

Constitutional Affairs Committee

Report: CA(3)-20-10 : 15 July 2010

This meeting can be viewed on Senedd TV at:

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Time: 1.00 pm

Venue: Committee Room 2, Senedd

Assembly Members in attendance

Dai Lloyd, South West Wales (Temporary Chair)

Alun Davies, Mid and West Wales

William Graham, South Wales East

Apologies were received from the Committee Chair, Janet Ryder AM. Dr Dai Lloyd substituted and was elected as temporary chair under SO 10.19 for the meeting. Apologies were also received from Kirsty Williams AM and Rhodri Morgan AM.

The Committee reports to the Assembly as follows:

Instruments in respect of which the Assembly is not invited to pay special attention under Standing Order 15.2 or 15.3

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

- **CA460 - The Integrated Family Support Teams (Composition of Teams and Board Functions) (Wales) Regulations 2010**
Negative Procedure. Date made 24 June 2010. Date laid 29 June 2010. Coming into force date 1 September 2010
- **CA461 - The Cancellation of Student Loans for Living Costs Liability (Wales) Regulations 2010**
Negative Procedure. Date made 26 June 2010. Date Laid 30 June 2010. Coming into force date 1 August 2010
- **CA462 - The Integrated Family Support Teams (Review of Cases) (Wales) Regulations 2010**
Negative Procedure. Date made 24 June 2010. Date Laid 29 June 2010. Coming into force date 1 September 2010
- **CA464 - The Child Minding and Day Care (Disqualification) (Wales) Regulations 2010**
Negative Procedure. Date Made 30 June 2010. Date Laid 2 July 2010. Coming into force date 25 July 2010.

- **CA465 – The Safeguarding Vulnerable Groups Act 2006 (Prescribed Period and Appropriate Officer) (Wales) (Revocation) Regulations 2010**
Negative Procedure. Date Made 30 June 2010. Date Laid 2 July 2010. Coming into force date 25 July 2010.

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

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

- **CA463 - The Integrated Family Support Teams (Family Support Functions) (Wales) Regulations 2010**
Negative Procedure Date made 24 June 2010. Date laid 29 June 2010. Coming into force date 1 September 2010

The Committee agreed that there were technical reporting points under Standing Order 15.2. No Merit reporting points were noted under Standing Order 15.3. The report is attached as Annex 1.

Other Business

Review of Standing Orders – Committees: Constitutional Affairs Committee

The Committee considered correspondence relating to the Business Committee’s review of Standing Orders and a related paper from the Committee Clerk. The Committee broadly endorsed the Committees Clerk’s paper and agreed that the Chair should respond on its behalf.

Committee Correspondence

The Committee noted a letter from the Committee Chair to the Deputy Minister for Children following up his evidence on the Proposed Rights of Children and Young Persons (Wales) Measure 2010

Dr Dai Lloyd AM

Temporary Chair, Constitutional Affairs Committee
15 July 2010

Annex 1

Constitutional Affairs Committee Draft Report

CA463

Title: The Integrated Family Support Teams (Family Support Functions) (Wales) Regulations 2010

Procedure: Negative

These regulations set out the functions of a local authority and the functions of a Local Health Board which are “family support functions” for the purposes of section 58 of the Children and Families (Wales) Measure 2010 (“the Measure”).

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention to the instrument on the following ground:

1. The Schedule sets out the functions of local authorities and local health boards that are to be considered “family support functions” for the purposes of the Measure. Tables 1, 3 and 4 include section 82 of the National Health Service Act 2006 which reads as follows:

In exercising their respective functions NHS bodies (on the one hand) and local authorities (on the other) must co-operate with one another in order to secure and advance the health and welfare of the people of England and Wales.

The wording suggests that this is not itself a function, but a duty to exercise functions in a particular way. On that basis, section 82 should not be included in the Schedule to the present Regulations as a function.

If it is argued, on the other hand, that section 82 does indeed constitute a function, there appears to be no good reason why it is not also included in Table 2 of the Schedule as a local authority function in relation to adults.

[Standing Order 15.2(vi). That the drafting appears to be defective.]

The Government has responded as follows:

Although this gives the appearance of unevenness as between local authorities and local health boards in the identification of functions, it

is a reflection of the primary legal role which local authorities have in establishing IFS teams.

The view taken is that s.82 of the National Health Service Act 1982 ("s.82") is a function in its own right.

General and incidental powers of Local Health Boards are cited amongst the functions designated as "family support functions " (e.g. section 1 and 2 National Health Service (Wales) Act 2006). Consideration was given as to whether general and incidental powers of local authorities (e.g. section 2 of the Local Government Act 2000 and s.111 of the Local Government Act 1972 as well as section 82 of the NHS Act 2006) should also be included in the table of family support functions. On the basis that the Integrated Family Support teams are an emanation of the local authority and not a separate legal entity, this was not considered necessary because the general and incidental powers of the local authority would apply in any event.

Although this gives the appearance of unevenness as between local authorities and local health boards in the identification of functions, it is a reflection of the primary legal role which local authorities have in establishing IFS teams.

However it is acknowledged that the reference to s.82 in table 1 is an error. Regulations to correct this error will be laid after recess and before the end of September 2010.

Merits Scrutiny

The Assembly is not invited to pay special attention to the instrument under Standing Order 15.3.

**Constitutional Affairs Committee
July 2010**