

# Subordinate Legislation Committee

(SLC(3)-22-08)

SLC201

## Subordinate Legislation Committee Report

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

### **Title: The National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008**

These Regulations amend the National Health Service (General Ophthalmic Services) Regulations 1986 ("the 1986 Regulations") and the National Health Service (Optical Charges and Payments) Regulations 1997 ("the 1997 Regulations"). The 1986 Regulations contain provision for the arrangements for general ophthalmic services under the NHS. The 1997 Regulations contain provision for a scheme of payments to be made by Local Health Boards and National Health Service Trusts by means of a voucher system in respect of the costs incurred by certain categories of persons in connection with sight tests and the supply, replacement and repair of optical appliances. Regulation 2 of these Regulations inserts a new definition into regulation 2 (1) of the 1986 Regulations (interpretation) and amends regulation 13 (sight tests-eligibility) to provide that a person who is receiving income-related employment and support allowance (or a member of that person's family) will be entitled to receive an NHS sight test. Regulation 3 inserts a new definition into regulation 1 (citation, commencement and interpretation) of the 1997 regulations and amends regulation 8 (eligibility-supply of optical appliances) to provide that a person who is receiving income-related employment and support allowance (or a member of that person's family) will be entitled to receive a voucher in respect of an optical appliance.

#### **Procedure: Negative**

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2 (viii) (that it uses gender specific language)

Regulation 2 (3) (b) (which amends the 1986 Regulations), sub-paragraph's (o) and (p) respectively which are to be inserted, are both gender specific:-

Regulation 2 (3) (b) (o) reads "**he** is in receipt of income-related employment and support allowance" and (p) reads "**he** is a member of the same family as a person in receipt of income-related employment and support allowance".

Regulation 3 (3) (b) (which amends the 1997 Regulations), sub-paragraph's (o) and (p) respectively which are to be inserted, are both gender specific:-

Regulation 3 (3) (b) (o) reads "**he** is in receipt of income-related employment and support allowance" and (p) reads "**he** is member of the same family as a person in receipt of income-related employment and support allowance".

Legal Advisers

## Subordinate Legislation Committee

October 2008

### **Government have responded as follows:-**

#### **The National Health Service (General Ophthalmic Services) and (Optical Charges and Payments) (Amendment) (Wales) Regulations 2008**

The Government accepts that the amendments to the National Health Service (General Ophthalmic Services) Regulations 1986 and the National Health Service (Optical Charges and Payments) 1997 that are made by these Regulations contain gender specific language.

However, the amendments were drafted on this basis in order to ensure that doubt is not cast upon the existing provisions within both sets of Regulations.

It is, of course, acknowledged that it is possible to make gender neutral amendments to pre-devolution instruments, but it is not possible to do so in every case, without major amendments to the text for which there was no time in the circumstances of the current instrument.

Both regulation 13(2) of the 1986 Regulations and regulation 8(3) of the 1997 Regulations contain lists of persons who are entitled to receive certain benefits under the NHS. Both sets of Regulations are drafted in gender-specific language (in accordance with the provisions of the Interpretation Act 1978) and to add an entry which refers to "he or she" to a list that contains only "he" would be likely to cause a lay reader to be confused about the application of the existing provisions.