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20 Ebrill 2015

Annwyl Dirprwy Lywydd,

Ymchwiliad: Deddfu yn y Pedwerydd Cynulliad

Diolch i chi am eich llythyr dyddiedig 26 Mawrth.

Gall darpariaethau trosolwg yn ein barn ni fod yn grynodedb defnyddiol o gynnwys biliau neu helpu'r darlennydd i lywio biliau mwy. Fodd bynnag, rhaid i drosolygon gael eu drafftio'n ofalus a rhaid iddynt fod yn gryno er mwyn bod yn effeithiol.

Dylwn ddweud bod gan rhai pobl farn wahanol o ran budd darpariaethau o'r fath, er enghraifft yn dadlau y dylai deddfwriaeth gynnwys darpariaethau sydd ag effaith gyfreithiol yn unig neu eu gwrthwynebu oherwydd y gallant luosogi cynnwys teitlau hir (sydd yn orfodol ar hyn o bryd). Gall problemau ymarferol hefyd ddigwydd lle y caiff Biliau eu newid yn ystod cyfnodau diwygio a rhaid cymryd gofal i sicrhau bod y trosolwg yn aros yn gywir.

Nid wyf yn rhannu'r safbwyntiau hyn a chredaf y gellir goresgyn y brif broblem gyda darpariaethau trosolwg os oeddent yn disodli teitlau hir.

Fel y cyfeirir ato yn "Craies on Legislation" diben y teitl hir o ddeddfwriaeth yw rhoi arwydd cyffredinol, ond cynhwysfawr, o gynnwys Bil. Mae pwrpas y teitl hir felly yn debyg iawn i bwrpas ddarpariaeth trosolwg. Yng nghwrs Biliau Senedd y DU bydd teitlau hir yn aml yn cael eu dylanwadu gan y rheolau ar ffurf a chwmpas. Am y rheswm hwnnw maent yn gyffredinol ar ffurf nifer o bynciau sy'n ymestyn mewn un frawddeg hir iawn, sydd, os meiddiaf ddweud, nid yw wastad yn hawdd i'w ddilyn ac mae'n anghyson â thueddiadau drafftio modern.

O ystyried y ffaith y gallai'r Llywydd newid y rheolau ar ffurf teitlau hir a'r rheolau gwahanol sydd gan y Cynulliad ar gwmpas biliau, ymddengys yn synhwyrol i ni eu disodli â darpariaeth drosolwg fwy modern. Byddai hyn yn hwyluso hygyrchedd drwy nodi'n cynnwys Bil yn gryno. Lle nad yw

hynny'n ymarferol oherwydd maint y Bil, rydym yn rhagweld taw rôl y (brif) trosolwg fyddai i gynorthwyo'r darllenydd i lywio'r gwahanol Rannau o'r Bil, gyda throsolygon mwy cynhwysfawr yn cael eu cynnwys ar ddechrau'r Rhannau (mewn ffordd debyg i'r arferion presennol). Ein gobaith yw y bydd darllenwyr deddfwriaeth yn dod yn gyfarwydd â'r ymarfer ac yn defnyddio'r trosolwg yn rheolaidd fel man cychwyn wrth ddarllen Deddf.

Er y ceir cyfyngiadau i hyn oherwydd yr angen i drosolwg aros yn gryno (er mwyn bod yn effeithiol), lle y mae Bil yn gwneud newidiadau sylweddol i ddeddfwriaeth bresennol gallai darpariaeth drosolwg fod yn ddefnyddiol drwy esbonio effaith y gwelliant. Mewn achosion o'r fath yn gyffredinol ni fydd testun y gwelliant ei hun yn ddealladwy heb orfod cael y ddeddfwriaeth bresennol i law (mae'r trosolwg byr iawn yn Neddf Cyllid y Gwasanaeth Iechyd Gwladol (Cymru) 2013 yn enghraifft).

Fel yn achos teitlau hir, ni ddylai trosolygon gael effaith o bwys, ac rydym yn tybio am y rheswm hwnnw y gallai'r llysoedd ystyried darpariaeth drosolwg at ddiben datrys amwysedd, ond ni fyddai'n cael ei ddefnyddio i ddisodli ystyr clir testun ddarpariaeth sylweddol. O ran cael dau fath o destun deddfwriaethol, nid ydym yn gweld hyn fel problem gan fod y gwahaniaeth hwn yn bodoli eisoes a gellid dadlau fyddai gosod y trosolwg ar wahân i'r prif adrannau ac Atodlenni yn gwneud y gwahaniaeth hwnnw'n gliriach. Gan nad oes bwriad i'r trosolwg fod yn ddarpariaeth sylweddol yn ein barn ni fe ddylai hi hefyd fod yn bosibl i'w ddiwygio mewn ffordd debyg i ddiwygio penawdau; drwy hyn yn ymdrin â'r potensial i'r trosolwg i 'fynd yn wenwynig' drwy ddod yn anghyson â gweddill Bil.

Rwy'n amgáu dwy enghraifft o sut y gallai trosolwg ar y ffurf newydd edrych i chi eu hystyried.

Rwyf yn hapus iawn i roi cymorth pellach i chi os oes ei angen.

Yn gywir



DYLAN M HUGHES

Prif Gwnsler Deddfwriaethol

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Social Services and Well-being (Wales) Bill

[DRAFT]

Overview

- (1) *This Act of the National Assembly for Wales reforms social services law by making provision—*
- (a) *improving the well-being outcomes for people who need care and support and carers who need support,*
 - (b) *about co-operation and partnership by public authorities with a view to improving the well-being of people,*
 - (c) *about complaints relating to social care and palliative care, and*
 - (d) *for connected purposes.*
- (2) *The Act contains ten Parts; see each Part for a further overview of content.*

The following is enacted:

PART 1

INTRODUCTION

Key terms

1 Meaning of “well-being”

- (1) This section applies for the purpose of this Act.
- (2) “Well-being”, in relation to a person, means well-being in relation to any of the following—
- (a) physical and mental health and emotional well-being;
 - (b) protection from abuse and neglect;
 - (c) education, training or recreation;
 - (d) domestic, family and personal relationships;
 - (e) contribution made to society;
 - (f) securing rights and entitlements;
 - (g) social and economic well-being;
 - (h) suitability of living accommodation.
- (3) In relation to a child, “well-being” also includes—
- (a) physical, intellectual, emotional, social and behavioural development;
 - (b) “welfare” as that word is interpreted for the purposes of the Children Act 1989.
- (4) In relation to an adult, “well-being” also includes—
- (a) control over day to day life;

- (b) participation in work.

2 Meaning of “adult”, “child”, “carer” and “disabled”

- (1) This section applies for the purposes of this Act.
- (2) “Adult” means a person who is aged 18 or over.
- 5 (3) “Child” means a person who is aged under 18.
- (4) “Carer” means a person who provides or intends to provide care for an adult or disabled child; but see subsections (7) and (8).
- (5) A person is “disabled” if the person has a disability for the purposes of the Equality Act 2010, subject to provision made under subsection (6).
- 10 (6) Regulations may provide that a person falling within a specified category is or is not to be treated as disabled for the purposes of this Act.
- (7) A person is not a carer for the purposes of this Act if the person provides or intends to provide care—
- (a) under or by virtue of a contract, or
- 15 (b) as voluntary work.
- (8) But a local authority may treat a person as a carer for the purposes of any of its functions under this Act if the authority considers that the relationship between the person providing or intending to provide care and the person for whom that care is, or is to be, provided is such that it would be appropriate for the former to be treated as a carer for the purposes of that function or those
- 20 functions.

PART 2

GENERAL FUNCTIONS

Overview

This Part—

- 25 (a) *imposes overarching duties on persons exercising functions under this Act in relation to persons who need or may need care and support or carers who need or may need support, so as to give effect to certain key principles (section 3);*
- 30 (b) *requires the Welsh Ministers to issue a statement specifying the well-being outcomes that are to be achieved for people who need care and support and carers who need support and to issue a code to help achieve those outcomes (sections 4 to 9);*
- (c) *requires local authorities to assess the needs in their areas for care and support, support for carers and preventative services (section 10);*
- (d) *requires the provision of preventative services by local authorities (section 11);*
- 35 (e) *requires the promotion by local authorities of social enterprises, co-operatives, user led services and the third sector in the provision in their areas of care and support and support for carers (section 12);*

(f) requires the provision by local authorities of a service providing information and advice relating to care and support and support for carers and assistance in accessing it (section 14);

(g) requires local authorities to establish and maintain registers of sight-impaired, hearing-impaired and other disabled people (section 15).

Overarching duties

3 Overarching duties

(1) A person exercising functions under this Act must seek to promote the well-being of—

(a) people who need care and support, and

(b) carers who need support.

(2) A person exercising functions under this Act in relation to—

(a) an individual who has, or may have, needs for care and support, or

(b) a carer who has, or may have, needs for support,

must comply with the duties in subsection (3).

(3) The person must—

(a) in so far as is reasonably practicable, ascertain and have regard to the individual's views, wishes and feelings,

(b) have regard to the importance of promoting and respecting the dignity of the individual,

(c) have regard to the characteristics, culture and beliefs of the individual (including, for example, language), and

(d) have regard to the importance of providing appropriate support to enable the individual to participate in decisions that affect him or her to the extent that is appropriate in the circumstances, particularly where the individual's ability to communicate is impaired through age, disability or otherwise.

(4) A person exercising functions under this Act in relation to an adult falling within subsection (2)(a) or (b) must, in addition, have regard to—

(a) the importance of beginning with the presumption that the adult is best placed to judge the adult's well-being, and

(b) the importance of promoting the adult's independence where possible.

(5) A person exercising functions under this Act in relation to a child falling within subsection (2)(a) or (b), in addition—

(a) must have regard to the importance of promoting the upbringing of the child by the child's family, in so far as doing so is consistent with promoting the well-being of the child, and

(b) where the child is under the age of 16, must ascertain and have regard to the views, wishes and feelings of the persons with parental responsibility for the child, in so far as doing so is—

(i) consistent with promoting the well-being of the child, and

(ii) reasonably practicable.

Human Transplantation (Wales) Bill

[DRAFT]

Overview

The main provisions of this Act of the National Assembly for Wales—

- (a) impose a duty on the Welsh Ministers to promote transplantation (section 1);
- (b) provide that certain activities done in Wales for the purpose of transplantation are lawful if done with consent (section 2);
- (c) set out how consent is given to transplantation activities, including the circumstances in which consent is deemed to be given in the absence of express consent (sections 3 to 7);
- (d) make it an offence for transplantation activities to be done in Wales without consent (section 8);
- (e) make amendments (sections 13 and 14) to the Human Tissue Act 2004, including in relation to a code of practice issued under that Act which—
 - (i) gives practical guidance to persons that do transplantation activities, and
 - (ii) lays down the standards expected in relation to the doing of such activities, including how consent is to be obtained.

The following is enacted:

Promotion of transplantation

1 Duty of the Welsh Ministers to promote transplantation

The Welsh Ministers must—

- (a) promote transplantation as a means of improving the health of the people of Wales,
- (b) provide information and increase awareness about transplantation, and
- (c) inform the public of the circumstances in which consent to transplantation activities is deemed to be given in the absence of express consent.

Lawful transplantation activities

2 Authorisation of transplantation activities

(1) Transplantation activities are lawful if done in Wales—

- (a) with express consent where that is required (see sections 3 to 5), or
- (b) otherwise with deemed consent (see sections 3 and 7).

(2) The following are transplantation activities for the purpose of this Act—

- (a) storing the body of a deceased person for use for the purpose of transplantation;
- (b) removing from the body of a deceased person, for use for that purpose, any relevant material of which the body consists or which it contains;
- (c) storing for use for that purpose any relevant material which has come from a