

Constitutional Affairs Committee

Report: CA(3)-09-11 : 30 March 2011

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Time: 10.30 am

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

Apologies.

Kirsty Williams

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)

CA579 - The Assembly Learning Grants and Loans (Higher Education) (Wales) (No. 2) Regulations 2011

Procedure: Negative.

Date made: 21 March 2011.

Date laid: 22 March 2011.

Coming into force date: 12 April 2011

CA584 - The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011

Procedure: Negative.

Date made: 24 March 2011.

Date laid: 29 March 2011.

Coming into force date: 11 April 2011

CA585 - The Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (Wales) Regulations 2011

Procedure: Negative.

Date made: 26 March 2011.

Date laid: 29 March 2011.

Coming into force date: 22 April 2011

**CA586 - The Higher Education Funding Council for Wales
(Supplementary Functions) Order 2011**

Procedure: Negative.

Date made: 28 March 2011.

Date laid: 29 March 2011.

Coming into force date: 19 April 2011

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)

CA578 - The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011

Procedure: Negative.

Date made: 16 March 2011.

Date laid: 18 March 2011.

Coming into force date: 11 April 2011

CA580 - The National Assembly for Wales (Letters Patent) Order 2011

Procedure: Negative

Date made: 16 March 2011

Date laid: 23 March 2011

Coming into force date: 5 May 2011

The Committee agreed the Reports under S.O.15.2 and S.O.15.3 on these statutory instruments, which are attached as Annexes 1-2.

Instruments Laid Before the Assembly too late for Committee Consideration

It was agreed that other Statutory Instruments, which had been or might be laid too late for the Committee to consider properly before the dissolution, would be brought to the Assembly's attention under Standing Order 15.3 ("as giving rise to an issue of public policy likely to be of interest to the Assembly" because they may by-pass the usual scrutiny arrangements for Statutory Instruments).

Other Business

The Chair thanked Members and officials for their work on behalf of the Committee. Members thanked the Chair for her contribution to the Committee's development.

Janet Ryder AM

Chair, Constitutional Affairs Committee

30 March 2011

Annex 1

Constitutional Affairs Committee

(CA(3)-09-11)

CA578

Constitutional Affairs Committee Report

Title: The Community Care Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011

Procedure: Negative

These Regulations make provision for the making of direct payments in respect of a person securing the provision of certain social care services. In doing so they revoke and replace the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004. The services in question are those which would be provided under the community care enactments mentioned in section 46 (3) of the National Health Service and Community Care Act 1990, to carers under section 2 of the Carers and Disabled Children Act 2000 or services under section 17 of the Children Act 1989 (provision of services for children in need, their families and others).

Technical Scrutiny

Under Standing Orders 15.2 the Assembly is invited to pay special attention to the following instrument:-

1.The Welsh word provided within these Regulations for surrogate is "lladmerydd", which translates as meaning interpreter, deputy or advocate as opposed to surrogate. It would seem that in the context within which surrogate arises within the Regulations, that advocate would be a more appropriate term to use.

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements; and Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

2.Regulation 9 paragraph (4) (a) of the English version of these Regulations states that the responsible authority may, with the requisite consent, make payments under section 57 (1A) of the Health and Social Care Act 2001 ("the 2001 Act") to S ("the suitable person") to secure the provision of a relevant service for P ("the Prescribed person"), whereas the Welsh version states that the responsible authority may in the same circumstances, with the requisite consent,

make payments under section 17A (1) of the 1989 Act (“the Children Act”) or section 57 (1A) of the 2001 Act. The result of this provision means that the English version would not allow payments to a person who is a parent with parental responsibility for a disabled child, a disabled person with parental responsibility for a child, or a disabled child aged 16 or 17.

(Standing Order 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

3. Regulation 11 paragraph (6) of the Welsh version refers to section 57 (1A) of the 2001 Act for the purposes of making direct payments whereas the English version merely refers to paragraph (1) of regulation 11 and not to section 57 (1A) of the 2001 Act. Although paragraph (1) of the English version does make reference to section 57 (1A) of the 2001 Act it does so in the context of making it subject to paragraph (5) which is about the rate of payment concerning aftercare. The versions are therefore significantly different from one another.

(Standing Order 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

4. Regulation 12 paragraph (5) in the English text refers to conditions in paragraph (4) which require that the payee must (amongst other things) not secure the relevant service from a particular person; and must provide such information to the responsible authority whereas regulation 12 paragraph (5) in the Welsh text does not refer to the conditions in paragraph (4).

(Standing Order 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

5. Regulation 12 paragraph (2) (c), and regulation 13 paragraph (3) (c) of the English text lists persons living in the same household as P for the purposes of payment from those persons for securing a service to meet P’s needs. However, regulation 12 paragraph (2) (c), and regulation 13 paragraph (3) (c) of the Welsh text does not refer to persons living in the same household. The Welsh version merely refers to and then lists persons who have a particular relationship with P. Both versions are significantly different as the English provision will apply to persons living within the same household as P whereas the Welsh version is not limited in this way.

(Standing Order 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts.

6. Regulation 17 paragraph (2) of both versions differ in how they relate to P. The English version states “that a responsible authority must review the making of direct payments under section 57 (1) of the 2001 Act where the responsible authority reasonably considers, on the basis of information given by any person, that P falls within section 57 (5A) of that Act”. Regulation 17 paragraph (2) of the Welsh version states “Rhaid i awdurdod cyfrifol adolygu’r arfer o wneud taliadau uniongyrchol o dan adran 57 (1) o Ddeddf 2001 os yw’r awdurdod cyfrifol o’r farn, yn rhesymol, ar sail gwybodaeth a roddir gan unrhyw berson, nad yw P yn dod o fewn adran 57 (5A) o Ddeddf honno”, which in English means “that a responsible authority must review the making of direct payments under section 57 (1) of the 2001 Act where the responsible authority reasonably considers, on the basis of information given by any person, that P does **not** fall within section 57 (5A) of that Act”.

(Standing Order 15.2 (vi) that its drafting appears to be defective or it fails to fulfil statutory requirements; and Standing Order (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts.

7. Regulation 19 paragraph (6) of the English text refers to “direct payments under section 57 (1A)” whereas regulation 19 paragraph (6) of the Welsh text merely refers to “payments under section 57 (1A) of the 2001 Act.” The word “direct” is not reflected in the Welsh text.

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements; and Standing Order (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

8. Regulation 19 paragraph 6 (a) of the English version refers to the beneficiary being a prescribed person whereas regulation 19 paragraph 6 (a) of the Welsh version states “os yw’r yn berson rhagnodedig” does not read correctly. It appears that it was intended to read “os yw’n berson rhagnodedig” or “os yw’r buddiolwyr yn berson rhagnodedig”.

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements; and Standing Order (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

9. Regulation 10 paragraph (2) of the English version refers to the responsible authority determining the prescribed person's means. Regulation 10 paragraph (2) of the Welsh version refers to "P" instead of the prescribed person within the same context. The prescribed person and "P" have different definitions in regulation 2.

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirements; and Standing Order (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

10. Schedule 3 refers to regulation 21 as being the appurtenant regulation to this Schedule. However there is no regulation 21 within these Regulations. The relevant regulation is regulation 20.

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirement).

11. Schedule 3 of the English version of these Regulations provides an erroneous title to "the Civil Partnership Act 2004 (Amendments to Subordinate Legislation) (Wales) Order 2005" which it seeks to revoke. The correct title to these Regulations is "The Civil Partnership Act 2004 (Consequential Amendments to Subordinate Legislation) (Wales) Order 2005."

(Standing Order 15.2 (vi) that its drafting appears defective or it fails to fulfil statutory requirement).

Merits Scrutiny

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

Janet Ryder AM
Chair, Constitutional Affairs Committee

30 March 2011

The Government has responded as follows:

1. – 9. The reporting points 1 to 9 are accepted. The Government intends to bring forward amending legislation as the earliest opportunity and in any event within 3 months from the coming into force of the Regulations.

10. The Government accepts that there is a minor typographical error in the side heading to Schedule 3 to the Regulations and is satisfied that it may be corrected upon publication.

11. The Government accepts that there is a minor typographical / clerical error in the body of Schedule 3 to the Regulations and is satisfied that it may be corrected upon publication.

Annex 2

Constitutional Affairs Committee

(CA(3)-09-11)

CA580

Constitutional Affairs Committee Report

Title: The National Assembly for Wales (Letters Patent) Order 2011

Procedure: Negative

Section 107 (2) of the Government of Wales Act 2006 (“the 2006 Act”) provides that a Bill passed by the National Assembly for Wales (“the Assembly”) becomes an Act on receipt of Royal Assent. Section 115 (4) of the 2006 Act provides that such a Bill receives Royal Assent when Letters Patent under the Welsh Seal signed with Her Majesty’s own hand signifying Her Assent are notified to the Clerk of the Assembly. Section 116 (1) of the 2006 Act provides for there to be a Welsh Seal. Section 116 (3) of the 2006 Act provides that Her Majesty may by Order in Council make provision as to the form and manner of preparation and the publication of such Letters Patent. This Order prescribes the form of words to be used in Letters Patent signifying Royal Assent to Bills passed by the Assembly. It also makes provision as to the preparation and publication of the Letters Patent.

Technical Scrutiny

No points are identified for reporting under Standing Orders 15.2 in respect of this instrument.

Merits Scrutiny

The following point is identified for reporting under Standing Order 15.3(ii) in respect of this instrument:

The Committee notes with approval that, on this occasion, this Order has been made in both English and Welsh despite being made by the Privy Council.

Janet Ryder AM

Chair, Constitutional Affairs Committee

30 March 2011