

SL(5)692 – The Digital Health and Care Wales (Membership and Procedure) Regulations 2020

Background and Purpose

The Digital Health and Care Wales (Establishment and Membership) Order 2020 ("the Order") establishes Digital Health and Care Wales ("DHCW") and makes provision about its constitution and overarching functions.

These Regulations supplement the Order and make detailed provision about the membership and procedures of DHCW. They set out procedural matters and detail in relation to the various members, including their appointment, eligibility, tenure, disqualification, suspension and removal from office. In addition, these Regulations require DHCW to make standing orders regarding its meetings and proceedings.

Together, the Order and these Regulations provide the legal framework for the establishment of DHCW.

Procedure

Negative.

Technical Scrutiny

The following points are identified for reporting under Standing Order 21.2 in respect of this instrument:

1. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

Regulation 14(2) provides that, in certain circumstances, the non-officer members may remove an associate member (appointed in accordance with regulation 3(6)(b)) from office.

Unlike regulations 11(2) and 13(2) - which expressly provide that written notice must be given *to the member* - it is not immediately apparent from the wording of regulation 14(2) what the non-officer members must do with the written notice in order to comply with the provision.

When considered alongside the wording of regulation 14(3), it could be inferred that written notice under regulation 14(2) must be given to the member (as that is what is required in order to suspend a member under 14(3)). However, this is not expressed clearly in the wording of regulation 14(2) and we believe that the ambiguity would be avoided if the wording "to the member" was included in the relevant place.



2. Standing Order 21.2(vi) – that its drafting appears to be defective or it fails to fulfil statutory requirements.

The beginning of regulation 14(5) reads “A person whose appointment is suspended under paragraph (1)”. It appears that the reference to paragraph (1) is incorrect, as the relevant power to suspend is contained in paragraph (3) of regulation 14, not paragraph (1).

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

1. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Regulation 2 in the English language version of these Regulations defines “the 1992 Act”, “the Act” and “the Order” first and then continues to list definitions in alphabetical order. Can the Welsh Government confirm why the same approach has not been adopted in the Welsh language version of these Regulations, where the entire list of definitions is in alphabetical order?

2. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Can the Welsh Government confirm why the Explanatory Memorandum and Regulatory Impact Assessment have only been laid in English?

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd.

Footnote (5) on page 4 of these Regulations refers to the National Health Service Reform (Scotland) Act 2004 [*emphasis added*], but “2004” has been omitted from the reference.

It is accepted that the footnote does not form part of the law. However, if the purpose of its inclusion is to assist a reader, it would be helpful if the complete reference were used.

Implications arising from exiting the European Union

None.

Welsh Government response

A Welsh Government response is required.

Legal Advisers

Legislation, Justice and Constitution Committee

18 December 2020

