

Constitutional and Legislative Affairs Committee

(CLA(4)-13-11)

CLA59

Constitutional and Legislative Affairs Committee Draft Report

Title: The Carers Strategies (Wales) Regulations 2011

Procedure: Affirmative

These Regulations made under the Carers Strategies (Wales) Measure 2010:-

- apply to Local Health Boards and Local Authorities and in part to Velindre NHS Trust and the Welsh Ambulance Services NHS Trust;
- require Local Health Boards in Wales and Local Authorities which fall within their area to work together in preparing and publishing a strategy setting out how they will work together to assist and include carers in arrangements for those they care for; and
- make provision for consultation in preparing strategies, the content of strategies, providing appropriate information and advice, consultation with carers or persons cared for, submission of draft strategies to Welsh Ministers, and the preparation of joint strategies.

Technical Scrutiny

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

(1) These Regulations are made using powers granted to Welsh Ministers by sections 2(1), 3(2), 4, 5(1),5(2), 6(4) and 10(2) of the Measure in respect of which no commencement order has yet been made. Whilst it is expected that such an order will be made before the plenary debate, the power is not available as this report is being prepared.

[Standing Order 21.2(i) - that there appears to be doubt whether it is intra vires]

Merits Scrutiny

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

(1) These Regulations are the first to be made under the Carers Strategies (Wales) Measure 2010.

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

(2) Regulation 9(7) states that the Carers strategy must be published in both Welsh and English “*unless it is not reasonably practicable to do so*”.

Given the detailed provisions in the Regulations regarding the preparation of the strategies, and that such strategies are intended to cover a three year period, there do not appear to be any circumstances in which it would not be reasonably practicable to publish them bilingually.

Furthermore, the qualification in Regulations 9(7) runs counter to the principle set out in section 156(1) of the Government of Wales Act 2006 which states:–

“(1) *The English and Welsh texts of—*

(a) *any Assembly Measure or Act of the Assembly which is in both English and Welsh when it is enacted, or*

(b) *any subordinate legislation which is in both English and Welsh when it is made,*

are to be treated for all purposes as being of equal standing”.

The principle is that the texts are only of equal standing if enacted or made bilingually. Whilst the current regulations relate to strategies rather legislation, unless the draft submitted for approval (under regulation 9(3)) or amendment (under regulation 9(6)) is submitted bilingually, the draft approved will constitute the strategy, and any translation will be exactly that.

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

**Legal Advisers
Constitutional and Legislative Affairs Committee**

November 2011

The Government has responded as follows:

The Carers Strategies (Wales) Regulations 2011

Merits scrutiny

No response is offered on the observation that these regulations are the first to be made under the Carers Strategies (Wales) Measure 2010.

On the language question, the Committee's draft report highlights that authorities must publish strategies in English and Welsh "*unless not reasonably practicable to do so*".

The report points out that this is not consistent with the requirement for legislation to be made bilingually, to which section 156 of the Government of Wales Act 2006 applies. In the case of legislation, a failure to ensure that a Welsh enactment is passed in both English and Welsh will mean that if the enactment is subsequently translated into a second language, the second language text will not have equal status with the text of the language in which the enactment was passed.

As the strategies to be prepared by "designated authorities" are not legislation, and not one of the enactments mentioned in section 156, they would not stand to benefit from the effect of that section in any event.

Section 156 is the provision which gives effect to the principle that when legislation is passed in both English and Welsh, then both texts have equal standing. It does not establish a principle that legislation requiring publication of documents by public authorities must include a requirement that they are produced in both English and Welsh and through a process which guarantees equal status to both languages.

All the public authorities affected by these regulations are subject to a duty to have a Welsh Language Scheme under section 5 of the Welsh Language Act 1993. They will need to observe the requirements of their own schemes.

The draft report notes that, given the nature of the strategy, there do not appear to be any circumstances in which it would not be reasonably practicable to publish the strategy bilingually. It is agreed that circumstances when it would not be reasonably practicable to publish the strategy bilingually are likely to be very few.