

Constitutional and Legislative Affairs Committee

(CLA(4)-05-11)

CLA17

Constitutional and Legislative Affairs Committee Draft Report

Title: The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations amend the National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011 (“the principal Regulations”).

Regulation 2(1) delays the coming into force of Part 7 of the principal Regulations from 1 October 2011 to 1 April 2012. Part 7 of the principal Regulations deals with how redress is to be provided where an NHS Trust in Wales or a Local Health Board in Wales enters into an arrangement for the provision of health services with an NHS body in England, Scotland or Northern Ireland.

Technical Scrutiny

No points are identified for reporting under Standing Order 21.2 in respect of this instrument.

Merits Scrutiny

The Committee makes the following report to the Assembly under Standing Order 21.3(ii) that these regulations are of political or legal importance and give rise to issues of public policy likely to be of interest to the Assembly.

Background

The *NHS Redress (Wales) Measure 2008* was the first Assembly Measure to be passed by the Assembly. The Measure enables Welsh Ministers to make Regulations, which allow for redress to be provided in circumstances where there is a qualifying liability in tort in relation to the provision of qualifying services. Redress may encompass apologies, explanations, action plans, remedial treatment and, if appropriate, financial compensation.

The first set of regulations made by Welsh Ministers under this Measure was *The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) Regulations 2011* (“the principal

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regulations”) which were laid by the then Minister for Health and Social Services, Edwina Hart AM, on 7 February 2011.

The objective of the principal regulations is to make it easier for patients to raise concerns if they are dissatisfied or if things go wrong with their NHS care. They also aim to ensure that the NHS approach to such situations is more consistent and results in a fairer outcome for patients and staff.

In 2007, the then Subordinate Legislation Committee took evidence and reported on the Measure. The Committee recommended **a strong level of scrutiny for Regulations made under the Measure and that there should be widespread consultation on the Regulations.**

The principal regulations were considered by the Constitutional Affairs Committee of the third Assembly on 17 February 2011. That Committee produced a merits report on the principal regulations and made the following comments:

“We have considered the current Regulations in relation to the issues raised above, particularly whether the Regulations have been subject to adequate consultation and whether the Regulations as presented adequately reflect issues raised during consultation ...

While we believe that the general concerns about ‘Framework’ Measures remain valid (and while we note the considerable amount of time that has elapsed since the Measure was passed), we are content that consultation in respect of these draft Regulations has in our view been thorough, inclusive and responsive to concerns during it.”

The principal regulations were subject to the affirmative procedure and were approved by the Assembly in plenary on 8 March 2011. They came into force on 1 April 2011, except for provisions in Part 7 of the regulations which were initially due to come into force on 1 October 2011.

The National Health Service (Concerns, Complaints and Redress Arrangements) (Wales) (Amendment) Regulations 2011 (“the amending regulations”) were tabled by the Minister for Health and Social Services, Lesley Griffiths AM, on 12 July 2011.

The objective of the amending regulations is to delay the coming into force of Part 7 of the principal Regulations, which deal with cross-border arrangements, from 1 October 2011 to 1 April 2012.

This is deemed necessary by the Welsh Government to allow for the detailed operational arrangements to be agreed between Welsh and

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other UK NHS bodies. According to the accompanying Explanatory Memorandum:

“The reason for this change is to allow more time for this work to be completed since the initial assessment that a coming into force date of 1 October 2011 would be sufficient time to agree these amendments, is not now achievable.”

An additional amendment is made to regulation 52(5) of the principal regulations to reflect the new coming into force date for Part 7 of the Regulations and makes it clear that the cross border arrangements outlined in Part 7 will not apply to services provided by English NHS bodies, Scottish NHS bodies or Northern Irish NHS bodies on behalf of Welsh NHS bodies before 1 April 2012.

Consideration by the Constitutional and Legislative Affairs Committee

While we agree with the Constitutional Affairs Committee of the third Assembly that the principal regulations adequately reflect issues raised during consultation, the introduction of the amending regulations suggest that there may have been insufficient consultation with NHS bodies in other parts of the UK in relation to cross-border issues.

Legal Advisers

Constitutional and Legislative Affairs Committee

July 2011