

Explanatory Memorandum to the Care and Support (Charging) (Wales) Regulations 2015 made under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above Regulations 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 Care and Support (Charging) (Wales) Regulations 2015 in relation to charging for social care and support made under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services
27 October 2015

PART 1 – OVERVIEW

1. Description

The Social Services and Well-being (Wales) Act 2014 (“the Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support, and carers who need support, into a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to focus on well-being, rights and responsibilities.

The existing financial assessment and charging statutory framework for social care and support is derived from separate pieces of legislation that originally stem from the National Assistance Act 1948, as regards charging for residential accommodation with care, and the Social Care Charges (Wales) Measure 2010, in respect of charging for non-residential, community based care and support. As such the framework is made up of a number of separate pieces of legislation, some of which have existed for a number of years so that they are now fragmented and out of date.

The current statutory framework does, however, provides a good basis for local authorities’ charging for the provision or arrangement of care and support, ensuring that only those who can afford to pay for their care and support are required to do so. We see no merit in moving away from this framework and propose that the framework for local authority financial assessment and charging under the Act is akin to the existing framework. That said, we propose to take the opportunity to revise the statutory framework where we consider it appropriate to do.

The Care and Support (Charging) (Wales) Regulations 2015 (“the Regulations”) seek to do this by governing the determination of a charge by a local authority imposed under section 59 of the Act for the provision or arrangement of care and support, or support to a carer, and under section 69 of the Act for the provision or arrangement of preventative services and assistance. The Regulations also govern the determination of a contribution or reimbursement under sections 50, 52 and 53(3) of the Act in relation to direct payments provided to a person to enable them to secure care and support, or support in the case of a carer.

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

No specific matters have been identified.

3. Legislative background

The powers enabling the making of the Regulations in relation to direct payments are contained in Part 4 of the Act (sections 50, 52 and 53(3)), while the powers enabling their making in relation to care and support, support to a carer, and preventative services and assistance are contained in Part 5 of the Act (sections 61, 62, 66, 67 and 69).

These Regulations are subject to the negative procedure. They will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

The overall purpose of the Regulations is to govern local authorities' determination of a charge for providing or arranging care and support (or support to a carer) and for providing or arranging preventative services and assistance. It is also to govern their determination of a contribution or reimbursement set for a person receiving direct payments to secure their care and support (or support in the case of carers). This is where local authorities use their discretion to charge or set a contribution or reimbursement under sections 50, 52, 53(3), 59 and 69 of the Act respectively. As a result the Regulations impose the following requirements where local authorities exercise this discretion:

- specify under regulations 3 and 18 persons who may not be charged (eg a person with CJD);
- specify under regulations 4 and 19 care and support for which no charge can be imposed (eg up to 6 weeks free reablement to enable a person to maintain or regain their ability to live independently at home);
- specify under regulations 7 and 22 the maximum weekly charge for non-residential care and support (ie the current requirement of not being able to charge more than £60 per week);
- specify under regulations 8, 9, 23 and 24 the procedure for determining a charge for those in receipt of non-residential care and support and for those in receipt of residential care respectively;
- specify under regulations 11 and 26 the level of the capital limit used to determine those who have sufficient means to be able to pay the maximum weekly charge for non-residential care and support or the full cost of their residential care (ie maintaining its current level at £24,000);
- specify under regulations 12 and 27 the minimum income amount that a person should retain where they are being charged for non-residential care and support (ie the current "buffer" of their basic entitlement to a welfare benefit plus 35% of this amount);
- specify under regulations 12 and 27 the disability related expenditure (DRE) allowance a person should retain where they are being charged for non-residential care and support (ie the current "DRE" of 10% of their basic entitlement to a welfare benefit);
- specify under regulations 13 and 28 the minimum income amount that a person should retain where they are being charged for residential care (ie a revised amount of £26.50 per week from the current amount of £25.50 per week);
- require under regulations 14 and 29 that where a local authority makes a determination of a charge it must provide the person being charged with a statement setting out the calculation of the payment to be made and that this cannot be collected until that person is sent such a statement;
- specify under regulations 15 and 30 the circumstances where a local authority may make a new determination where one has been previously made (eg a person's means have changed);
- specify under regulation 16 that a local authority, where it uses its discretion to impose a charge for arranging or providing preventative services and assistance, that such charge must be a flat rate charge (so as to remove the requirement to undertake a financial assessment for what would be low level charges).

5. Consultation

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. There were 61 substantive written responses to this received from a wide range of individuals, representative groups, local authority officers and professional organisations. Overall the Regulations were well received with respondents generally supporting the proposed continuation of the present financial assessment and charging framework. Where responses have resulted in material changes to the Regulations, these have been reflected in the final version of the Regulations being laid.

A summary report of the consultation responses is available on the Welsh Government website at:

<http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This Regulatory Impact Assessment considers the following options:

- “do nothing” and not make any regulations (option 1);
- make regulations but only to implement exactly the same charging framework as presently exists (option 2); and
- make the Regulations to implement the existing charging framework but with appropriate revisions (option 3).

Option 1 – do nothing

This option involves no regulations in relation to the determination of a charge being made under the relevant powers under Parts 4 and 5 of the Act referred to earlier. As a result no requirements are placed on local authorities in this respect beyond those placed upon them by the relevant sections contained within Parts 4 and 5.

This would result in local authorities having a discretion to impose a charge for the provision or arrangement of care and support, or support to a carer, and for the provision or arrangement of preventative services and assistance. They would also have discretion to impose a contribution or reimbursement in relation to direct payments provided to a person to enable them to secure care and support, or support in the case of a carer. However, it would be a matter for authorities as to what categories of persons receiving these they charge, and for which forms of care and support, preventative services and assistance they charged. It would also be at authorities' discretion as to whether to have a weekly maximum charge in relation to charging for non-residential care and support and the level of this where they did. It would also be at their discretion as to whether to allow a person being charged to retain a minimum income level, whether being charged for residential or non-residential care and support, and to set the level of this where they did. There would also be no requirement to issue a statement of a charge set to the person being charged.

As a result this situation has the potential to lead to wide variations in local authorities charging policies, with inconsistency of practice between authorities, and no guaranteed financial protections for those upon whom a charge was imposed.

Option 2 – make regulations to implement the existing charging framework

This option involves making regulations in relation to the determination of a charge under the relevant powers under Parts 4 and 5 of the Act as referred to earlier. This would, however, merely replicate a statutory framework for charging under the Act to that currently in place under present legislation with no revisions.

While this removes the risks of inconsistency associated with option 1, it would mean that the revisions proposed to the framework to update it would not occur. This would include:

- the policy of providing up to 6 weeks free homecare to a person leaving hospital would remain rather than the proposed update of this to up to 6 weeks free reablement to enable a person to retain or regain their ability to live independently at home (which is current practice and covers a wider range of people);
- local authorities would have a discretion to charge parents or guardians for the care and support their children received rather than this being disapplied as proposed under the Regulations;
- the proposed uplift in the minimum income amount for those in residential care from £25.50 a week to £26.50 per week would not be implemented; and
- local authorities would only be able to charge a person for the care and support (or support if a carer) they receive, or for direct payments they provide to secure this, from the time they provide the person with a statement of the charge not from the time they first receive these. This would result in a potential loss of income for authorities for the time between the care and support, or support, being first provided to the person and the time from when they were able to charge the person following the provision of a statement of a charge. In residential care this loss could amount to a substantial amount.

For these reasons this option is not considered appropriate.

Option 3 – make the Regulations to introduce the existing charging framework with appropriate revisions

Under this the existing framework is implemented which precludes certain persons from being charged (eg those with CJD) and certain forms of care and support from being charged for. It also updates the current policy of providing up to 6 weeks free home to a person leaving hospital to be match current practice by providing up to 6 weeks free reablement to enable a person to maintain or regain their ability to live independently at home.

It would continue the current policy of a weekly maximum charge for non-residential care and support (and the level of this at £60 per week) and the operation of a capital limit to determine whether a person has the means to pay maximum, or with residential care the full cost of their accommodation and care. It also maintains the minimum income amount financial protection for those who are charged and allows for the

proposed updates to the existing framework listed above under option 2 to be implemented.

Hence under this option it removes the inconsistency risks associated with option 1 and allows the proposed updates to the framework to take place and for these reasons, it is the preferred option.

Costs

Option 1 – do nothing

This option removes the present legislative requirements placed on local authorities by regulations when exercising their ability to impose a charge and as such, presents them with the ability to increase their charge income dependent upon the charging policies they adopt. Indeed the Welsh Government has previously provided authorities with financial compensation to operate some of the financial protections for those charged which would be removed (eg £13.3 million p.a. for the weekly maximum charge) and there would be a case for the recovery of this funding.

Option 2 – make regulations to implement the existing charging framework

As this option is effectively the status quo, it is generally a cost neutral option. This is with the exception of it allowing to local authorities to charge parents or guardians for the care and support provided to their child, hence presenting authorities with the potential to slightly increase their charge income dependent upon the policies they adopted for this.

Option 3 – make the Regulations to introduce the existing charging framework with appropriate revisions

This option also effectively maintains the status quo but does introduce a small number of updates in relation to local authorities' ability to impose a charge. That said, the updating of the period of free homecare on leaving hospital to be a period of free reablement mirrors current practice and so is cost neutral.

The proposed increase from £25.50 per week to £26.50 a week in the minimum income amount those in residential care are able to retain for their own purposes does have a cost. However, this will be met from the estimated increase of £2.90 per week in state pensions from April 2016 those in residential care will receive, with the balance of this increase being collected by authorities as part of a person's contribution to the costs of their residential care.

Benefits

Option 1 – do nothing

While it could be argued there are benefits of allowing local authorities more of a free hand to impose charges for care and support and hence increase their charge income, this comes with major risks. The current restrictions on charging of particular individuals, of limiting the level of charges and of operating financial protections for those charged by maintaining minimum income amounts, are all removed with the inherent risks these pose. On balance this option will have major dis-benefits for those upon whom charges are imposed.

Option 2 – make regulations to implement the existing charging framework

This option would not have the risks associated with option 1 and would, therefore, have the benefits of continuing the present statutory charging framework with the safeguards it operates for those charged. It would, however, have the dis-benefits of allowing authorities to charge parents or guardians for the care and support their child receives, of not revising the current period of free support to match current practice of providing up to 6 weeks free reablement and of not allowing for the proposed increase in the minimum income amount for those in residential care.

Option 3 – make the Regulations to introduce the existing charging framework with appropriate revisions

This option also does not have the risks associated with option 1 and so also has the benefits of continuing the present statutory charging framework with the safeguards it operates. It has the additional benefits, however, of implementing a number of updates to this framework in relation to local authorities' ability to impose a charge. These include: the updating of the period of free homecare on leaving hospital to be a period of free reablement to mirror current practice; introducing the proposed increase in the minimum income amount for those in residential care; and of disapplying the ability of authorities to charge parents or guardians for the care and support their child receives which is not considered appropriate at this time.

Consultation

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. The documents can be found at:

<http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing	No

costs for new or potential suppliers that existing suppliers do not have to meet?	
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

Post implementation review

The Act contains provisions to allow for the Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these Regulations.

The Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child and Older People and Equality.