

Constitutional and Legislative Affairs Committee

Meeting Venue:
Committee Room 2 – Senedd

Meeting date:
21 November 2011

Meeting time:
14:10

Cynulliad
Cenedlaethol
Cymru

National
Assembly for
Wales



For further information please contact:

Steve George
Committee Clerk
029 2089 8242
CLA.Committee@wales.gov.uk

Olga Lewis
Deputy Clerk
029 2089 8154

Agenda

- 1. Introduction, apologies, substitutions and declarations of interest**
- 2. Instruments that raise no reporting issues under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

CLA55 – The Right to Manage (Prescribed Particulars and Forms) (Wales) Regulations 2011

Negative Procedure. Date made 5 November 2011. Date laid 8 November 2011.
Coming into force date 30 November 2011.

CLA56 – The Private Dentistry (Wales) (Amendment) Regulations 2011

Negative Procedure. Date made 6 November 2011. Date laid 9 November 2011.
Coming into force date 1 January 2012

Affirmative Resolution Instruments

None

- 3. Instruments that raise issues to be reported to the Assembly under Standing Order 21.2 or 21.3**

Negative Resolution Instruments

None

Affirmative Resolution Instruments

CLA52 – The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011 (Pages 1 – 34)

Affirmative Procedure. Date made 2011. Date laid not stated. Coming into force date 6 June 2012

CLA53 – The Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011 (Pages 35 – 41)

Affirmative Procedure. Date made not stated. Date laid not stated. Coming into force date 1 April 2012

4. Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Farmers Union of Wales (Pages 42 – 46)

CLA(4)-07-11(p1) – CLA GP5 – Farmers Union of Wales

Mr Andrew Gurney, Policy Officer (Land Use)

Mr Gavin Williams, Chairman of the Union's Land Use and Parliamentary Committee

First Minister of the Welsh Government Rt. Hon Carwyn Jones AM (Pages 47 – 55)

CLA(4)-12-11(p1) – CLA GP11 – First Minister of the Welsh Government Rt. Hon Carwyn Jones AM

CLA(4)-12-11(p2) – CLA GP12 – The Wales Office

Rt. Hon Carwyn Jones AM, First Minister of the Welsh Government

Dr Hugh Rawlings CB, Director, Constitutional Affairs and Inter-Governmental Relations, Welsh Government.

5. Date of the next meeting (Pages 56 – 64)

CLA(4)-11-11– Report of the meeting 14 November 2011

6. Motion under Standing Order 17.42 to resolve to exclude the public from the meeting for the following business:

A Committee may resolve to exclude the public from a meeting or any part of a meeting where:

(vi) the Committee is deliberating on the conclusions or recommendations of a report it proposes to publish

7. Consideration of the evidence submitted to Inquiry to date

Farmers Union of Wales

Rt. Hon Carwyn Jones AM, First Minister of the Welsh Government

Agenda Item 3.1

Constitutional and Legislative Affairs Committee

CLA(4)-11-11

CLA52

Constitutional and Legislative Affairs Committee Draft Report

Title: The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

Procedure: Affirmative

These Regulations make provision about care co-ordination and care and treatment planning for patients using secondary mental health services.

Technical Scrutiny

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

Merits Scrutiny

Under Standing Order 21.3(ii) (gives rise to issues of public policy likely to be of interest to the Assembly) the Assembly is invited to pay special attention to the following instrument.

These Regulations are part of a suite of regulations made by the Welsh Ministers under powers conferred on them by provisions of the Mental Health (Wales) Measure 2010 ("the Measure") designed to develop and enhance mental health services in Wales.

Under Part 2 of the Measure patients accepted into secondary mental health services in Wales will have a dedicated care co-ordinator. Provision is made by the Regulations relating to the criteria which must be satisfied before a person can be appointed as a care co-ordinator.

The Measure also provides that service providers (Local Health Boards and local authorities) will act in a co-ordinated manner to improve the effectiveness of the mental health services provided to the patient.

The Measure ensures that each individual patient will have a tailored care and treatment plan developed by the care co-ordinator in consultation with the patient and overseen by the co-ordinator with a view to achieving the outcomes which the services provided to the patient are designed to achieve.

These provisions are unique to Wales.

As these Regulations are subject to the affirmative procedure they will be debated by the Assembly in Plenary.

Legal Advisers
Constitutional and Legislative Affairs Committee

14 November 2011

Draft Regulations laid before the National Assembly for Wales under section 52(6) of the Mental Health (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

MENTAL HEALTH, WALES

The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations contain provisions about care co-ordination and care and treatment planning for patients using secondary mental health services (within the meaning of The Mental Health (Wales) Measure 2010 (“the Measure”). They also contain provision about the identification of relevant mental health service providers, and transitional provisions for patients who are already in secondary mental health services at the coming into force date of these Regulations.

2. Regulation 3 provides for the identification of a relevant mental health service provider in circumstances where a patient is using secondary mental health services provided by both a Local Health Board and a local authority.

3. Regulation 4 makes provision about the eligibility requirements which must be met before a person may be appointed as a care coordinator. Professional requirements which a person must satisfy are set out in Schedule 1.

4. Regulation 5 makes provision about the form and content of care and treatment plans. The form of a care and treatment plan is set out in Schedule 2, and is to be completed in the Welsh or the English language, or partly in Welsh and partly in English.

5. Regulation 6 makes provision about the persons who must be consulted by the care coordinator as part of the care coordinator’s functions of preparing,

reviewing and revising care and treatment plans. Provision is made also regarding persons who may be consulted by the care coordinator, and for the views of the patient to be taken into account before any consultation under this regulation takes place.

6. Regulation 7 provides for the review and revision of care and treatment plans. This includes provision about how frequently a plan must be reviewed and if necessary, revised, and who may request a review and, if necessary, revision.

7. Regulation 8 makes provision about the persons who must be provided with a copy of a patient's care and treatment plan following the preparation, review or revision of that plan. Provision is made also regarding persons who may be provided with copies of such plans, for copies of plans to be withheld or only parts of copies to be provided, and for the views of the patient to be taken into account before any copies of plans or parts of plans are provided.

8. Regulation 9 makes provision about how copies of care and treatment plans are to be provided, and allows for the use of both electronic and non-electronic means of provision.

9. Regulation 10 makes provision about the information which is to be provided to an individual when he or she is discharged from secondary mental health services.

10. Regulation 11 makes transitional provision for patients who are already in secondary mental health services at the coming into force date of these Regulations. This includes provision for patients who do not have a care coordinator or a care and treatment plan at the coming into force date.

11. A regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Mental Health Legislation Team, Department for Health, Social Services and Children, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

Draft Regulations laid before the National Assembly for Wales under section 52(6) of the Mental Health (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

MENTAL HEALTH, WALES

The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011

Made 2011

Coming into force 6 June 2012

The Welsh Ministers make these Regulations in exercise of the powers conferred by sections 15(4), 18(1)(c), 18(8), 18(9), 47(1)(b), 47(2) and 52(2) of the Mental Health (Wales) Measure 2010⁽¹⁾.

A draft of this instrument has been laid before the National Assembly for Wales in accordance with section 52(6) of the Measure, and approved by resolution of the National Assembly for Wales.

Part 1 - General

Title, commencement and application

1.—(1) The title of these Regulations is The Mental Health (Care Co-ordination and Care and Treatment Planning) (Wales) Regulations 2011 and they come into force on 6 June 2012.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

(1) 2010 nawm 7.

“adult placement carer” (“*gofalwr lleoliad oedolyn*”) means a person in whose home an adult is or may be accommodated and provided with personal care under an adult placement agreement entered into or proposed to be entered into by the carer;

“care and treatment plan” (“*cynllun gofal a thriniaeth*”) means a plan prepared for the purpose of achieving the outcomes which the provision of mental health services for a relevant patient⁽¹⁾ is designed to achieve, as provided in section 18(1)(b) (functions of the care coordinator) of the Measure;

“carer” (“*gofalwr*”) means, in relation to a relevant patient, an individual who provides or intends to provide a substantial amount of care on a regular basis for that patient, but does not include an individual who provides, or intends to provide care for that patient by virtue of a contract of employment or other contract with any person or as a volunteer for a body (whether incorporated or not incorporated);

“employed” (“*wedi'i gyflogi*”) means employed under a contract of service or engaged under a contract for services;

“guardian” (“*gwarcheidwad*”) means the person named as guardian in a guardianship application made under section 7 (application for guardianship) of the 1983 Act or a guardianship order made under section 37 (powers of courts to order hospital admission or guardianship) of the 1983 Act;

“managing authority” (“*awdurdod rheoli*”) in relation to a National Health Service hospital has the meaning given by paragraph 176 (hospitals and their managing authorities) of Schedule A1 (hospital and care home residents: deprivation of liberty) to the 2005 Act, in relation to an independent hospital has the meaning given by paragraph 177(b) (hospitals and their managing authorities) of Schedule A1 to the 2005 Act, and in relation to a care home has the meaning given by paragraph 179(b) (care homes and their managing authorities) of Schedule A1 to the 2005 Act;

“the Measure” (“*y Mesur*”) means the Mental Health (Wales) Measure 2010⁽²⁾;

“parental responsibility” (“*cyfrifoldeb rhiant*”) has the meaning given by section 3 (meaning of “parental responsibility”) of the 1989 Act;

(1) See section 12 (meaning of “relevant patient”) of the Measure for the definition of relevant patient.
(2) 2010 nawm 7.

“relevant discharge period” (“*cyfnod rhyddhau perthnasol*”) means the period within which an adult may request that a mental health assessment is carried out following discharge from secondary mental health services(1);

“relevant mental health service provider” (“*darparydd gwasanaeth iechyd meddwl perthnasol*”) means the secondary mental health service provider who is identified as a relevant patient’s relevant mental health service provider in accordance with section 15 (identification of the relevant mental health service provider for a relevant patient) of the Measure or regulation 3 of these Regulations;

“relevant patient’s medical practitioner” (“*ymarferydd meddygol claf perthnasol*”) means, in relation to a relevant patient, the registered medical practitioner with whom the patient is registered and any registered medical practitioner with whom a patient is not registered but by whom that patient is referred for a primary mental health assessment under Part 1 (local primary mental health support services) of the Measure;

“responsible clinician” (“*clinigydd cyfrifol*”) has the meaning given by section 34(1) (interpretation of Part II) of the 1983 Act;

“responsible Local Social Services Authority” (“*Awdurdod Gwasanaethau Cymdeithasol Lleol cyfrifol*”) has the meaning provided by section 34(3) of the 1983 Act;

“supervisory body” (“*corff goruchwyllo*”) in relation to a hospital has the identity given by paragraph 181 (supervisory bodies: hospitals) of Schedule A1 to the 2005 Act, and in relation to a care home has the identity given by paragraph 182 (supervisory bodies: care homes) of Schedule A1 to the 2005 Act;

“the 1983 Act” (“*Deddf 1983*”) means the Mental Health Act 1983(2);

“the 1989 Act” (“*Deddf 1989*”) means the Children Act 1989(3);

“the 2005 Act” (“*Deddf 2005*”) means the Mental Capacity Act 2005(4); and

“working day” (“*diwrnod gwaith*”) means any day except Saturday, Sunday, Christmas Day, Good Friday or a bank holiday in England and Wales

(1) See regulation 3 (relevant discharge period) of The Mental Health (Assessment of Former Users of Secondary Mental Health Services) (Wales) Regulations 2011 (S.I. 2011/2500 (W. 272)).

(2) 1983 c.20.

(3) 1989 c.41.

(4) 2005 c.9.

under the Banking and Financial Dealings Act 1971(1).

Part 2 – Care coordinators

Identification of relevant mental health service provider

3.—(1) Where a Local Health Board is responsible for providing a secondary mental health service(2) to a relevant patient and a local authority is also responsible for providing such a service, then the provisions of this regulation apply.

(2) The Local Health Board is the relevant mental health service provider for a relevant patient unless paragraphs (3) or (4) apply.

(3) A local authority is the relevant mental health service provider for a relevant patient if that patient is the subject of—

- (a) a guardianship application made under section 7 of the 1983 Act; or
- (b) a guardianship order made under section 37 of the 1983 Act.

(4) A local authority is the relevant mental health service provider for a relevant patient if that patient is under the age of eighteen years and—

- (a) is looked after by a local authority within the meaning of section 22(1) (general duty of local authority in relation to children looked after by them) of the 1989 Act;
- (b) is a relevant child within the meaning of section 23A (the responsible authority and relevant children) of the 1989 Act;
- (c) qualifies for advice and assistance under section 24(1A) (persons qualifying for advice or assistance) or section 24(1B) of the 1989 Act; or
- (d) is admitted to a school in accordance with a statement of special educational needs made under section 324 (statement of special educational needs) of the Education Act 1996(3) that names the school.

Eligibility requirements for care coordinators

4.—(1) A person is eligible to be appointed as a care coordinator if that person—

-
- (1) 1971 c.80.
 - (2) See section 49 of the Measure (meaning of secondary mental health services) for the definition of secondary mental health services.
 - (3) 1996 c. 56.

- (a) fulfils one or more of the professional requirements in Schedule 1 to these Regulations; and
- (b) has demonstrated to the satisfaction of the relevant mental health service provider that he or she has appropriate experience, skills or training, or an appropriate combination of experience, skills and training.

(2) When determining whether a person satisfies the appointment requirement in paragraph (1)(b) regard must be had to standards in any Codes of Practice issued under section 44 (codes of practice) of the Measure, and any guidance that may be from time to time issued by the Welsh Ministers.

Part 3 – Care and treatment plans

Form and content of care and treatment plans

5.—(1) A care coordinator must ensure that a care and treatment plan which records all of the outcomes which the provision of mental health services are designed to achieve for a relevant patient is completed in writing in the form set out in Schedule 2.

(2) The outcomes must include (but are not limited to) achievements in at least one of the areas provided in section 18(1)(a) (functions of the care coordinator) of the Measure.

Part 4 – Preparing, reviewing and revising care and treatment plans

Persons to be consulted

6.—(1) Where a relevant patient’s care coordinator must work with a relevant patient and that patient’s mental health service providers to—

- (a) agree the outcomes which the provision of mental health services for that patient are designed to achieve as provided by section 18(1)(a) of the Measure;
 - (b) agree a care and treatment plan for that patient as provided by section 18(1)(b) of the Measure; or
 - (c) review and revise a care and treatment plan for that patient as provided by section 18(1)(c) of the Measure,
- then the provisions of this regulation apply.

(2) Subject to paragraph (4), the care coordinator is to take all practicable steps to consult the following persons where those persons are identified in relation to a relevant patient—

- (a) all persons with parental responsibility for that patient;
- (b) all carers and adult placement carers of that patient;
- (c) that patient's responsible clinician;
- (d) where a guardian has been appointed for that patient as a result of a guardianship application made under section 7 of the 1983 Act or a guardianship order made under section 37 of the 1983 Act, that patient's guardian;
- (e) a donee of that patient's lasting power of attorney who has been appointed in accordance with section 10 (appointment of donees) of the 2005 Act, or a deputy of that patient who has been appointed by the Court of Protection in accordance with section 16 (powers to make decisions and appoint deputies: general) of the 2005 Act, provided that—
 - (i) in the case of a donee, the matters which are to be considered in the consultation fall within the scope of the lasting power of attorney, or
 - (ii) in the case of a deputy, the matters which are to be considered in the consultation fall within the scope of the order, directions or terms of appointment of the deputy which have been specified by the Court of Protection;
- (f) where there are acts or decisions proposed in relation to that patient under sections 37 (provision of serious medical treatment by NHS body), 38 (provision of accommodation by NHS body), 39 (provision of accommodation by local authority), 39A (person becomes subject to Schedule A1), 39C (person unrepresented whilst subject to Schedule A1) or 39D (person subject to Schedule A1 without paid representative) of the 2005 Act, an Independent Mental Capacity Advocate who has been appointed to represent that patient in accordance with section 35 (appointment of independent mental capacity advocates) of that Act;
- (g) where that patient is subject to a standard authorisation given under Part 4 (standard authorisations) of Schedule A1 to the 2005 Act, the managing authority, the supervisory body and the relevant person's representative who has been appointed for that patient under paragraph 139 (supervisory body to appoint representative) of Schedule A1 to the 2005 Act; and

- (h) where that patient is subject to an urgent authorisation given under Part 5 (urgent authorisations) of Schedule A1 to the 2005 Act, the managing authority and the supervisory body.

(3) Subject to paragraph (4), where the following persons are identified in relation to a relevant patient, he or she may be consulted by the care coordinator—

- (a) any person who the care coordinator wishes to consult, in order to facilitate the carrying out of the care coordinator's functions; and
- (b) any person who that patient wishes to be consulted in connection with the care coordinator carrying out his or her functions.

(4) Before consulting any of the persons mentioned in paragraphs (2) and (3)(a) the care coordinator is to take account of the views of a relevant patient regarding whether such persons ought to be consulted.

(5) But the care coordinator may consult any of the persons mentioned in paragraphs (2) and (3)(a) against the wishes of a relevant patient provided that the care coordinator has given due consideration to the views of that patient.

(6) Where the same person is to be consulted in more than one capacity under paragraphs (2) and (3), only one consultation need take place.

(7) Where the person consulted is not an individual, consultation may take place with an individual acting on behalf of, or employed by, the person.

Review and revision of care and treatment plans

7.—(1) A care and treatment plan may be reviewed or revised by the care coordinator at any time provided that the care coordinator agrees to that review or revision.

(2) Subject to regulation 11, a care coordinator must review and, if necessary revise, a care and treatment plan when—

- (a) a period of no more than 12 calendar months has elapsed since the initial preparation or the last review of that plan;
- (b) a relevant patient requests a review of his or her plan before the 12 calendar month period has elapsed;
- (c) a relevant patient's carer or adult placement carer requests a review of that patient's plan before the 12 calendar month period has elapsed; or
- (d) a mental health service provider for the purposes of Part 2 (coordination of and care planning for secondary mental health service

users) of the Measure⁽¹⁾ requests a review of a relevant patient's plan.

(3) But a care coordinator need not review a care and treatment plan at the request of a relevant patient, that patient's carer or that patient's adult placement carer if, in his or her opinion—

- (a) the request for a review is frivolous or vexatious; or
- (b) since the last review there has been no change in circumstances which merit the holding of another review before the 12 month period in paragraph (2)(a) has passed.

(4) With the exception of the requirement to have a review and, if necessary, a revision of a care and treatment plan as provided in paragraph (2)(a), a care coordinator need not review a care and treatment plan under any provision of this regulation if minor amendments are required to the plan which, in the care coordinator's opinion, it is appropriate to make without a review being carried out.

Copies of care and treatment plans

8.—(1) Where a relevant patient's care coordinator has—

- (a) agreed a care and treatment plan for a relevant patient and recorded the plan in writing as provided by section 18(1) and (2) of the Measure;
 - (b) recorded the plan or plans determined under the provisions of section 18(4) or (5) of the Measure in writing as provided by section 18(6) of the Measure; or
 - (c) reviewed or revised a care and treatment plan for a relevant patient as provided by regulation 7 or 11 of the Regulations,
- then the provisions of this regulation apply.

(2) Subject to paragraph (4), where the following persons are identified in relation to a relevant patient, the care coordinator is to take all practicable steps to ensure that such persons are provided with a written copy of that patient's care and treatment plan—

- (a) that patient, unless—
 - (i) that patient has declined to receive a copy of the plan; or
 - (ii) the provision of a copy of the plan is likely to cause serious harm to the physical or mental health or condition of that patient;

(1) See section 13 (meaning of "mental health service provider") of the Measure for the definition of mental health service provider for the purposes of Part 2.

- (b) all persons with parental responsibility for that patient, unless a person with such responsibility has declined to receive a copy of the plan;
- (c) all carers and adult placement carers of that patient, unless a carer or adult placement carer has declined to receive a copy of the plan;
- (d) that patient's registered medical practitioner;
- (e) the mental health service providers and voluntary organisations who provide mental health services to that patient;
- (f) that patient's responsible clinician;
- (g) where a guardian has been appointed for that patient as a result of a guardianship application made under section 7 of the 1983 Act or a guardianship order made under section 37 of the 1983 Act—
 - (i) that patient's guardian, and
 - (ii) that patient's responsible Local Social Services Authority;
- (h) a donee of that patient's lasting power of attorney who has been appointed in accordance with section 10 of the 2005 Act, or a deputy of that patient who has been appointed by the Court of Protection in accordance with section 16 of the 2005 Act, provided that—
 - (i) in the case of a donee, the matters with which the plan is concerned including (but not limited to) outcomes which have been agreed in accordance with section 18(1)(a) of the Measure, fall within the scope of the lasting power of attorney, or
 - (ii) in the case of a deputy, the matters with which the plan is concerned including (but not limited to) outcomes which have been agreed in accordance with section 18(1)(a) of the Measure, fall within the scope of the order, directions or terms of appointment of the deputy which may have been specified by the Court of Protection;
- (i) where there are acts or decisions proposed in relation to that patient under sections 37, 38, 39, 39A, 39C or 39D of the 2005 Act, an Independent Mental Capacity Advocate who has been appointed to represent that patient in accordance with section 35 of that Act;
- (j) where that patient is subject to a standard authorisation given under Part 4 of Schedule A1 to the 2005 Act, the managing authority, the supervisory body and the relevant person's representative who has been

appointed for that patient under paragraph 139 of Schedule A1 to the 2005 Act; and

- (k) where that patient is subject to an urgent authorisation given under Part 5 of Schedule A1 to the 2005 Act, the managing authority and the supervisory body.

(3) Subject to paragraph (4), where the following persons are identified in relation to a relevant patient, he or she may be provided with a written copy of that relevant patient's care and treatment plan—

- (a) any person who the care coordinator wishes to receive a copy of the plan, in order to facilitate the achievement of the outcomes which the provision of mental health services are designed to achieve for that patient; and
- (b) any person who that patient wishes to be provided with a copy of the plan.

(4) Before providing copies of a relevant patient's care and treatment plan to any of the persons mentioned in paragraphs (2) and (3)(a) the care coordinator is to take account of the views of that patient regarding whether such persons ought to be provided with such copies.

(5) But the care coordinator may provide copies of a relevant patient's plan to any of the persons mentioned in paragraphs (2) and (3)(a) against the wishes of that patient provided that the care coordinator has given due consideration to the views of that patient.

(6) For the purposes of this regulation—

- (a) where a copy of a plan is to be provided to a person, the care coordinator may withhold that copy or provide a copy of part of that plan if the care coordinator is of the view that it is in a relevant patient's interests to do so;
- (b) where a person is eligible to receive more than one copy of a plan relating to a relevant patient, only one copy of the plan need be provided;
- (c) a person is eligible to receive a copy of a plan if he or she is eligible under one or more of the categories in paragraph (2) at the time when copies of the plan are to be provided under paragraph (1);
- (d) a person to whom a plan is to be provided cannot decline to receive a plan unless a provision in paragraph (2) expressly allows him or her to do so.

Delivery of copies of care and treatment plans

9.—(1) Any copy of a care and treatment plan is provided if it is—

- (a) delivered by hand to a person;

- (b) delivered by hand to the last known address of a person;
- (c) sent by prepaid post to the last known address of a person;
- (d) sent by facsimile transmission to a number specified by a person; or
- (e) delivered or sent by any other means whether electronic or otherwise as may be agreed between the care coordinator and a person.

(2) Where a person is not an individual, a copy of a plan is provided if it is delivered or sent to an individual acting on behalf of, or employed by, that person.

Part 5 - Discharge

Information for persons ceasing to be relevant patients

10.—(1) The following information must be provided in writing to an individual on his or her discharge from secondary mental health services—

- (a) the reason for that individual's discharge from secondary mental health services; and
- (b) the action which may be taken, and by whom, if that individual considers that further support and advice in relation to his or her mental health is required following discharge.

(2) In addition to the information in paragraph (1), an adult must be provided with information in writing regarding his or her entitlement to assessment under Part 3 (assessments of former users of secondary mental health services) of the Measure.

(3) In addition to the information in paragraph (1), where an individual is discharged from secondary mental health services as a child but becomes an adult during the relevant discharge period the following information must be provided in writing—

- (a) information on his or her entitlement on reaching the age of eighteen years to assessment under Part 3 of the Measure;
- (b) an explanation of how his or her eighteenth birthday is relevant for the purposes entitlement to such an assessment; and
- (c) the length of the relevant discharge period which is unexpired at the individual's eighteenth birthday.

(4) Information other than that which must be provided in accordance with paragraphs (1), (2) and (3) may be given to the individual on his or her discharge from secondary mental health services.

(5) Where a Local Health Board discharges an individual from secondary mental health services, the Board must provide that individual with information in accordance with paragraphs (1), (2), (3) and (4) if, at the date of discharge, no local authority is providing that individual with a secondary mental health service.

(6) Where a local authority discharges an individual from secondary mental health services, the authority must provide that individual with information in accordance with paragraphs (1), (2), (3) and (4) if, at the date of discharge, no Local Health Board is providing that individual with a secondary mental health service.

Part 6 - Transition

Transitional provisions

11.—(1) In the case of a relevant patient for whom a care coordinator has not been appointed at the coming into force date of these Regulations, the relevant mental health service provider must—

- (a) appoint a care coordinator for that patient no later than 1 calendar month from the coming into force date of these Regulations;
- (b) ensure that the coordinator who is appointed satisfies the eligibility requirements for care coordinators set out in regulation 4 and Schedule 1 to these Regulations; and
- (c) if the care coordinator is employed by another person, ensure that the consent of the other person to the care coordinator's appointment is obtained in accordance with section 16(2) (further provision about the appointment of care coordinators) of the Measure.

(2) Where a care coordinator has been appointed for a relevant patient at the coming into force date of these Regulations—

- (a) the care coordinator is deemed to be appointed as care coordinator for that patient in accordance with regulation 4 and Schedule 1 of these Regulations, and is referred to as a “deemed care coordinator” for the purpose of this regulation;
- (b) if the deemed care coordinator is employed by a person other than that patient's relevant mental health service provider, the consent of the other person to the deemed care coordinator's appointment must be obtained by the provider in accordance with section 16(2) of the Measure; and
- (c) if the consent of the person who is the deemed care coordinator's employer is not obtained,

the relevant mental health service provider must appoint another care coordinator for that patient no later than 1 calendar month from the coming into force date of these Regulations.

(3) Where the deemed care coordinator for a relevant patient does not satisfy the eligibility requirements for appointment as a care coordinator in accordance with regulation 4 and Schedule 1 of these Regulations, the patient's relevant mental health service provider must appoint a care coordinator for that patient who satisfies the eligibility requirements no later than 1 calendar month from the coming into force date of these Regulations.

(4) In the case of a relevant patient who does not have an existing care and treatment plan at the coming into force date of these Regulations, the care coordinator must—

- (a) work with that patient and that patient's relevant mental health service providers with a view to agreeing the outcomes which the provision of mental health services for that patient are designed to achieve, and prepare and record in writing a care and treatment plan for that patient in accordance with regulation 5 no later than 60 days from the coming into force date of these Regulations;
- (b) consult with persons in accordance with regulation 6 as part of the process of agreeing outcomes and preparing a care and treatment plan for that patient no later than 60 days of the coming into force date of these Regulations;
- (c) provide copies of that patient's care and treatment plan in accordance with regulation 8 no later than 10 working days after the plan has been being prepared and recorded in writing; and
- (d) review that patient's care and treatment plan no later than 12 calendar months from the date on which the plan was prepared and recorded in writing.

(5) Where a relevant patient has an existing care and treatment plan at the coming into force date of these Regulations, the care coordinator must—

- (a) review that existing care and treatment plan no later than 12 calendar months from the coming into force date of these Regulations;
- (b) as part of the review of that existing care and treatment plan for that patient—
 - (i) consult with persons in accordance with regulation 6,
 - (ii) work with that patient and that patient's relevant mental health service providers

with a view to agreeing the outcomes which the provision of mental health services for that patient are designed to achieve, and prepare and record in writing a care and treatment plan (the “new plan”) in accordance with regulation 5; and

- (c) provide copies of that patient’s new plan as provided in regulation 8.

Minister for Health and Social Services, one of the Welsh Ministers

2011

PROFESSIONAL REQUIREMENTS

1. The professional requirements are that a person must be—

- (a) a qualified social worker registered with the Care Council for Wales or the General Social Care Council;
- (b) a first or second level nurse, registered in Sub-Part 1 or Sub-Part 2 of the register maintained under article 5 of the Nursing and Midwifery Order 2001⁽¹⁾, with the inclusion of an entry indicating that his or her field of practice is mental health or learning disabilities nursing;
- (c) an occupational therapist who is registered in Part 6 of the Register maintained under article 5 of the Health Professions Order 2001⁽²⁾;
- (d) a practitioner psychologist who is registered in Part 14 of the Register maintained under article 5 of the Health Professions Order 2001;
- (e) a registered medical practitioner;
- (f) a dietician who is registered in Part 4 of the Register maintained under article 5 of the Health Professions Order 2001;
- (g) a physiotherapist who is registered in Part 9 of the Register maintained under article 5 of the Health Professions Order 2001; or
- (h) a speech and language therapist who is registered in Part 12 of the Register maintained under article 5 of the Health Professions Order 2001.

(1) S.I. 2002/253.

(2) S.I. 2002/254.

SCHEDULE 2 Regulation 5(1)

Care and Treatment Plan

Gall y cynllun hwn cael ei gwblhau yn y Gymraeg neu yn y Saesneg, neu yn rhannol yn y Gymraeg ac yn rhannol yn y Saesneg

This plan may be completed in the Welsh or the English language, or partly in Welsh and partly in English

Mental Health (Wales) Measure 2010 Section 18 – Care and Treatment Plan

This care and treatment plan has been prepared under section 18 of the Mental Health (Wales) Measure 2010, and in accordance with the requirements of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011.

This is the care and treatment plan of [Name of relevant patient] who lives at [Full usual address of relevant patient].

The care coordinator who has prepared this care and treatment plan is [Name of care coordinator] who can be contacted at [Telephone number, postal address and, where appropriate, email address of care coordinator]. The care coordinator has been appointed by, and is acting on behalf of, [Name of Local Health Board or Local Authority that appointed the care coordinator].

This plan was made on [Date the plan was made] and is to be reviewed no later than [Date by which the plan must be reviewed]. However, [Name of relevant patient], his or her carer(s) or adult placement carer(s) may request a review of this care plan at any time.

This part of the care and treatment plan records the outcomes which the provision of mental health services are designed to achieve, details of those services that are to be provided, and the actions that are to be taken with a view to achieving those outcomes.

[The planned outcome(s) included in the following part of the plan must relate to **one or more** of the areas listed, and include an explanation of how each outcome relates to each area. Outcomes also may be achieved in other areas, and are to take into account any risks identified in relation to the relevant patient.

This part of the plan also sets out details of the services that are to be provided, or actions taken, to achieve the

planned outcomes, including when, and by whom those services are to be provided or actions taken.

[Outcomes to be achieved must be agreed in relation to at least one of the following areas:

- a) accommodation
- b) education and training
- c) finance and money
- d) medical and other forms of treatment, including psychological interventions
- e) parenting or caring relationships
- f) personal care and physical well-being
- g) social, cultural or spiritual
- h) work and occupation.

Outcomes to be achieved may also be agreed in relation to other areas]

- Outcome to be achieved
- What services are to be provided, or actions taken
- When
- Who by

The following thoughts, feelings or behaviours may indicate that [Name of relevant patient] is becoming more unwell and may require extra help from the care team (these are sometimes called relapse signatures):

If [Name of relevant patient] feels that his or her mental health is deteriorating to the point where he or she requires extra help or support, the following actions ought to be taken (this is sometimes known as a crisis plan and must include details of the services to be contacted):

Any language or communication requirements or wishes which [Name of relevant patient] has (including in relation to the use of the Welsh language) ought to be recorded here:

The views of [Name of relevant patient] on this care and treatment plan, the mental health services that are to be provided, and any future arrangements that ought to be considered, are:

[Record any views that the relevant patient wishes to be included (including past and present wishes and feelings about the matters covered by the plan), and

include any statements about any future arrangements which may apply. If the patient does not have any views or statements on these matters, or the patient's views cannot be ascertained, this ought to be recorded also.]

This care and treatment plan has

- * been agreed with [Name of relevant patient] and is recorded in accordance with section 18(2) of the Mental Health (Wales) Measure 2010
- * not been agreed with [Name of relevant patient] but the outcomes have been determined by the mental health service provider(s), and are recorded in accordance with section 18(6) of the Mental Health (Wales) Measure 2010

[* delete as applicable (one, but not more than one, statement must apply)]

So far as it is reasonably practicable to do so, the following mental health service provider(s) must ensure that the mental health services set out in this care and treatment plan are provided: [Enter the name of the Local Health Board and/or the Local Authority who are responsible for providing secondary mental health services to the relevant patient]

Signed [The relevant patient may sign the care and treatment plan, if they wish] Relevant patient

Signed [The care coordinator must sign this care and treatment plan] Care coordinator

Date [Enter the date the care and treatment plan is made]

Explanatory Memorandum and Regulatory Impact Assessment

The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

Contents

PART 1 – EXPLANATORY MEMORANDUM	3
1. Description.....	3
2. Matters of special interest to the Constitutional and Legislative Affairs Committee	3
2. Legislative background.....	4
3. Purpose and intended effect of the legislation.....	4
4. Consultation.....	5
5. Options	6
6. Costs and benefits.....	8
7. Consultation.....	8
8. Competition assessment	11
9. Post implementation review.....	11
Annex A – Contact information.....	12

Explanatory Memorandum to the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Lesley Griffiths AM

Minister for Health and Social Services

7 November 2011

PART 1 – EXPLANATORY MEMORANDUM

1. Description

1. The Mental Health (Care Coordination and Care and Treatment Planning) (Wales) Regulations 2011 make provision as to:
 - a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
 - b. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
 - c. the form and content of care and treatment plans;
 - d. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
 - e. when care and treatment plans must be reviewed or revised;
 - f. who should receive a copy of a care and treatment plan;
 - g. how copies of care and treatment plans are to be provided;
 - h. what information should be provided to a patient when they are discharged from secondary mental health services; and,
 - i. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

2. This is the first set of Regulations to be made relating to Part 2 of the Mental Health (Wales) Measure 2010.
3. Because the first regulations (alone or with other provisions) to be made under section 18(1)(c) or 18(8) of the Measure are made subject to the approval of the National Assembly for Wales, all of the regulations made within this statutory instrument are made subject to approval.
4. These Regulations include transitional provisions, reflecting the necessary arrangements of moving from a non-statutory to a statutory scheme of care and treatment planning within secondary mental health services.
5. It is proposed that these Regulations are made before the commencement of the main provisions of Part 2 of the Measure. However, the powers to make these Regulations have commenced in accordance with section 55(1) and (2)(b) of the Measure, and the remaining provisions of Part 2 will be commenced prior to the coming into force date of these Regulations.

2. Legislative background

6. These Regulations may be made in exercise of powers conferred on the Welsh Ministers by sections 15(4), 18(1)(c), 18(8), 18(9), 47(1)(b), 47(2) and 52(2) of the Mental Health (Wales) Measure 2010.
7. These Regulations are made subject to the approval of the National Assembly for Wales, as noted previously.

3. Purpose and intended effect of the legislation

8. Part 2 of the Mental Health (Wales) Measure seeks to provide that all relevant patients (of any age) who have been accepted into secondary mental health services in Wales have a dedicated care coordinator and that service providers (LHBs and local authorities) act in a coordinated manner to improve the effectiveness of the mental health services provided to an individual. Also:
 - a. there will be a care and treatment plan for the patient;
 - b. the plan will be developed by a care coordinator in consultation with the patient (so far as practicable, taking into account their capacity and cooperation) and service provider(s), and overseen by the care coordinator;
 - c. the plan is to be agreed with a view to achieving the outcomes which the provision of mental health services for the patient are designed to achieve;
 - d. the plan will be in writing; and,
 - e. the plan will be subject to periodic review and revision in accordance with any Regulations which are made by the Welsh Ministers.
9. These regulations support these provisions of the Measure, by providing detailed practical arrangements to support the operation of Part 2 of the Measure.
10. In relation to care coordinators, these Regulations will:
 - a. ensure that only persons meeting the eligibility requirements may be appointed as a care coordinator; this is to ensure that suitably qualified, trained and experienced staff undertake this important function;
 - b. continue the intentions of section 15 of the Measure, to ensure that the most appropriate mental health service provider is identified as the relevant mental health service provider for a relevant patient, and appoints the care coordinator for that patient (in the case of the Regulations this applies where both an LHB and a local authority provide services).

11. In relation to care and treatment planning, these Regulations will:

- a. set out a prescribed form which the care and treatment plan must meet. This will help to ensure that plans are clear and accessible, and meet the purposes of such a document;
 - b. establish the content which all care and treatment plans must include; such content is based within the context of the philosophy of recovery which underpins secondary mental health services; and,
 - c. prescribe the circumstances when care and treatment plans must and may be reviewed and, if necessary, revised.
12. To support the principles of consultation, collaborative and joint working which underpin care and treatment planning within secondary mental health services, these Regulations will:
- a. provide comprehensive requirements about the persons, in addition to the relevant patient and the mental health service providers, who should be consulted in making and reviewing care and treatment plans; and,
 - b. help to ensure that the right people and organisations are clear about the expected outcomes of service provision, and understand what their obligations and expectations are in achieving those outcomes. This is achieved, in part, by providing copies of a relevant patient's care and treatment plan.
13. To help identify the support which relevant patients who leave secondary mental health services may need, these Regulations require certain information to be provided to patients on discharge.
14. It is anticipated that statutory care and treatment planning will lead to the greater involvement of patients in decisions which are made in relation to their care and treatment, and better outcomes for them.
15. In addition, it is expected that the design and delivery of care and treatment plans will foster more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

4. Consultation

16. Details of the consultation undertaken are included in the regulatory impact assessment that has been completed for these Regulations, and is set out in Part 2 of this document.

PART 2 – REGULATORY IMPACT ASSESSMENT

5. Options

17. This section of the RIA presents two different options in relation to the policy objectives of the proposed Regulations (see Section 4 of Part 1 of this document). Both of the options are analysed in terms of how far they would achieve the Government's objectives, along with the risks associated with each. The costs and benefits of each option are set out in Section 7 of this Regulatory Impact Assessment.

18. The options are:

- Option 1 - Do nothing
- Option 2 - Deliver the policy objectives through the Regulations

Option 1 – Do nothing

19. The current responsibilities for health and social care services in respect of care and treatment planning for patients in adult mental health services is set out in policy guidance relating to the Care Programme Approach (“CPA”)¹. The CPA guidance does not, currently, apply to patients in child and adolescent secondary mental health services.

20. The Welsh Government has also initiated performance management arrangements in respect of CPA through the Service and Financial Framework (SaFF) and more recently through the Annual Operating Framework (AOF) and Annual Quality Framework (AQF).

21. However, despite existing guidance and targets, there have been anecdotal concerns over recent years that care and treatment plans are not being effectively developed with service users, and that the CPA guidance is not being correctly followed. This position has been confirmed by a recent review of the operation of CPA in Wales².

22. Part 2 of the Measure is aimed at ensuring patients (of all ages) have a care coordinator and a care and treatment plan. Although this will improve the current situation, without the supporting regulations there are risks that a multitude of different documents will be considered to be a care and treatment plan and that different standards will be applied to the content of care and treatment plans. There are also risks that ineffective consultation with relevant individuals, professionals and organisations take place.

¹ Welsh Assembly Government (2010) *Delivering the Care Programme Approach in Wales: Interim Policy Implementation Guidance*

² Elias E and Singer L (2009) *A review of the care programme approach in Wales*. Bridgend: Delivery Support Unit and National Leadership and Innovation Agency for Health (unpublished)

23. There are also concerns that unacceptable variations will continue, or increase, as to who may be appointed as a care coordinator and the skills and experience that such an individual will hold.

Option 2 – Make regulations

24. This option proposes that the Regulations will provide the necessary operational detail to the Measure, and make provision as to:

- a. determining whether a Local Health Board (LHB) or a local authority is identified as the relevant mental health service provider for a relevant patient, and is therefore responsible for appointing a care coordinator for that patient (other than as provided in the Mental Health (Wales) Measure);
- d. the eligibility of persons who may be appointed as a care coordinator for patients receiving secondary mental health services;
- e. the form and content of care and treatment plans;
- f. who is to be consulted when making and reviewing a care and treatment plan for a relevant patient;
- g. when care and treatment plans must be reviewed or revised;
- h. who should receive a copy of a care and treatment plan;
- i. how copies of care and treatment plans are to be provided;
- j. what information should be provided to a patient when they are discharged from secondary mental health services; and,
- k. transitional arrangements in respect of patients within secondary mental health services at the coming into force of the Regulations.

25. Using legislation in this way will ensure that relevant patients receive an effective assessment of their needs and risks (including vulnerability) that can be translated into effective planning of care and treatment designed to address identified needs, the management of identified risk, and achieve the agreed outcomes.

26. The duties contained in the Measure will therefore be supplemented by detailed regulations and both will be supported by updated guidance, and an implementation programme aimed at moving planning to a holistic, outcome-focussed, recovery-centred approach. Taken collectively this will enable the Welsh Government to redirect the focus of care planning and achieve a position whereby all relevant patients have the support of a dedicated care coordinator and receive a plan which is relevant to their needs, regularly reviewed and updated as appropriate throughout the duration of their treatment.

27. The risks associated with this option relate to the implementation of the legislation, rather than in taking a legislative approach. For example, it will be important to ensure that services are supported in moving towards holistic care planning where such services are not currently working in that way. These risks will be addressed through the implementation programme for the Mental Health (Wales) Measure 2010.

6. Costs and benefits

Costs and benefits of Option 1 (do nothing)

28. Ongoing performance management of CPA will have no additional direct costs, and would continue to be used to ensure that care plans are in place for individuals. However, there are costs associated with inadequate planning of care, including poorer outcomes for individuals and their families, and ineffective care delivery and resource allocation. In the worse case, this may even lead to compromised public and patient safety, and increased potential for litigation, and reputational damage. The benefits expected to be realised in moving care and treatment planning forward on a statutory basis (as established by Part 2 of the Measure), may well not be realised with the 'do nothing' option.

Costs and benefits of Option 2 (make regulations)

29. Because care and treatment planning has been a (non-statutory) requirement within secondary mental health services for a number of years, there are no anticipated additional costs associated with these Regulations. There are identified implementation costs associated with Part 2 of the Measure (as set out in the Explanatory Memorandum to the Measure), but these Regulations do not add to those costs.

30. It is anticipated that these Regulations, in association with the Measure, will lead to greater involvement of relevant patients in decision-making around their care and treatment, and better outcomes for those patients. Revised CPA guidance and other components of the implementation programme will be directed to support the re-focussing of care and treatment planning which should also encourage more cohesive, focussed and effective cross-discipline working amongst mental health and social care professionals in delivering services.

31. The ultimate aim is to ensure that appropriate services are directed where they are actually required in a timely manner. If successful, this will not only benefit patients, but should also help remove inefficiencies in practice and potential wastage in care and treatment delivery, leading to potential cost savings (although unquantifiable at this stage) within the service.

Summary

32. **Option 2 (make regulations)** best meets the Government's objectives.

7. Consultation

33. Welsh Government officials undertook a programme of consultation on the draft regulations relating to care coordination and care and treatment planning. 117 written responses were received from a variety of stakeholders, including service user representative bodies, NHS organisations, local authorities and professional

bodies.

34. A detailed consultation response report has been published on the Welsh Government's website, but the views received and the most noteworthy amendments made to the regulations as a result of the consultation are summarised in the following paragraphs.

Identification of relevant mental health service provider

35. The majority of respondents agreed with the principle that one organisation (either the relevant LHB or the local authority) should be the body responsible for appointing a care coordinator; therefore the Welsh Government will not be amending this Regulation.

Eligibility requirements for care coordinators

36. In response to suggestions received from stakeholders, dieticians, physiotherapists and speech and language therapists have been added to the list of those professionals who can be appointed as care coordinators. The Regulations have also been amended to make it clear that only qualified social workers (as opposed to student social workers) may be appointed as care coordinators. In addition, 'skills' has been added to Regulation 4(1)(b) in recognition of the fact that certain specific skill sets will on occasions be necessary when appointing care coordinators to patients with certain conditions or requirements.

Form and content of care and treatment plans

37. The Welsh Government has made significant changes to Schedule 2 of the Regulations to take into account the range of views expressed by stakeholders. All care and treatment plans will now include a review date, any risks identified in relation to the patient will be recorded against the relevant outcomes, and details of the patient's relapse signatures will be included. In addition, the wording of the mandatory text in Schedule 2 has been adapted to make the language less formal, and the layout of the plan has been substantially revised to clearly link outcomes with the mental health services to be provided with a view to achieving those outcomes. Given the amendments made to Schedule 2, the wording of Regulation 5 has been simplified from the version introduced for consultation.

Persons to be consulted in preparing, reviewing and revising care and treatment plans

38. To address concerns voiced by some respondents regarding how/whether certain persons set out in the draft Regulations should be consulted by the care coordinator when preparing or reviewing a care and treatment plans, the Regulations have been amended so that whilst it will be the case that the care coordinator has to take account of the views of the patient before consulting with any of the relevant persons set out in the regulations, he or she may choose to consult with such persons against the wishes of the patient, provided that the care coordination has given due consideration to the wishes of the patient. This

approach is intended to ensure that the wishes of the patient are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

Review and revision of care and treatment plans

39. In response to uncertainty expressed by some consultees, the wording of the Regulations has been amended to make it clear that a review must be held *within* each 12 month period. The Welsh Government has also amended the Regulations to make it clear that any statutory mental health service provider providing care to a patient, and the patient's carer, or adult placement carer, may request that the care and treatment plan be reviewed as suggested by some stakeholders ('adult placement carers' have been added to the Regulations to reflect the fact that some patients will be cared for by such a carer under an Adult Placement Scheme).

Copies of care and treatment plans

40. To address concerns voiced by some respondents regarding whether/how certain persons set out in the draft Regulations should receive copies of the patient's care and treatment plan, the Regulations have been amended so that the care coordinator has to take account of the views of the patient before providing copies of his or her care and treatment plan to any of the persons set out in the Regulations. However, the care coordinator may choose to provide such persons with copies of the plan against the wishes of the patient provided that the care coordinator has given due consideration to the wishes of the patient. This approach is intended to ensure that the wishes of the service user are balanced against the care coordinator's responsibility of delivering safe and effective care and treatment to the patient. To avoid adding unwarranted complexity to the process of developing and reviewing the care plan it was not felt proportionate to require the care co-ordinator to seek a decision from a 3rd party on whether it was appropriate to consult certain people against a patients wishes. It is expected that the Code of Practice relating to Parts 2 and 3 of the Measure will recommend that the reasons for such decisions should be clearly documented.

Information for persons ceasing to be relevant patients

41. Given that a majority of consultees were content with the arrangements set out in the draft Regulation, the Welsh Government will not be making any substantive amendments to this Regulation. The wording of the text of Regulation 10(3)(b) has, however, been revised to make the relevance of a child's 18th birthday clearer, and, in keeping with amendments made elsewhere in the Regulations, the 'best interest' test which was previously included in Regulation 10(4) has been removed.

Transitional provisions

42. In response to the view expressed by some stakeholders, services will be required to ensure that all persons in secondary mental health services (irrespective of age) at the time of the commencement of this legislation should have a care and treatment plan within 60 days.

8. Competition assessment

43. The competition filter is required to be completed if the subordinate legislation affects business, charities and/or the voluntary sector. The filter is therefore not required in respect of these Regulations.

9. Post implementation review

44. Section 48 of the Measure places the Welsh Ministers under a duty to the review the operation of Measure, and to publish a report of the findings of the review. The report on Part 2 of the Measure must be published no later than four years after the commencement of the principal provisions of Part 2.
45. It is intended that the review relating to Part 2, will take account of these Regulations.
46. The report of the review must be placed before the National Assembly for Wales, in accordance with section 48(9) of the Measure.

Annex A – Contact information

For further information in relation to this document, please contact:

Mental Health Legislation Team
Welsh Government
Cathays Park
Cardiff
CF10 3NQ

Telephone: 029 2082 3294

Email: mentalhealthlegislation@wales.gsi.gov.uk

Agenda Item 3.2

Constitutional and Legislative Affairs Committee

(CLA(4)-12-11)

CLA53

Constitutional and Legislative Affairs Committee Draft Report

Title: The Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011

Procedure: Affirmative

This Order amends Part 1 of Schedule 2 to the Red Meat Industry (Wales) Measure 2010 ('the Measure') by replacing the component tables in paragraphs 5 and 6 to increase the maximum rate of levy that may be charged for the production and slaughter/ export components of the red meat levy.

Technical Scrutiny

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

1. The Order is to be made using powers granted to Welsh Ministers by section 5(4) 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

No points are identified for reporting under Standing Order 21.3 in respect of this instrument.

Legal Advisers

Constitutional and Legislative Affairs Committee

November 2011

The Government has responded as follows:

INTERT RESPONSE

Draft Order laid before the National Assembly for Wales under section 17 of the Red Meat Industry (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

AGRICULTURE, WALES

**The Red Meat Industry (Wales)
Measure 2010 (Amendment) Order
2011**

EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Red Meat Industry (Wales) Measure 2010.

Article 2 amends Part 1 of Schedule 2 to the Measure by replacing the component tables in paragraphs 5 and 6.

A regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector has not been prepared.

Draft Order laid before the National Assembly for Wales under section 17 of the Red Meat Industry (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

DRAFT WELSH STATUTORY
INSTRUMENTS

2011 No. (W.)

AGRICULTURE, WALES

**The Red Meat Industry (Wales)
Measure 2010 (Amendment) Order
2011**

Made ***

Coming into force 1 April 2012

The Welsh Ministers make the following Order in exercise of powers conferred by sections 5(4) and 17 of the Red Meat Industry (Wales) Measure 2010(1).

A draft of this Order was laid before and approved by resolution of the National Assembly for Wales.

Title, commencement and application

1. The title of this Order is the Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011. It applies in relation to Wales and comes into force on 1 April 2012.

Amendments to Schedule 2 to the Measure

2. Part 1 of Schedule 2 to the Measure is amended as follows—

(1) In paragraph 5 of the Schedule replace the table with the following table—

“Animal	Maximum rate of production component per animal
----------------	--

(1) 2010 nawm 3.

Draft Order laid before the National Assembly for Wales under section 17 of the Red Meat Industry (Wales) Measure 2010, for approval by resolution of the National Assembly for Wales.

Cattle	£ 6.91
Calves	£ 0.50
Sheep	£ 1.00
Pigs	£ 1.67“.

(2) In paragraph 6 of the Schedule replace the table with the following table—

“Animal	Maximum rate of slaughter or export component per animal
Cattle	£ 2.12
Calves	£ 0.50
Sheep	£ 0.32
Pigs	£ 0.40“.

Deputy Minister for Agriculture, Food, Fisheries and European Programmes, under authority of the Minister for Business, Enterprise, Technology and Science, one of the Welsh Ministers

Date

Doc 2

**Explanatory Memorandum to the Red Meat Industry (Wales) Measure 2010
(Amendment) Order 2011**

This Explanatory Memorandum has been prepared by the Department for Business, Enterprise, Technology and Science and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

Minister's Declaration

In my view this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Red Meat Industry (Wales) Measure 2010 (Amendment) Order 2011.

Alun Davies AM

Deputy Minister for Agriculture, Food, Fisheries and European Programmes, under authority of the Minister for Business, Enterprise, Technology and Science, one of the Welsh Ministers.

8 November 2011

Description

- 1.1. The purpose of this Statutory Instrument is to amend two paragraphs in the Schedule 2 of Red Meat Industry (Wales) Measure 2010 and so increase the maximum rate of levy that may be charged for the production and slaughter/ export components of the red meat levy.

Matters of special interest to the Constitutional and Legislative Affairs Committee

- 2.1 There are no issues of special interest in this Statutory Instrument.

Legislative Background

- 3.1 The Welsh Ministers may make the proposed Statutory Instrument in exercise of powers conferred by sections 5(4) and 17 of the Red Meat Industry (Wales) Measure 2010 through the affirmative procedure.

Purpose and intended effect of the legislation

- 4.1 The fundamental purpose of this Statutory Instrument is to amend the Schedule to the Measure which sets the maximum rates of levy that may be charged on the red meat industry in Wales.
- 4.2 Currently the actual levy rates are set by the Welsh Levy Board. Where the proposed rate exceeds the maximum set out in the Welsh Levy Board Order 2008 Ministerial consent is required.
- 4.3 From 1 April 2012 the levy rate will be set annually by the Welsh Ministers. The rate must be set in accordance with the provisions made in the Measure and so any increases beyond the maximum value would require the Schedule to the Measure to be amended, by affirmative procedure, annually. This proposed Statutory Instrument would set the proposed maximum rates are based on current rates plus increases that take account of anticipated inflation over the next ten years thereby avoiding the need to amend the Schedule each year.
- 4.3 The Measure sets some basic parameters in respect of the levy, namely;
- Money raised in each sector (cattle, sheep and pigs) must be spent for the benefit of that sector and so the promotion of the sector will be proportionate to its importance to the agriculture industry in Wales.
 - The money raised can only be spent on the development and promotion of these three sectors in the red meat industry, for example, it cannot be spent on the promotion of general agricultural produce from Wales nor could it be spent on general research and development.

Consultation

- 5.1. No specific consultation has been entered into for this Statutory Instrument because this is one step in a process that started in 2006 when detailed and extensive consultation with the industry and other interested parties was undertaken as part of the Radcliffe Report on the Review of the UK Levy Bodies.
- 5.2. The recommendations in the report on the Radcliffe Review of the levy bodies were subject to wide consultation. Respondents from the meat sector were wholly supportive of the idea of having a Welsh red meat levy-raising body directly accountable to the then Welsh Assembly Government rather than directly accountable to the UK Levy Board - AHDB. The idea was accepted by all the main players including NFU Cymru, HCC, Welsh Lamb & Beef Producers Ltd. and Farmers' Union of Wales.

Regulatory Impact Assessment (RIA)

- 6.1. A Regulatory Impact Assessment is not required for this Statutory Instrument.
- 6.2. The proposed Statutory Instrument simply amends the tables in an existing Measure and so will set the maximum amount of levy that may be charged in future. The proposed amounts are based on current rates plus increases that take account of anticipated inflation over the next ten years.
- 6.3. The proposed Statutory Instrument would not give rise to any other administrative, compliance and/or other costs.

CLA GP5

Constitutional and Legislative Affairs Committee

Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Response from Farmers Union of Wales

**NATIONAL ASSEMBLY FOR WALES'
CONSTITUTIONAL AND LEGISLATIVE
COMMITTEE'S INQUIRY INTO THE
GRANTING OF POWERS TO WELSH
MINISTERS IN UK LAWS**

Response from the Farmers' Union of Wales

September 2011

NATIONAL ASSEMBLY FOR WALES' CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE'S INQUIRY INTO THE GRANTING OF POWERS TO WELSH MINISTERS IN UK LAWS

Response from the Farmers' Union of Wales

INTRODUCTION

1. The Farmers' Union of Wales welcomes this opportunity to contribute to the Constitutional and Legislative Affairs Committee's Inquiry into the Granting of Powers to Welsh Ministers in UK Laws, with particular reference to how this practice impacts on the scrutiny of legislation affecting rural Wales.
2. The Farmers' Union of Wales (FUW) supported Devolution and the establishment of a National Assembly for Wales believing that this would enable Wales to promote, develop and institute policies that were designed specifically to cater for the needs and aspirations of the people of Wales.
3. The Union firmly believes that the interests of farmers and the rural economy of Wales are best served by policies and legislation determined and fashioned, wherever possible, by the elected representatives of the National Assembly for Wales who would be more attuned to the particular concerns and needs of Wales' rural areas.
4. As a means of achieving this, the Union supported the strengthening of the powers and responsibilities afforded to the National Assembly for Wales, believing that legislative parity was needed between Wales and the other devolved nations.
5. The Union, therefore, welcomed the Referendum on Further Law Making Powers for Wales held earlier this year.

Questions

The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms.

6. The FUW believes that the National Assembly for Wales should have the opportunity to comment on all legislation pertaining to Wales, whether emanating from Westminster or Cardiff, and that full scrutiny should be undertaken by the appropriate Assembly Committee to ensure total transparency and appropriateness of any new legislation implemented in Wales.
7. The current practice, where the National Assembly does not have the power to formally scrutinise those UK Acts of Parliament which confer powers directly onto Welsh Ministers is a cause of concern to the Union.
8. The FUW believes that unless the National Assembly, through an appropriate scrutiny Committee, is able to influence primary legislation through Assembly Ministers prior to its drafting in Westminster, then the opportunity to shape the content of such legislation could be compromised.
9. The Union believes that the various scrutiny Committees within the Assembly play a vital role in informing and shaping the activities undertaken by the Welsh Government.
10. During the third Assembly, the Union became increasingly concerned over the decline in emphasis given to the reports, recommendations and advice provided by scrutiny Committees to Assembly Ministers.
11. The FUW was particularly disappointed that, under the current Welsh Government, the Business Committee abolished the Rural Development Sub-Committee, thus, in its view, weakening the opportunity for discussion and debate on the particular challenges facing the rural economy in Wales.
12. While acknowledging that the Environment and Sustainability Committee will establish, when needed, 'Task and Finishing Groups' to look at specific issues affecting rural areas, such as the recently formed Common Agricultural Policy Task and Finish Group, the FUW believes that, due to the predominately rural nature of Wales and the importance of agriculture to rural areas, a separate Committee was needed to consider and scrutinise any issues and legislation which affects agriculture or rural Wales.
13. The Union believes that, for the scrutiny process to be seen to be working, the current process whereby Westminster can confer powers directly onto Welsh Ministers, without involving the National Assembly, needs to be amended so that the National Assembly is able to fully scrutinise any relevant pieces of legislation.

The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders.

14. As outlined in the Annex document issued with the Inquiry letter, the National Assembly has no formal role in scrutinising powers transferred to Welsh Ministers through UK Acts of Parliament.

15. The FUW believes that the Assembly's role in the process needs to be formalised to prevent inappropriate legislation or parts of legislation being implemented in Wales.
16. At present, when a UK Act of Parliament confers powers directly onto Welsh Ministers, the Standing Orders, particularly Standing Order 30, only requires a written statement regarding the Bill and its provisions. Once this statement has been laid, there is no requirement for it, or the actual legislation, to be scrutinised by the Business Committee or, by referral, a relevant Committee.
17. The Union supports the comments made by the Constitutional Affairs Committee during the third Assembly regarding amending the Standing Orders to enable legislation applied to both the Assembly and individual Welsh Ministers to be scrutinised at an appropriate point. The subsequent changes made to the Standing Orders, particularly Standing Order 30, appear to be insufficient to address these recommendations and subsequently the level of scrutiny which can be undertaken.
18. If Welsh Ministers are to be more accountable to the National Assembly and the relevant Assembly Committees, the Union believes that Standing Order 30 should be amended to increase the level of scrutiny of UK legislation which confers powers directly onto Welsh Ministers.
19. These amendments should include referral of the statement and the actual legislation to the Business Committee who, in turn, would be able to scrutinise and comment on the documents or refer them to the Committee with the relevant knowledge and expertise to undertake this work. Similar provisions are contained within paragraph 29.4 of Standing Order 29 which the Union believes could be used as a basis to amend Standing Order 30.
20. Standing Order 21, paragraphs 21.8 and 21.9, already confers powers on a 'responsible Committee' to consider draft European Union legislation and make written representations on behalf of the National Assembly, to the relevant Committee in the House of Commons or the House of Lords. The Union also believes that, with some minor amendments, there is scope within this Standing Order to extend this to include the scrutiny of UK legislation which confers powers directly onto Welsh Ministers.

The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments.

21. The Union is concerned that the Devolution Guidance Notes have yet to be updated to reflect the changes in the powers afforded to the National Assembly following the outcome of the Referendum. It believes that this work should be undertaken as a matter of urgency to ensure that UK Government acts appropriately following the changes brought about by the Referendum.

The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.

22. The Union welcomes the changes to Standing Order 29, for the fourth Assembly, which bestows the appropriate Assembly Committee with the ability to scrutinise and report on a Legislative Consent Motion (LCM) and the legislation which led to it being tabled.
23. In practice, this scrutiny can only take place if the Business Committee refers the LCM to the relevant Committee. The Union believes that the Business Committee should be required to refer all LCMs to the most appropriate Committee. This would allow the legislation to be fully debated and reported and allow the tabling of amendments which would allow the legislation to be adapted for Wales.
24. The Union also believes that an Assembly Committee should be able to request the referral of an LCM to it if it believes that it is important or could have implications for the work areas within its remit.
25. The FUW supports the conclusion of the Scottish Parliament's Procedures Committee in its report on 'The Sewel Convention' that "any legislation must either be the product of its own deliberations [the Scottish Parliament] or require its explicit consent. Either way, it remains in control".

29th September 2011

Agenda Item 4.2

Y Gwir Anrh/Rt Hon Carwyn Jones AC/AM
Prif Weinidog Cymru/First Minister of Wales



Llywodraeth Cymru
Welsh Government

Ein cyf/Our ref: LF/FM/5152/11

David Melding AM
Chair
Constitutional & Legislation Affairs Committee
National Assembly for Wales
Cardiff Bay
Cardiff

15th November 2011

Dear David

I am writing further to my letter of 2nd November accepting your invitation to give oral evidence to the Committee.

Your Committee's inquiry raises a specific issue, that of the delegation of powers, in connection with the pursuit by Welsh Ministers of our policy objectives through appropriate provision in Westminster legislation. In general, the Welsh Government follows the principle that primary legislation in devolved areas should be enacted by the National Assembly. However, it is necessarily the case that there are, and will continue to be, circumstances in which it is sensible and advantageous if provision which otherwise would be within the Assembly's competence is sought for Wales in Parliamentary Bills, with the consent of course of the National Assembly (signified by approval of a Legislative Consent Motion). Such provision will not infrequently include conferring new delegated powers on the Welsh Ministers.

Taking provision in a UK Bill can enable pragmatic solutions to be reached in a timely fashion, while simultaneously respecting the competence of the Assembly through the LCM process. It can be a matter of practical good government for such provisions to be included in a UK Bill. Examples of situations where such an approach would be appropriate could include:

- when the UK Government's legislative proposal would also be appropriate for Welsh circumstances but there is no time available for similar provisions to be brought forward in the Assembly;
- where the inter-connected nature of the relevant Welsh and English administrative systems mean that it is most effective and appropriate for provision for both to be taken forward at the same time in the same legislative instrument;
- where the devolved provisions in question are minor or technical and non-contentious;
- where the UK Bill covers both devolved and non devolved matters and the Westminster route must be taken in order to achieve the policy objective;
- where the competence of the Assembly and/or the powers of the Welsh Ministers would be extended in a way that could not be achieved through an Assembly Act, given the limits on the Assembly's legislative competence.

Bae Caerdydd • Cardiff Bay
Caerdydd • Cardiff
CF99 1NA

English Enquiry Line 0845 010 3300
Llinell Ymholiadau Cymraeg 0845 010 4400
Ffacs * Fax 029 2089 8198
ps.firstminister@wales.gsi.gov.uk

In my Government's view, it would be most unwise if we were to adopt a self-denying ordinance in respect of Westminster Bills in such circumstances.

Turning to the points specifically raised in your call for evidence:

The extent of the current National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms

This is of course primarily a matter for the Assembly itself. The Government must work within the devolution settlement as contained in the Government of Wales Act 2006 (GOWA 2006) and, in our dealings with the UK Government, in accordance with the principle of confidentiality enshrined in the Memorandum of Understanding.

A number of arrangements are already in place to enable Assembly scrutiny of provisions in Parliamentary Bills. Section 33 of GOWA 2006 requires the Secretary of State for Wales to consult the Assembly about the UK Government's legislative programme, which is followed by a debate in plenary. Assembly Committees have the discretion to consider Welsh provisions in Parliamentary Bills and the revised Standing Orders have put in place new arrangements for Legislative Consent Motions and the laying of written statements in relation to certain types of Bill provision.

The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders

The content of Standing Orders is a matter for Business Committee.

The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments

The existing Devolution Guidance Notes are currently being revised to take account of the new constitutional arrangements in Wales. Your Committee will of course bear in mind that these Notes are not the responsibility of the Welsh Government, although our officials engage in dialogue with Wales Office officials on the drafting. The Notes are aimed primarily for the guidance of civil servants working in Whitehall departments, who may on occasion have only a limited knowledge and understanding of devolution.

The procedures for Legislative Consent Motions compared to the position in the other devolved legislatures.

So far as I am aware, the procedures followed here are similar to those used in the other devolved legislatures, but your Committee will no doubt draw attention to any distinctive features of our arrangements which merit reconsideration.

I look forward to attending the Committee next week to discuss these matters further.

Yours sincerely



CARWYN JONES

National Assembly for Wales Constitutional and Legislative Affairs Committee

Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

Memorandum from the Wales Office

1. This memorandum sets out the response of the Wales Office, on behalf of the United Kingdom Government, to the invitation from the Constitutional and Legislative Affairs Committee of the National Assembly for Wales to submit written evidence in relation to its inquiry on the granting of powers to Welsh Ministers in UK laws. It sets out the overarching principles which inform the Government's approach to legislating in respect of Welsh Ministers' functions, and responds specifically in the five areas on which the Committee has welcomed views.

Key Principles

2. There are four key principles which inform the Government's approach to including provision relating to Welsh Ministers' functions in parliamentary Bills:

i. The UK Government works with the Welsh Government on matters relating to its legislative programme

3. The UK Government consults the Assembly on its legislative programme at the start of each session of Parliament. The Government of Wales Act 2006 requires the Secretary of State for Wales to undertake with the Assembly such consultation as appears to her appropriate. In practice, the Secretary of State for Wales appears before the Assembly soon after the start of each parliamentary session to present the UK Government's legislative programme and hear the views of Assembly Members on it.

4. The UK Government consults the Welsh Government in preparing and managing its legislative programme. The Wales Office engages with the Welsh Government as the UK Government puts together its legislative programme, and keeps the Welsh Government informed of progress as the parliamentary session progresses. UK Government Departments currently ensure that contact with the Welsh Government on individual Bills starts at an early stage in the Bill development process, and continues during the parliamentary stages of a Bill.

5. The UK Government believes it is essential to encourage close working relationships with the Welsh Government to ensure both Governments act in the interests of Wales and of the United Kingdom as a whole. This relationship should be one based on mutual respect, where both Governments share information relating to their legislative programmes, and to particular Bills which form part of those programmes, to enable the legislative aspects of the

Welsh devolution settlement to work effectively. Each Government, in turn, should maintain a close working relationship with its respective legislature.

ii. The Assembly would normally legislate on subjects within its legislative competence

6. The subjects within the Assembly's legislative competence are set out in Part 1 of Schedule 7 to the Government of Wales Act 2006, together with exceptions to that competence, and the Assembly would normally legislate in these areas. Parliament retains the right to legislate in any area of the Assembly's legislative competence, although the UK Government currently observes the convention that it will not bring forward legislation in areas devolved to the Assembly without the Assembly's consent. The Welsh Government would ordinarily be expected to bring forward legislation in the Assembly in order to fulfil its legislative competence.

iii. The UK Government would not normally ask Parliament to legislate on subjects which are within the Assembly's legislative competence without the consent of the Assembly.

7. Notwithstanding the principle above, there may be specific circumstances where the UK Government would agree a request by the Welsh Government to include provision in a parliamentary Bill on a subject within the Assembly's legislative competence, including provisions relating to Welsh Ministers' powers. This may be because there is no suitable Assembly Bill in the Welsh Government's legislative programme in which to make provision and / or the requirement is too specific to warrant an Assembly Bill of its own.
8. Any provision which the Welsh Government wishes to make would need to be agreed with the UK Government, and fall within the scope of the relevant parliamentary Bill. It should not adversely affect the handling or timing of the Bill.
9. The consent of the Assembly is required if provision is included in a parliamentary Bill which is within its legislative competence. It is the responsibility of the Welsh Government to promote the relevant Legislative Consent Motion (LCM) in the Assembly. The UK Government would seek to agree with the Welsh Government before a parliamentary Bill is introduced that the Welsh Ministers would support an LCM, and lay a motion and an accompanying legislative consent memorandum in the Assembly as soon as possible after the Bill is introduced in Parliament. We understand that the Assembly's Standing Orders require the Welsh Government to lay an LCM in the Assembly normally no later than two weeks after a Bill is introduced in Parliament. An LCM may also be required if the provision is amended during a Bill's parliamentary stages.

- iv. **The UK Government may ask Parliament to legislate in relation to Welsh Ministers' functions in non-devolved areas, but would normally seek the agreement of the Welsh Government to do so.**
10. Welsh Government Ministers exercise most of their executive functions in areas where the Assembly has legislative competence. Accordingly, provisions in parliamentary Bills relating to the functions of Welsh Government Ministers will often be within the Assembly's legislative competence and will, for that reason, require the consent of the Assembly (through an LCM).
 11. But Welsh Government Ministers may also exercise functions in areas which are non-devolved, where the Assembly does not exercise legislative competence. They may, for example, be best placed to exercise specific functions in relation to Wales in areas where the UK Government is implementing a policy in a non-devolved area UK-wide or GB-wide, or in relation to England and Wales.
 12. The UK Government would not normally bring forward legislation in such circumstances, or in a way which significantly affects Welsh Government Ministers' executive functions (other than incidental or consequential provision), without the consent of Welsh Government Ministers. We understand that in accordance with the Standing Orders of the Assembly, Welsh Government Ministers should notify the Assembly in a written statement about provisions in parliamentary Bills which have a significant impact on Welsh Government Ministers' functions. The UK Government considers it appropriate for the Assembly to agree with the Welsh Government the nature and extent of Assembly engagement in relation to such provision.
 13. In response to the specific areas on which the Committee has invited written evidence
 - i. **The extent of the National Assembly scrutiny of delegated powers given to Welsh Ministers through provisions in UK Acts and through other statutory mechanisms.**
 14. As explained in our discussion of key principles, the consent of the Assembly is required in relation to powers conferred on Welsh Government Ministers in parliamentary Acts in areas within the Assembly's legislative competence. The Welsh Government is accountable to the Assembly for the exercise of its functions, and in drafting provisions the UK Government and the Welsh Government may, for example, require a draft of a statutory instrument brought forward by the Welsh Government under delegated powers to be laid before, and approved by a resolution of, the Assembly (affirmative procedure) or provide for an instrument to be subject

to annulment by the Assembly (negative procedure). The Assembly would, in turn, be mindful of the need for such requirements in considering whether to approve an LCM brought forward by the Welsh Government in relation to such provision.

15. Similarly, if executive functions are conferred on Welsh Government Ministers in non-devolved areas, any relevant scrutiny functions would normally be conferred on the Assembly. Parliament however would continue to exercise legislative competence and could undertake scrutiny in the relevant area. The Assembly, in the same way, normally assumes any scrutiny function formerly exercised by Parliament in the event of executive functions being transferred to Welsh Government Ministers in non-devolved areas (for example, in a Transfer of Functions Order). In some very particular cases the exercise of a delegated power may be subject to both Assembly and parliamentary approval.

ii. The extent to which the National Assembly is able to exercise robust scrutiny of such processes through its Standing Orders.

16. The UK Government considers this to be a matter for the National Assembly, in consultation with the Welsh Government.

iii. The relevance of the UK Government's Devolution Guidance Notes in the light of recent Welsh constitutional developments.

17. The UK Government makes available (on the Cabinet Office website) a series of Devolution Guidance Notes (DGNs) setting out guidance to UK Government Departments on working arrangements between the UK Government and the Devolved Administrations.

18. These DGNs can cover arrangements relating to all administrations, or to specific bilateral relations between the UK Government and one of the Devolved Administrations. In the context of the Committee's inquiry, DGN9 (Post-Devolution Primary Legislation Affecting Wales) is of particular relevance. The content of this DGN had been agreed between the UK Government and the (then) Welsh Assembly Government before publication, and is mirrored by reciprocal Welsh Government guidance.

19. Following the affirmative vote in the 3 March Assembly powers referendum and the subsequent conferral on the Assembly of enhanced law-making powers in the 20 devolved areas, the UK Government has been working with the Welsh Government to revise relevant DGNs to reflect the new constitutional arrangement. In that regard, we have prioritised the revision of DGN9, and are also preparing a new DGN (DGN17) to set out the process for modifying the legislative competence of the Assembly under section 109 of the Government of Wales Act 2006 (replacing DGN16, which

dealt with Legislative Competence Orders under section 95 of the 2006 Act).

20. The UK Government believes that DGNs remain crucially important in ensuring an efficient and effective working relationship between Whitehall and the Welsh Government, and that the Welsh devolution settlement continues to work well in this respect. In terms of DGN9, the guidance is being updated to reflect the new constitutional arrangements in place following the March referendum, and will provide the basis for Whitehall departments' engagement with the Welsh Government on legislative matters.
21. The UK Government is mindful of the need to publish revised guidance, and is working to agree a revised DGN9 with the Welsh Government. It is also expected that this revised guidance will form the basis for reciprocal Welsh Government guidance.

iv. The procedures for Legislative Consent Motions compared to the position on the other devolved legislatures.

22. The UK Government considers the procedures for LCMs in the Assembly to be a matter for the Assembly itself, in consultation with the Welsh Government. However, we consider it important that the Welsh Government agrees with the UK Government to promote an LCM in the Assembly before a parliamentary Bill is introduced which includes provision in an area within the Assembly's legislative competence. That should include a commitment to support that LCM, and to lay a motion and an accompanying legislative consent memorandum in the Assembly as soon as possible after the parliamentary Bill is introduced.
23. The Assembly should ideally give its consent well before, but at least by, the time the relevant clauses are considered in Committee in the House of introduction, and certainly before the Bill reaches its final amending stage in the House of introduction. The absolute deadline (which applies primarily in relation to amendments to relevant clauses which trigger the need for an LCM) is the last opportunity for the clauses to be amended while the Bill is still before Parliament.
24. The UK Government is mindful of the need for Whitehall departments and the Welsh Government to work together closely as the Welsh Government prepares a motion, in order to meet these deadlines. Certain factors inevitably complicate the process, including the fact that the sitting and recess dates for Parliament and the Assembly are not always the same, and that amendments may be made to a Bill after its introduction which trigger the need for an LCM. We consider it important that Bill Teams in Whitehall departments are aware of these factors. Another important factor is that the Assembly's Business Committee may refer a legislative

consent memorandum to another Assembly committee or committee(s) for consideration, and the Assembly would not debate an LCM until the committee has reported.

25. This process makes it all the more important for LCMs to be presented to the Assembly in a timely way, and for the UK Government and the Welsh Government to engage as early as possible about bringing forward an LCM for the Assembly to consider. By the same token, it is also important for the Assembly to be respectful of the parliamentary process, and deadlines, in managing the process of considering an LCM.
26. As a general rule, in relation to Bills introduced before the Assembly Act provisions came into force, the UK Government sought an LCM only if a Bill included provision which was within the Assembly's legislative competence at the time of introduction (or at the time when amendments were tabled). LCMs were not sought retrospectively, as a result of the wider legislative competence exercised by the Assembly since 5 May 2011, for provisions which were already included in Bills before that date.

v. Any other matters relevant to the Inquiry.

27. The Assembly Research Service's paper *Provision about Welsh Ministers in UK Acts* provides background and context to the Committee's inquiry. It identifies the Public Bodies Bill as an example of a "current UK Bill which seeks to delegate significant subordinate legislation-making powers to Welsh Ministers", and explains that the Bill provides a framework enabling changes to be made to public bodies and providing executive powers to both UK Government Ministers and Welsh Government Ministers to allow for those changes to be taken forward.
28. It is important to note that this Bill was introduced in Parliament in October 2010, before the March referendum on Assembly powers and the subsequent conferral on the Assembly of enhanced law-making powers (and so was subject to the general rule described in paragraph 26). In developing proposals it was necessary to work on the basis of the Assembly's legislative competence at the time. Following the Assembly's acquisition of wider powers, where amendments have been made to relevant clauses of the Bill, or new clauses added, the UK Government has worked closely with the Welsh Government to consider the implications of the new constitutional arrangements.
29. The Assembly has approved an LCM for the Public Bodies Bill relating to the powers of the Welsh Ministers in relation to environmental and other bodies, and the powers of UK Government Ministers insofar as they extended to areas within the Assembly's legislative competence. The provisions in clause 9 of the Bill mean that UK Government Ministers will not have the power to make

provision in Orders which are within the Assembly's legislative competence unless the Assembly gives its agreement. The Assembly will therefore be able to decide whether any changes are made which are within its legislative competence following Royal Assent of the Public Bodies Act.

30. The Welsh Ministers' powers under the Bill are subject to Assembly procedures equivalent to the parliamentary procedures which apply to orders made by UK Government Ministers. They give the Assembly and its committees a greater role in relation to orders under the Bill than is usual for subordinate legislation, for example enabling the Assembly to require an enhanced affirmative procedure to be followed. This reflects the significance of the powers in the Bill.

Wales Office
November 2011

Cynulliad
Cenedlaethol
Cymru
National
Assembly for
Wales



Constitutional and Legislative Affairs Committee

Report: CLA(4)-11-11 : 14 November 2011

The Committee reports to the Assembly as follows:

Instruments that raise no reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA51 – The Non-Domestic Rating Contributions (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 1 November 2011

Date laid: 2 November 2011

Coming into force date: 30 November 2011

CLA54 – The RTM Companies (Model Articles) (Wales) Regulations 2011

Procedure: Negative.

Date made: 5 November 2011

Date laid: 8 November 2011

Coming into force date: 30 November 2011

Affirmative Resolution Instruments

CLA50 – The Incidental Flooding and Coastal Erosion (Wales) Order 2011

Procedure: Affirmative.

Date made: not stated.

Date laid: not stated.

Coming into force date: 1 December 2011

Instruments that raise reporting issues under Standing Order 21.2 or 21.3

Negative Resolution Instruments

CLA48 – The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011

Procedure: Negative.

Date made: 25 October 2011

Date laid: 27 October 2011
Coming into force date: 21 November 2011

CLA49 – The Audit and Assessment Reports (Wales) (Amendment) Order 2011

Procedure: Negative.
Date made: 31 October 2011
Date laid: 1 November 2011
Coming into force date: 22 November 2011

The Committee agreed the Reports under S.O.21.2 and S.O.21.3 on these statutory instruments, which are attached as Annexes 1 – 2.

Other Business

Committee Inquiries: Inquiry into the Granting of Powers to Welsh Ministers in UK Laws

The Committee took oral evidence from Mr Mike Lewis, Chief Executive and Ms Daisy Cole, Head of Influencing, PR & Child Policy, both representing Welsh Refugee Council.

Resolution to Meet in Private

In accordance with Standing Order 17.42(vi) the Committee resolved to exclude the public from the remainder of the meeting to discuss the Committee's submission to the Commission on a Bill of Rights and the evidence submitted thus far on the Inquiry into the Granting of Powers to Welsh Ministers in UK Laws.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

14 November 2011

Annex 1

Constitutional and Legislative Affairs Committee

(CLA(4)-11-11)

CLA48

Constitutional and Legislative Affairs Committee Report

Title: The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011

Procedure: Negative

These Regulations revise the terminology in the Landfill Allowances Scheme (Wales) Regulations 2004 (the Regulations) to ensure consistency with other legislation under the Waste and Emissions Trading Act 2003 (the Act).

Technical Scrutiny

As these Regulations do not cite all the powers used to make the principal Regulations, it is necessary to be very careful to refer to the correct ones when making amendments. In this case no reference is made in the introductory paragraph to sections 12(2) and 15 of the Act, which are considered relevant to the changes made here to regulations 6 and 10 respectively of the principal Regulations.

The Assembly is invited to pay special attention to these Regulations under Standing Order 21.2 (vi).

Merits Scrutiny

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

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

14 November 2011

The Government has responded as follows:

The Landfill Allowances Scheme (Wales) (Amendment) Regulations 2011

Section 12

The Government accepts the Committee's point about section 12(2) which should have been cited in the enabling powers. Section 12(2) is the power under which the amendment to regulation 6(5)(b) of the principal regulations can be made. The amendments to the remainder of regulation 6 are made under section 12(1) of the Act

The Government acknowledges that the omission may produce ambiguity about whether an amendment to regulation 6(5)(b) of the principal regulations has been made. Although the Government considers it unlikely that the term "biodegradable municipal waste" could be interpreted as relating to anything other than the waste dealt with by waste disposal authorities under the landfill allowances scheme, the Government will make regulations to amend regulation 6(5)(b) of the principal regulations within six weeks.

Section 15

The Government believes that the amendments to regulation 10 of the principal regulations are authorised by section 11(1) and (2)(b) of the Act and that section 15 of the Act is concerned with information of a different character to that currently dealt with by regulation 10 of the principal regulations. The Government concludes that the citation of section 12 in the principal regulations was an error. The reasons which lead us to these conclusions are explained below.

There are two provisions in the Act which confer power to make provision about the maintenance of registers; sections 11 and 15.

Section 11(1) of the Act confers power to make provision for the purpose of carrying Chapter 1 of the Act into effect. By section 11(2)(b), those regulations can make provision for the maintaining of registers of matters relating to landfill allowances.

Section 15 of the Act is more specific and confers power to make regulations requiring the monitoring authority to maintain a register containing "monitoring information" of a description specified in the regulations. "Monitoring information" is information or evidence that is:

- acquired by the monitoring authority in carrying out its functions under the Act; or
- disclosed to the monitoring authority by another monitoring authority which has acquired the information or evidence in carrying out its own functions under the Act.

The Government interprets "acquired" and "disclosed" in section 15 to mean that the information or evidence in question is information or evidence which is initially in the possession of someone other than the monitoring authority and which is subsequently obtained by the

monitoring authority during the course of carrying out its monitoring role under the landfill allowances scheme.

We reach this view because of the nature of the monitoring authority's role under the Act and thus the context in which information and evidence is likely to be acquired by, or disclosed to, a monitoring authority.

Broadly speaking, a monitoring authority's role is to monitor the operation of the landfill allowances scheme generally, to monitor the amount of biodegradable collected municipal waste sent to landfills in particular and to audit the performance of waste disposal authorities in complying with their duties under the Act.

To enable it to carry out this role, the Act allows regulations to require waste disposal authorities to make returns to the monitoring authority. The Act also allows regulations to permit the monitoring authority to require waste disposal authorities to produce records for inspection or removal and to supply information and evidence relating to the sending of biodegradable municipal waste to landfill. In addition to this, the Act allows regulations to permit the monitoring authority to obtain records kept by landfill operators, using force if necessary.

The Government believes that it is in this context that information or evidence will be "acquired" by the monitoring authority and thus it will be the same kind of information obtained in a similar context by another monitoring authority that will be "disclosed" to a monitoring authority.

Regulation 10 of the principal regulations does not relate to this kind of information. Instead, it concerns:

- (a) information that is brought into existence as a result of decisions made and published under the Act by the Welsh Ministers; that is to say, the allowances allocated to each waste disposal authority under section 4 of the Act and any alterations to those allocations made under section 5 of the Act; and
- (b) information which the monitoring authority itself creates; that is to say:
 - (i) the amount of biodegradable collected municipal waste sent to landfill by each waste disposal authority; and
 - (ii) the balance between that amount and the amount for which the waste disposal authority holds landfill allowances.

The information at (i) is the product of applying a statutory factor of 61% to the amount of collected municipal waste sent to landfill by a waste disposal authority. Part of the information needed to make this calculation will be contained in a waste disposal authority's records and returns to the monitoring authority and those records and returns will be "acquired" by the monitoring authority in carrying out its functions under the Act. The Government does not consider that the resulting calculation is either "acquired by" or "disclosed to" the monitoring authority.

The information at (ii) is the product of subtracting the amount at (i) from the number of allowances held by the authority and published by the Welsh Ministers under section 4 and / or 5 of the Act. Again, the Government does not consider that the resulting calculation is information or evidence "acquired by" or "disclosed to" the monitoring authority.

For these reasons the Government considers that the provision made at regulation 10 of the principal regulations is authorised by section 11(1) and (2)(b) of the Act.

Annex 2

Constitutional and Legislative Affairs Committee

(CLA(4)-11-11)

CLA49

Constitutional and Legislative Affairs Committee Report

Title: The Audit and Assessment Reports (Wales) (Amendment) Order 2011

Procedure: Negative

This Order amends the Audit and Assessment Reports (Wales) Order 2010 by providing that, in respect of financial years beginning on or after 1 April 2011, the date by which the report is to be sent the Welsh Ministers and the Welsh improvement authority concerned is to be 31 January in the financial year during which the audit was carried out or to which the assessment relates.

Technical Scrutiny

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

Merits Scrutiny

The Assembly is invited to pay special attention under Standing Order 21.3(ii) in respect of this instrument – (ii) that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly.

The Audit and Assessment Reports (Wales) Order 2010 was made in English only despite being extremely short, and was the subject of an adverse report by the then Constitutional Affairs Committee for that reason. A copy of that report is annexed.

The current Order is made bilingually, but because it has been drafted as an amending order, the amendment to the 2010 Order is in English only and the substantive law is still in English only. Had the current Order revoked and replaced the 2010 Order, it would have replaced an English statement of the law with a bilingual item of legislation.

This example highlights the importance of having bilingualism rather than translation at the core of the legislative process. It also shows the need to have regard to earlier reports by this Committee and its predecessors when drafting legislation on the same subject.

David Melding AM

Chair, Constitutional and Legislative Affairs Committee

14 November 2011

ANNEX

Constitutional Affairs Committee

CA(3)-01-11

CA508: The Audit and Assessment Reports (Wales) Order 2010

Procedure: Negative

Section 19 of the Local Government (Wales) Measure 2009 requires the Auditor General for Wales to issue an audit and assessment report in respect of a Welsh improvement authority. This Order amends section 19(3)(a) of the Measure in respect of the financial year beginning 1 April 2010 by extending the date by which the Auditor General for Wales must send copies of any report to the Welsh Ministers and the Welsh improvement authority concerned. The deadline is changed from 30 November 2010 to 31 January 2011.

Technical Scrutiny

Under Standing Order 15.2 the Assembly is invited to pay special attention to this instrument:-

1. The Order has been made in English only. The Explanatory Memorandum contains the following statement: "The Minister for Social Justice and Local Government has further determined in this particular circumstance that it is not reasonable or practicable for the order to be made in English and Welsh.". However, the Order, including the Explanatory Note is only 392 words long, which is just over half the length of the accompanying letter which explains the breach of the 21 day rule, which letter has been translated. Moreover, save for the standard terminology used in Statutory Instruments, the terminology used in the Order is that used in the letter. In those circumstances it not apparent why it should be considered either not reasonable or practicable to make the Order bilingually.

[Standing Order 15.2(ix)]

Merits Scrutiny

No points are identified for reporting under Standing Order 15.3 in respect of this instrument.

Legal Advisers
Constitutional Affairs Committee

November 2010

The Government has responded as follows:

It is the Welsh Assembly Government's view that in this instance it was not reasonable or practicable to translate The Audit and Assessment Reports (Wales) Order 2010 given the time constraints faced in making the Order. The comments regarding the accompanying letter are noted. However, the Order required legal translation and checking which was not possible to accommodate within the given time frame.