

Constitutional Affairs Committee

Report: CA(3)-03-11 : 3 February 2011

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Time: 9.30am

Venue: Committee Room 2, Senedd

Assembly Members in attendance

Janet Ryder, North Wales (Chair)

Alun Davies, Mid and West Wales

William Graham, South Wales East

Rhodri Morgan, Cardiff West

Kirsty Williams, Brecon and Radnorshire

Apologies.

There were no apologies.

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)

CA522 - The Independent Health Care (Fees) (Wales) Regulations 2011.

Procedure: Negative

Date made: 20 January 2011

Date laid: 21 January 2011

Coming into force date: 1 April 2011

CA524 - The Assembly Learning Grants and Loans (Higher Education) (Wales) Regulations 2011

Procedure: Negative

Date made: 25 January 2011

Date laid: 27 January 2011

Coming into force date: 21 February 2011

CA525 - The Education (School Day and School Year) (Wales) (Amendment) Regulations 2011

Procedure: Negative

Date made: 25 January 2011

Date laid: 27 January 2011

Coming into force date: 18 February 2011

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)

CA523 - The Care Standards Act 2000 (Notification) (Wales) Regulations 2011

Procedure: Negative

Date made: 18 January 2011

Date laid: 24 January 2011

Coming into force date: 1 April 2011

The Committee agreed the report under SO15.2 on these regulations, which is attached as Annex 1.

Draft Instruments subject to approval pursuant to a resolution of the Assembly (Affirmative Procedure)

CA519 - The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011

The Committee noted that CA519 - The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 had been withdrawn and would be re-laid by the Welsh Government at a later date.

Other Business

Consideration of the Proposed Local Government (Wales) Measure

The Committee considered the Chair's letter to the Minister for Social Justice and Local Government Carl Sargeant AM and the Minister's response regarding the amendments proposed by the Welsh Government, which would allow the Government to amalgamate local authorities. The Committee agreed to invite the Minister to give evidence at 8:30am on 10 February.

The Committee considered the paper provided by Wales Governance Centre and took evidence from David Lambert, Research Fellow and Marie Navarro, Research Associate, from the Wales Governance Centre, Cardiff Law School.

Arising from their oral evidence, the Wales Governance Centre agreed to provide further information on criteria that might be added to the proposed amendments to clarify the circumstances in which the proposed power could be used by the Welsh Ministers.

Resolution to Meet in Private

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to prepare itself to take evidence from the Minister for Social Justice and Local Government in relation to the proposed Local Government (Wales) Measure.

Janet Ryder AM
Chair, Constitutional Affairs Committee

3 February 2011

Annex 1

Constitutional Affairs Committee

(CA(3)-03-11)

CA523

Constitutional Affairs Committee Report

Title: The Care Standards Act 2000 (Notification) (Wales) Regulations 2011

Procedure: Negative

These Regulations are made under the Care Standards Act 2000 (“the Act”). The Welsh Ministers are the registration authority in relation to Wales for the purposes of Part 2 of the Act. Section 30A(2) of the Act provides that the registration authority must notify all local authorities in England and Wales as soon as practicable if they take any of the actions specified in section 30A(2) against a person carrying on or managing an establishment or agency specified. The information to be included in those notifications is set out in regulation 2. Section 30A(3) provides for further notifications to be sent when the registration authority becomes aware of the prescribed circumstances. Regulation 3 prescribes the circumstances.

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument for the following reasons:-

1. A number of the powers relied upon to make these Regulations have not yet been commenced other than for regulation making purposes. As they are to come into force on 1 April 2011, it is essential that section 30A(3) and (4) of the Act be commenced for remaining purposes before these Regulations have effect. [Standing Order 15.2(ii)]
2. Sections 30A(3) and (4) of the Act merely use the term ‘prescribed’. The fact that ‘prescribed’ means prescribed by regulations made by Welsh Ministers is contained in sub-section (7) which should therefore also have been cited. [Standing Order 15.2(vi)]
3. Regulations 2(3) and 3(b) both contain the following form of words: ‘(decided to adopt or give notice to suspend or extend such a suspension)’. It is not clear what is to be adopted. Examination of the enabling Act reveals that the words ‘a proposal’ are missing. [Standing Order 15.2 (v)]

Merits Scrutiny

Under Standing Order 15.3 the Committee is not invited to pay special attention to this instrument.

Janet Ryder AM

Chair, Constitutional Affairs Committee

3 February January 2011

The Government has responded as follows:

The Care Standards Act 2000 (Notification) (Wales) Regulations 2011

I am grateful to the Constitutional Affairs Committee Legal Advisers for drawing my attention to three matters in relation to the Care Standards Act 2000 (Notification) (Wales) Regulations 2011; and I have the following observations to make:

1. The pertinent sub-sections of section 30A will have been commenced by 1 April 2011, they are included within a planned Commencement Order.
2. Citing sub-section (7) as this is the sub-section which states that 'prescribed' is to mean 'prescribed by regulations made by the Welsh Ministers' is noted.
3. As section 30A of the Act is clear it was not felt that this was needed but it is accepted that including the words 'a proposal' would have made it clearer.'