

Subordinate Legislation Committee

(SLC(3)-22-08)

SLC204

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 (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No 2) Regulations 2008

These Regulations amend the National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007 ("the principal Regulations") by amending the definition of "family" contained in the principal Regulations and to provide that a person who is receiving income-related employment and support allowance will be entitled to full remission of an NHS charge and to full payment of NHS travelling expenses without the need to make a claim for such payment or remission.

Procedure: Negative

The Assembly is invited to pay special attention to this instrument on the grounds set out in Standing Order 15.2(vi) (defective drafting).

Regulation 2(2) of the Regulations amends the definition of "family" by reference to the meaning given in regulation 2 of the Employment and Support Allowance Regulations 2008. The Welsh text of the Regulations is a literal translation of the English text.

However, as the Employment and Support Allowance Regulations concern non-devolved areas (social security) they were, consequently, made by the Secretary of State in English only. Where terms are defined in Assembly legislation by reference to nomenclature used in mono-lingual documents the practice has been to state that the Welsh term has the meaning given to the English term in the specific document.

It is acknowledged that this is a technical drafting error which is unlikely to mislead the reader and would not require immediate correction.

Legal Advisers

Subordinate Legislation Committee

October 2008

Government have responded as follows:-

The National Health Service (Travelling Expenses and Remission of Charges) (Wales) (Amendment) (No.2) Regulations 2008

The Government acknowledges that the report raises an issue which is technical in nature and will not affect the use of the Regulations by the reader.

The Government does not agree with the reporting point.

The amendment contained in regulation 2(2) of these Regulations amends the definition of "family" in regulation 2 of the principal Regulations (The National Health Service (Travelling Expenses and Remission of Charges) (Wales) Regulations 2007) for which the reader is referred to the Social Security Contributions and Benefits Act 1992, the definition goes on to list exceptions to the general rule and this amendment adds another such exception.

The substantive definition has been translated into Welsh and it was considered that any addition or amendment to that definition should therefore also be in Welsh.

Additionally, the amendment refers the reader to, but does not quote directly from, the Employment and Support Allowance Regulations 2008.