24B; and (iii) inserts new regulations 24E and 24F into Part 6 of the LA (CFA) Wales 2003 Regulations. The LA (CFA) (Wales) 2008 regulations give local authorities some flexibility in the way they account for stepped interest rate loans entered into before 21 January 2008 and financial guarantees they gave before that date.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2(ii) (that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made)

- The LA (CFA) (Wales) Regulations 2008 state that the Welsh Ministers are using their powers pursuant to section 9 (3) of the Local Government Act 2003 ("the LGA 2003"), which provides for a regulation making power to make provision for the whole of a sum received by a local authority ("LA"):-(i) in respect of the disposal by it of an interest in a capital asset, or such part of such a sum as may be determined under the regulations, to be treated as not being a capital receipt; or (ii) otherwise than in respect of the disposal by it of an interest in a capital asset, or such a sum as may be determined under the regulations, to be treated as being a capital receipt.

- Section 9 (3) LGA 2003 is a superfluous power as it is mentioned in the LA (CFA) (Wales) 2008 Regulations but is not actually being used by the Welsh Ministers.

Government have responded as follows:-

"The government accepts that the instrument cites section 9(3) of the Local Government Act 2003 but the power contained within that subsection is not used in the instrument.

As the power cited is not being used the government does not accept the reporting of this instrument on the ground that it appears to make unusual or unexpected use of the powers conferred by the enactment under which it is made or to be made.

Whilst the government does not accept the reporting ground, it recognises that the instrument contains a superfluous power which whilst it has no effect will be corrected by the issue of a correction slip"

The proposed course of action is considered acceptable.

Dr Dai Lloyd AM

Chair, Subordinate Legislation Committee

08 April 2008