

Constitutional Affairs Committee

Report CA(3)-11-10

Date: 22 April 2010
Time: 13.00
Venue: Committee Room 2, Senedd

CONTENTS

The Committee met on 22 April 2010. At the meeting the following Committee Members were present: Janet Ryder AM, Mike German AM, William Graham AM, Rhodri Morgan AM. Apologies were received from Alun Davies AM. There were no substitutions.

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 and 15.3

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

- CA426 - The Fish Labelling (Wales) Regulations 2010
Negative Procedure Date made 15 March 2010. Date laid 16 March 2010. Coming into force date 6 April 2010
- CA427 - The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2010
Negative Procedure Date made 15 March 2010. Date laid 16 March 2010. Coming into force date: for the purpose of regulation 6 - 6 April 2010; for all other purposes - 12 April 2010
- CA429 - The National Health Service (Charges to Overseas Visitors) (Miscellaneous Amendments) (Wales) Regulations 2010
Negative Procedure Date made 23 March 2010. Date laid 24 March 2010. Coming into force date in accordance with regulation 1(2)
- CA430 - The Food Hygiene (Wales) (Amendment) Regulations 2010
Negative Procedure Date made 18 March 2010. Date laid 23 March 2010. Coming into force date 13 April 2010
- CA432 - The Health and Social Care Act 2008 (Commencement No 2 and Transitional Provisions) (Wales) Order 2010
Negative Procedure Date made 24 March 2010. Date laid 26 March 2010. Coming into force date 19 April 2010

- CA434 - The Local Education Authorities and Children's Services Authorities (Integration of Functions) (Subordinate Legislation) (Wales) Order 2010

Negative Procedure. Date made 31 March 2010. Date laid 1 April 2010. Coming into force in accordance with article 1(1)

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

- CA431 - The Marine and Coastal Access Act 2009 (Consequential Provisions) (Wales) Order 2010

Affirmative Procedure. Date made 2010. Date laid 2010. Coming into force date April 2010

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

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

- CA428 - The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2010

Negative Procedure Date made 18 March 2010. Date laid 19 March 2010. Coming into force date 1 April 2010

Legal Advisers confirmed that the Government response to some of the points raised in the original draft report was satisfactory. The Committee agreed to draw the Welsh Government's attention to the relatively large number of remaining errors in these Regulations and ask what reasons there were for what appeared to be mainly drafting errors.

The Committee noted the Welsh Government's intention to bring forward amending regulations, to address the remaining points from those identified in the original draft report, within the next two months, but the Committee felt that this period was too long and that the amending regulations should be made within one month.

The Committee agreed the report under S.O.15.2 on these Regulations, which is attached as Annex 1.

Other Business

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

The Committee took oral evidence from the Counsel General and Leader of the Legislative Programme, Welsh Government, John Griffiths AM. The Counsel General agreed to provide further information on workforce planning for future law graduates capable of drafting legislation in both English and Welsh. The Committee also noted that the Counsel General and Leader of the Legislative Programme was conducting a Review of the Legislative Processes. The Members welcomed an opportunity to contribute to the Review.

Committee Correspondence

Response of the Deputy Minister for Social Services to the Committee's Report on The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity) (Wales) Regulations 2010 (CA402)

The Committee noted the response from the Deputy Minister for Social Services of the Welsh Government Gwenda Thomas AM to the Committee's report on CA402 - The Safeguarding Vulnerable Groups Act 2006 (Controlled Activity) (Wales) Regulations 2010

In accordance with Standing Order 10.37(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the evidence submitted thus far on Inquiry into the Developments in Schedule 5 to the Government of Wales Act 2006, including Exceptions to Matters and the Inquiry into Monitoring the outcome of the Committee's Reports on Statutory Instruments.

Janet Ryder AM
Chair, Constitutional Affairs Committee

22 April 2010

Annex 1

Constitutional Affairs Committee

(CA(3)-11-10)

CA428

Constitutional Affairs Committee Report

Title: The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2010

Procedure: Negative

These Regulations amend the National Health Service (Pharmaceutical Services) Regulations 1992 (“the principal Regulations”) in respect of the terms of service for pharmacists and suppliers of appliances.

Technical Scrutiny

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

1) Regulation 2 of these Regulations refers to regulation 2 (1) (c) of the principal Regulations, when in fact there is no regulation 2 (1) (c) in existence within the principal Regulations. (Standing Order 15.2 Defective drafting or it fails to fulfil statutory requirements).

2) Regulation 8 of these Regulations amends Schedule 2 to the principal Regulations by inserting a new paragraph 10A into the Schedule. Regulation 8 (6) (a) refers to paragraph 25 (A) (1) when there is no paragraph 25 (A) (1) in Schedule 2 of the principal Regulations. (Standing Order 15.2 Defective drafting or it fails to fulfil statutory requirements).

3) Regulation 16 (3) in these Regulations refers to the Pharmaceutical Services (Wales) Directions 2010 (“2010 Directions”) when there is no formal reference provided for the 2010 Directions and there is doubt as to the actual existence and/or the correct title of the 2010 Directions. (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

4) Paragraph 6 (3) (a) states that “the supplier of appliances must ask any person who makes a declaration that the person named on the prescription does not have to pay under regulation 8...”. This does not read correctly as a question. (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

5) Paragraph 6 (3) (a) to Schedule 2A refers to the National Health Service (Free Prescriptions and Charges) for Drugs and Appliances (Wales) Regulations 2007; and paragraph 6 (3) (c) (i) refers to the National Health Service Free Prescriptions and Charges for Drugs and Appliances (Wales) Regulations 2007 when the correct title should in actual fact be the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007. The brackets are inserted in the incorrect positions. (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

6) Paragraph 12 (1) (b) and (c); paragraph 14 (3) (c) (i); and paragraph 15 (4) (b) and (c) of Schedule 2A refer to directions by a Local Health Board within paragraph 4 of Schedule 2 when there is no reference to the issuing of directions within paragraph 2 of Schedule 2 to the principal Regulations. (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

7) Paragraph 14 (c) of Schedule 2A refers to paragraph 13 (1) (a) when paragraph 13 (1) (a) does not exist and is not referred to in either Schedule 2 within the principal Regulations or within Schedule 2A to these Regulations. (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

8) Paragraph 12 (5) of Schedule 2A which deals with the supplier of appliances making other arrangements when prevented by illness or other reasonable cause does not read correctly: "...where a supplier of appliances is prevented by illness or other reasonable cause from complying with its obligations...the supplier of appliances, where practicable, makes arrangements with one or more suppliers of appliances, pharmacists or LPS chemists whose premises are situated in the neighbourhood for the provision of pharmaceutical services...during that time." (Standing Order 15.2 Defective drafting or fails to fulfil statutory requirements).

9) Paragraph 19 (3) (a) refers to paragraph 11 (1) (4), when paragraph 11 (1) (4) does not exist and is not referred to in either Schedule 2 to the principal Regulations or within Schedule 2A to these Regulations. (Standing Order 15.2 Defective drafting or fails to fulfil a statutory requirement).

10) Paragraph 19 (3) (a) and (b) refers to paragraph 12 (1) (a) in the context of the provision of contact details of alternative pharmacists or suppliers of appliances, when paragraph 12 (1) (a) actually deals with the length of time of the provision of pharmaceutical services (being "not less than 30 hours each week") and so for these purposes has no relevance. (Standing Order 15.2 Defective drafting or fails to fulfil a statutory requirement).

11) Paragraph 20 of Schedule 2A refers to paragraphs 20 and 21 and 25 (4) (a) and (b) in the context of the provision of information by a supplier of appliances (body corporate) to a Local Health Board. Paragraph 20 is the paragraph which itself refers to paragraph 20 and so is of no relevance, and paragraph 21 deals with complaints. Neither paragraphs 20 or 21 specify the information to be provided. Furthermore paragraph 25 (4) (a) and (b) does not exist either within Schedule 2A or within Schedule 2 to the principal Regulations. (Standing Order 15.2 Defective drafting or fails to fulfil a statutory requirement).

12) Paragraph 21 which deals with complaints refers to the National Health Service (Complaints) Regulations 2004 (“the 2004 Regulations”), when in fact the 2004 Regulations have been revoked by regulation 22 (1) of the Local Authority Social Services and National Health Services Complaints (England) Regulations 2009 (Statutory Instrument 2009/309), as from 1st April 2009. The 2004 and 2009 Regulations are applied to England only, and consequently have no relevance in these Regulations. (Standing Order 15.2 Defective drafting or fails to fulfil a statutory requirement).

13) Regulation 16 (5) (iii) of the English text of these Regulations defines “transitional period” whereas regulation 16 (5) (b) of the Welsh text provides for the definition of “transitional period”. There is no paragraph (5) (a) or (b) of regulation 16 within the English text. (Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

14) Regulation 16 (5) (a) in the Welsh text provides the meaning for “telerau gwasanaethu” (“terms of service”) in relation to a pharmacist represented by roman numeral (i) and in relation to a supplier of appliances by roman numeral (ii). Whereas sub-paragraph (a) of (5) of regulation 16 in the English text has been omitted, and instead the meaning provided for “the terms of service” is provided in relation to a pharmacist by roman numeral (i) and in relation to a supplier of appliances by roman numeral (ii). (Standing Order 15.2 (vii) that there appear to be inconsistencies between the meaning of its English and Welsh texts).

15) Regulation 16 (5) expands upon the meaning of “terms of service” by way of roman numerals (i) and (ii), however the meaning of “transitional period” is provided in regulation 15 (5) (iii), which by implication gives the impression that the meaning of “transitional period” itself falls within the definition provided for in “terms of service” (i) to (iii). (Standing Order 15.2 Defective drafting or fails to fulfil a statutory requirement).

Government Response

The Government responded as follows in relation to the foregoing points:

The National Health Service (Pharmaceutical Services) (Amendment) (Wales) Regulations 2010

1. The reference should be to regulation 2(1C) of the principal Regulations (and not 2(1)(c)) and this will be corrected in amending regulations.
2. The reference should be to paragraph 24(A)(1) in Schedule 2 of the principal Regulations (and not 25(A)(1)) and this will be corrected in amending regulations.
3. Regulation 16(3) should refer to The Pharmaceutical Services (Advanced Services) (Appliances) (Wales) Directions 2010 and this will be corrected in amending regulations.
4. Paragraph 6(3)(a) requires minor amendment to clarify the obligation imposed on the supplier of appliances and this will be corrected in amending regulations.
5. The use of brackets in paragraph 6(3) requires minor amendment to properly refer to the National Health Service (Free Prescriptions and Charges for Drugs and Appliances) (Wales) Regulations 2007 and this will be corrected in amending regulations.
6. Paragraphs 12(1), 14(3) and 15(4) require minor amendment to refer to the correct cross reference in the principal Regulations and this will be corrected in amending regulations.
7. The reference in paragraph 14(3)(c) should be to paragraph 12(1)(a) (and not paragraph 13(1)(a)) and this will be corrected in amending regulations.
8. The word “must” should be inserted into paragraph 12(5) (“...*the supplier of appliances must, where practicable...*”) and this will be corrected in amending regulations.
9. The references in paragraph 19¹(3)(a) should be to paragraphs 10(4) and 11(1)(b) (instead of, respectively, to paragraphs 11(1)(4) and 12(1)(a)) and this will be corrected in amending regulations.

¹ The paragraph numbering in these Regulations requires correction from this point – the reference should be to paragraph 18 and not 19. For ease of reference, the paragraph references in the draft report have been cited throughout the response.

10. The reference in paragraph 19(3)(b) should be to paragraph 11(1)(a) (and not paragraph 12(1)(a)) and this will be corrected in amending regulations.
11. The references in paragraph 20 should be to paragraphs 19 and 24(3) and (4) (instead of, respectively, to paragraphs 21 and 25(4)(a) and (b)) and this will be corrected in amending regulations.
12. Paragraph 21 requires amendment to insert the correct cross reference to the relevant complaints provision and this will be corrected in amending regulations.
- 13, 14 & 15. Regulation 16(5) of the English text of these Regulations requires minor amendment to remove the impression that the definition of “transitional period” falls within the definition of “the terms of service” and this will be corrected in amending regulations.

Amending regulations to address all the above points will be made within the next two months.

Committee Consideration of Government Response

The Committee noted that the Government had accepted that there were 15 errors in these regulations and was concerned at such a relatively large number of errors in one set of regulations. The Committee agreed to draw these concerns to the attention of the Assembly and, separately, to write to the Minister drawing her attention to its concerns.

The Committee welcomed the Government’s intention to amend the errors through amending regulations. However, the Committee was concerned that the deadline for this was as long as two months. In view of the number of errors identified, the Committee agreed that one month would be a more appropriate deadline. The Committee agreed to write to the Minister confirming its view on this point concerns.

Merits Scrutiny

No points were identified for reporting under Standing Order 15.3 in respect of this instrument.