



**Cynulliad Cenedlaethol Cymru
The National Assembly for Wales**

ADRODDIAD GAN Y PWYLLGOR DEDDFAU

LEGISLATION COMMITTEE REPORT

**The Registration of Social Care and Independent Healthcare (Fees) (Wales)
Regulations 2002**

These prescribe registration and annual fees payable under Part II of the Care Standards Act 2000 and Part XA of the Children Act 1989, in respect of social care and healthcare establishments and facilities.

Standing Order 11.5

The following points have been raised with the Minister under SO 11.4. The Minister has responded in a letter of 3 May 2002, a copy of which is annexed to this report.

Enabling powers

Attention was drawn to the reference to section 79F of the Care Standards Act 2000 which appeared to be incorrect. There is no such section in that Act. Section 79(1) of the Care Standards Act 2000 amends the Children Act 1989, by inserting a section "79F" into the 1989 Act. This section 79F is correctly cited separately as a section of the 1989 Act.

The Minister acknowledges that the reference to section 79F of the Care Standards Act 2000 is an error, and indicates that it is intended to correct this when the regulations are printed.

The Assembly is accordingly invited to pay special attention to this drafting error as a matter which should be corrected in the published regulations.

Additionally, although no reporting point arises, it is suggested that in relation to section 79F where correctly cited, it would have been appropriate to specify subsections (1) and (2) as these appear to be the only provisions of that section which operate as enabling powers in respect of the present regulations

Regulation 3(1)

Given that paragraphs (6) and (7) make specific provision with regard to “the registration fee” it was suggested that the opening wording of paragraph (1) should have been expressed to be subject to “paragraphs (2) to (7)” rather than “paragraphs (2) to (5)”.

In response to this, the Minister submits that paragraph (1) should not have been made subject to paragraphs (6) and (7) because those paragraphs deal with fees under Part XA of the Children Act 1989 whereas paragraph (1) is concerned with fees under Part II of the Care Standards Act 2000.

The point of concern had been that because “registration fee” is defined in regulation 2(1) as including the fee payable under section 79F(2)(b) of the 1989 Act (which is in Part XA of that Act), the “registration fee” reference in regulation 3(1) might have been taken to cover fees payable under the 1989 Act. It is now appreciated, however, that since regulation 3(1) only makes provision for fees in respect of “an establishment” that could not be construed as having any application in respect of a “registration fee” under Part XA of the 1989 Act. It is thus accepted that there is no defect in regulation 3(1).

Regulation 7(2)

A query was raised as to the meaning of “clinic home”. It appeared that it should be merely “clinic”.

The Minister accepts that the reference should merely be “clinic” and indicates that it is intended to correct this at the printing stage. The Assembly is accordingly invited to pay special attention to this drafting defect which should be corrected on printing.

Regulation 7(5)(c)

It was queried whether “home” should be “independent hospital or clinic”.

It has been confirmed by the Minister that there is a defect here and that “home” is to be corrected to “independent hospital or clinic” in the published regulations. The Assembly is accordingly invited to pay special attention to this drafting defect which should be corrected on printing.

General Observations

Explanatory Note

The opening paragraph might have been clearer if “paid by” had been something like “paid in respect of”.

Date of Making

It is noted that the regulations were made on 28 March 2002, but that date has not been included on the copy submitted to the Committee.

Footnotes

Footnote (a) on page 2 should really draw the attention of the reader to section 5 of the Act to confirm that the reference in section 121(1) to “the Assembly” is to the National Assembly for Wales.

Footnote (b) on page 2 should identify the 1999 transfer of functions order and section 120(2) of the 2000 Act together with the definitions of “prescribed” and “regulations” in the 1989 Act, to explain the means by which the regulation making function under the cited provisions of the 1989 Act is vested in the Assembly.

Footnote (c) on page 3 remains to be completed.

Mick Bates AM
Chair, Legislation Committee

21 May 2002

Jane Hutt AM
Minister for Health and Social Services



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Our ref: JH/01269/02

Mick Bates AM
Chair
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3 May 2002

Dear Mick,

**THE REGISTRATION OF SOCIAL CARE AND INDEPENDENT HEALTH CARE (FEES)
(WALES) REGULATIONS 2002 (LC 463)**

Thank you for your letter of 23 April about the above regulations, made under the executive procedure and considered by the Legislation Committee on 23 April.

I am grateful for the opportunity to respond to the drafting points raised by the Committee under Standing Order 11.5.

The reference to Section 79F of the Care Standards Act 2000 in the enabling powers is, indeed, an error. It is intended to correct this at the printing stage.

It is submitted that the opening words of regulation 3(1) should not be made subject to regulations 3(6) & (7). This is because (6) and (7) deal with fees under Part XA of the Children Act 1989 whereas paragraph (1) is concerned with fees under Part II of the Care Standards Act 2000. There is therefore no need for the provisions of regulation 3(1) to be made subject to 3(6) & (7), because 3(6) & (7) are not intended to modify 3(1).



PLUDDIOLINA NEWYFON
DYWODRAETH CYMRO

Regulation 7(2) - it is accepted that the reference to "clinic home" should have been a reference to "clinic". It is intended to correct this at the printing stage. This error was an oversight that was not picked up through the usual proof reading checks through time pressures.

Regulation 7(5)(c) - it is accepted that the reference to "home" should have been a reference to "independent hospital or clinic". It is intended to correct this at the printing stage. This error was an oversight that was not picked up through the usual proof reading checks through time pressures.

General Observations

These errors in the non-operative components of the instrument will be corrected at the printing stage.

I hope that the Legislation Committee find this explanation helpful.

Yours,
Jane