

Subordinate Legislation Committee

Report (SLC (3) 01-10)

Date: 14 January 2010
Time: 9.00am
Venue: Committee Room 4, Ty Hywel

CONTENTS

The Committee met on 14 January 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Alun Davies AM, Mike German AM, Rhodri Morgan AM. Apologies were received from William Graham AM (Alun Cairns substituted).

The Chair informed the Members that Rhodri Morgan AM replaced Joyce Watson AM as a Committee Member. The Chair thanked Joyce Watson AM for her contribution to the Committee's work and welcomed Rhodri Morgan AM to the Committee.

The Committee agreed to report to the Assembly as follows:

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)

SLC362 - The Smoke Control Areas (Exempted Fireplaces) (Wales) Order 2009

Negative Procedure. Date made 4 December 2009. Date laid 8 December 2009. Coming into force date 31 December 2009

SLC363 - The Smoke Control Areas (Authorised Fuels) (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 4 December 2009. Date laid 8 December 2009. Coming into force date 31 December 2009

SLC364 - The Agricultural Holdings (Units of Production) (Wales) Order 2009

Negative Procedure. Date made 7 December 2009. Date laid 9 December 2009. Coming into force date 31 December 2009

SLC365 - The Food Supplements (Wales) and Addition of Vitamins, Minerals and Other Substances (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 8 December 2009. Date laid 10 December 2009. Coming into force date 1 January 2010

SLC366 - The Food for Particular Nutritional Uses (Addition of Substances for Specific Nutritional Purposes) (Wales) Regulations 2009

Negative Procedure. Date made 8 December 2009. Date laid 10 December 2009. Coming into force date 1 January 2010

SLC368 - The Education (Local Curriculum for Pupils in Key Stage 4) (Wales) Regulations 2009

Negative Procedure. Date made 8 December 2009. Date laid 10 December 2009. Coming into force date 1 January 2010

The Committee noted that this piece of legislation brings forward one of the first Statutory Instruments under the Learning and Skills (Wales) Measure 2009 and helps implement the Welsh Government's "Learning Pathways" programme.

SLC371 - The Quality Partnership Schemes (Wales) Regulations 2009

Negative Procedure. Date made 14 December 2009. Date laid 15 December 2009. Coming into force date 1 February 2010

SLC374 - The Education (Information About Children in Alternative Provision) (Wales) Regulations 2009

Negative Procedure. Date made 17 December 2009. Date laid 21 December 2009. Coming into force date 12 January 2010

Instruments in respect of which the Assembly is invited to pay special attention under Standing Orders 15.2 and 15.3

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

SLC367 - The Private and Voluntary Health Care (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 8 December 2009. Date laid 10 December 2009. Coming into force date 1 February 2010

The Committee noted that whilst the Explanatory Memorandum limited these Regulations to "the same establishment" in relation to regulation 2 (2) (b), the regulation 2 (2) (b) itself in both the English and Welsh versions of the Regulations did not contain the words "in the same establishment". The Committee decided to draw this to the attention of the National Assembly under S.O.15.3

SLC369 - The Children Act 1989 (Amendment of Miscellaneous Regulations) (No. 2) (Wales) Regulations 2009

Negative Procedure. Date made 9 December 2009. Date laid 10 December 2009. Coming into force date 20 January 2010

SLC370 - The Rural Development Programmes (Wales) (Amendment) Regulations 2009

Negative Procedure. Date made 9 December 2009. Date laid 11 December 2009. Coming into force date 1 January 2010

The Committee noted that this Statutory Instrument implemented one of the Welsh Government's commitments under the "One Wales" programme.

SLC372 - The Town and Country Planning (Environmental Impact Assessment) (Undetermined Reviews of Old Mineral Permissions) (Wales) Regulations 2009

Negative Procedure. Date made 16 December 2009. Date laid 17 December 2009. Coming into force date 8 January 2010

The Committee decided to postpone reporting on this Statutory Instrument till next week to allow the Welsh Government time to consider a possible report under S.O. 15.3

The Committee's Reports under S.O.15.2 and S.O.15.3 on these Regulations are attached as Annexes 1-3.

Other Business

Committee Inquiries : Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters and Monitoring the outcome of the Committee's Reports on Statutory Instruments

The Committee took oral evidence from the Law Society, represented by E Kay Powell, LL.M Solicitor and Policy Adviser; Tessa Shellens, Consultant, Morgan Cole and Huw Williams, Partner, Geldards LLP. The Law Society agreed to provide examples of the problems arising from the variations between the English and Welsh versions of legislation.

The Committee also took oral evidence from the Constitution Unit, School of Public Policy, UCL, represented by Alan Trench. Mr Trench agreed, once it was prepared, to provide a copy of his written evidence to the Welsh Affairs Committee.

Committee Correspondence

The Committee discussed the Minister for Health and Social Services Edwina Hart MBE AM's response to the Chair's letter regarding SLC353 - The National Health Service (Charges to Overseas Visitors) (Amendment) (No.2) (Wales) Regulations 2009.

Janet Ryder AM

Chair, Subordinate Legislation Committee

14 January 2010

Annex 1

Subordinate Legislation Committee

(SLC(3)-01-10)

SLC367

Subordinate Legislation Committee Report

Title: The Private and Voluntary Health Care (Wales) (Amendment) Regulations 2009

Procedure: Negative

These Regulations amend regulation 24 (Fitness of premises) of the Private and Voluntary Health Care (Wales) Regulations 2002 by inserting a new regulation 24 (1A). The Regulations are amended in order to place a limit on the number of beds an independent hospital may provide where long term treatment and nursing is provided for persons with a learning disability, and those with a mental illness. There is also a requirement that no other independent hospital should be located in close proximity to another independent hospital in such a way as it might be considered a multiple of the original independent hospital, and therefore might affect the rationale and purpose of restricting the number of patients in independent hospitals as provided in these regulations.

Technical Scrutiny

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

Regulation 3 (1) in the Welsh text applies to all new applications by independent hospitals to register or vary an existing registration of an independent hospital with the Welsh Ministers which are made on or after 1 February 2010, whereas regulation 3 (1) of the English text which also applies to all new applications to register or vary an existing registration of an independent hospital with the Welsh Ministers which are made on or after 1 February 2010, does not state that the new applications are made by the independent hospitals. [S.O. 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts].

Merits Scrutiny

Under Standing Order 15.3 the Assembly is invited to pay special attention to the following instrument:-

Part of the purpose and intention of the Regulations as provided in the Explanatory Memorandum is that “anticipated treatment which extends beyond a 12-month period” is “in the same establishment” in relation to regulation 2 (2) (b). However regulation 2 (2) (b) in both the English and Welsh versions of the Regulations does not contain the words “in the same establishment.” By omitting the words “in the same establishment” the Regulations are not giving effect to the purpose and intention of the Explanatory Memorandum. Could the Government confirm firstly, why the words have been omitted, and secondly whether the Regulations imperfectly achieves its policy objectives? [S.O.15.3 (v)].

Janet Ryder AM
Chair, Subordinate Legislation Committee

14 January 2010

The Government has responded as follows:

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention because of inconsistencies between the meaning of the English and Welsh texts in regulation 3(1).

Response:

This regulation applies to all new applications to register or vary an existing registration of an independent hospital with the Welsh Ministers which are made on or after 1 February 2010.

The Welsh language text reads:

"Mae'r rheoliad hwn yn gymwys i bob cais newydd **gan ysbytai annibynnol** i gofrestru ysbyty annibynnol neu i amrywio cofrestrriad ysbyty annibynnol gyda Gweinidogion Cymru sy'n cael ei wneud ar 1 Chwefror 2010 neu wedi hynny."

In the Welsh text, the words "**gan ysbytai annibynnol**" appear, whilst in the English text they are not present. If the English text were to mirror the Welsh it would read:-

This regulation applies to all new applications **by an independent hospital** to register or vary an existing registration of an independent hospital with the Welsh Ministers which are made on or after 1 February 2010.

We do not believe that the additional wording in the Welsh text makes any difference to the legal meaning of regulation 3(1), or the operation

of the regulations, even though strictly speaking the literal meaning of the text might differ.

Merits Scrutiny

Under Standing Order 15.3 the Assembly is invited to pay special attention as the regulations are not giving effect to the purpose and intention of the Explanatory Memorandum.

Response:

The Explanatory Memorandum reads in relation to regulation 2(b):-

2(b) An independent hospital providing treatment and care for patients with a mental illness (including those in low and medium secure accommodation) and also for patients with a learning disability, whose treatment is anticipated to extend beyond a 12-month period **in the same establishment**, and for whom overnight accommodation is provided, must not exceed 15 beds, and where reasonably practicable, provided in two or more units.

Regulation 2(2)(b) reads:-

"an independent hospital, providing treatment and nursing for patients with a mental illness (including those in low and medium secure accommodation) and also for patients with a learning disability, whose treatment and nursing is anticipated to extend beyond a 12-month period, and for whom overnight accommodation is provided, must not exceed 15 beds, and where reasonably practicable, provided in two or more units.

Therefore the words "**in the same establishment**", are not included in regulation 2(2)(b).

The words "**in the same establishment**" were intentionally not included in regulation 2(2)(b) as the wording was not thought necessary. Even with the omission of the words "in the same establishment", it is clear by implication that the restriction on the number of beds relates to the same establishment. The words "**in the same establishment**" were used in the Explanatory Memorandum, simply for the purposes of explanation and clarification. It does not follow that but words used in the Explanatory Memorandum to refer to or explain and clarify a regulation, must be used in the actual regulation itself.

We are happy that that the meaning of regulation 2(2)(b) here is clear, and that it does give effect to the purpose and intention of the Explanatory Memorandum, and the policy intention of the government.

Annex 2

Subordinate Legislation Committee

(SLC(3)-01-10)

SLC369

Subordinate Legislation Committee Report

Title: The Children Act 1989 (Amendment of Miscellaneous Regulations) (No. 2) (Wales) Regulations 2009

Procedure: Negative

These Regulations revoke The Children Act 1989 (Amendment of Miscellaneous Regulations) (Wales) Regulations 2009 which contained drafting errors.

The Children Act 2004 extended the meaning of “organisation” in the Children Act 1989 to include an unincorporated association. These Regulations make amendments to the Childminding and Day Care (Wales) Regulations 2002 and the Registration of Social Care and Independent Health Care (Wales) Regulations 2002 to give administrative effect to that amendment. They also amend the schedule of documents and information that an applicant for registration is required to provide where a person has been appointed to be in charge of day care.

Technical Scrutiny

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

Regulation 3 (6) in the English text refers to “a body corporate” being substituted for “organisation”, whereas regulation 3 (6) in the Welsh text refers in the English insertion to “a corporate body” being substituted for “organisation”. [SO 15.2 (vii) applies, that there appear to be inconsistencies between the meaning of its English and Welsh texts].

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument/draft instrument:

Janet Ryder AM

Chair, Subordinate Legislation Committee

14 January 2010

The Government has responded as follows:

**The Children Act 1989 (Amendment of Miscellaneous Regulations)
(No. 2) (Wales) Regulations 2009**

"It is accepted that there is an inconsistency between the English and Welsh texts in that regulation 3(6) in the English text refers to "a body corporate" being substituted for "organisation", whereas regulation 3(6) in the Welsh text refers in the English insertion to "a corporate body" being substituted for "organisation". The English text is as intended, the Welsh is in error. However, there is no difference in meaning between "corporate body" and "body corporate" and "organisation" is correctly defined in both texts. No confusion is caused by the error. The Government does not propose to take any action at this time but will review the matter at the next suitable opportunity."

Annex 3

Subordinate Legislation Committee

(SLC(3)-01-10)

SLC370

Subordinate Legislation Committee Report

Title: The Rural Development Programmes (Wales) (Amendment) Regulations 2009

Procedure: Negative

These Regulations amend the Rural Development Programmes (Wales) Regulations 2006 to confer powers upon Welsh Ministers in relation to the Support for Young Entrants into Farming Scheme which will open in 2010.

Technical Scrutiny

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

In regulation 2(3) there is a cross reference in the English text to regulation 9(1)(l) of the 2006 Regulations. The Welsh text contains an identical cross reference, but as the paragraphs were lettered in the relevant alphabetical order, the corresponding Welsh reference would have been to rheoliad 9(1)(h). [Standing Order 15.2 (vii)]

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument/draft instrument:

Janet Ryder AM

Chair, Subordinate Legislation Committee

14 January 2010

The Government has responded as follows:

The Rural Development Programmes (Wales) (Amendment) Regulations 2009

"The error has been rectified in the published version of the Welsh text of the Regulations."