

## **Explanatory Memorandum to the Care and Support (Choice of Accommodation) (Wales) Regulations 2015**

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 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 Care and Support (Choice of Accommodation) (Wales) Regulations 2015 made under Part 4 of the Social Service and Well-being (Wales) Act 2014 in relation to a person's ability to express a choice for a particular care home. 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pieces of legislation, some of which have existed for a number of years so that they have become fragmented and out of date.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 (Choice of Accommodation) (Wales) Regulations 2015 (“the Regulations”) seek to do this by continuing the ability of a person entering residential care to express a preference for particular care home accommodation and where an additional cost is required for this, for this to be met. The Regulations set out that where a local authority is going to meet a person’s needs under sections 35 to 38 of the Act through the provisions of care home accommodation, and that person has expressed a preference for a particular care home, a local authority must arrange for the provision of their preferred care home if specified conditions are met. The Regulations will also enable an additional cost to be paid where such accommodation is more expensive than the local authority would usually pay to meet the person’s needs.

### **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 these Regulations in relation to choice of accommodation are contained in Part 4 (section 57) the Act.

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

#### **4. Purpose & intended effect of the legislation**

The overall purpose of the Regulations is to enable a person, assessed as in need of care and support in a care home, to exercise choice as to their preferred care home. A person's preferred choice must, however, meet certain conditions, as set out in the Regulations, to ensure their chosen care home can meet their assessed care and support needs in full.

A person can choose a care home that is more expensive than the local authority would usually expect to incur for the provision of accommodation of that type. In such circumstances, the Regulations enable a person to choose a more expensive care home where a third party, or in limited instances the person being placed in the care home, is willing and able to pay for this. This is known as an additional cost and is the difference between the amount a local authority would usually pay for care home accommodation of that type, and the actual cost of the chosen home. Provisions under the Regulations provide local authorities with a clear structure to ensure certain conditions are met and a consistent approach is taken where a person wishes to exercise choice over their care home placement. As such the Regulations impose the following requirements on a local authority:

- regulation 2 enables local authorities to provide, or arrange the provision of, accommodation in a care home chosen by a person assessed as in needs of such care anywhere within the UK, subject to certain conditions being met set out in regulation 3;
- regulation 3 sets out four key conditions that must be met in such circumstances (ie a person's care plan has specified their needs can only be met by the provision of care home accommodation; the accommodation is suitable to meet their needs; it is available and; the provider agrees to accommodate the person on the local authority's terms). Regulation 3 also requires that, where the cost of the preferred accommodation is greater than the cost the local authority would expect to incur for such accommodation, the additional cost conditions must be met in regulation 4;
- regulation 4 sets out the additional cost condition, including that the local authority must be satisfied that the person who is to pay the additional cost is willing and able to do so for the duration of a person's stay in a care home. Regulation 4 also establishes the required terms and details of the content of the written agreement that must be entered into between the local authority and the person paying the additional cost for the duration of the person's stay. It also stipulates the limited circumstances where the person being provided with care home accommodation is able to pay the additional cost;
- regulation 5 sets out that, where a local authority refuses to provide or arrange accommodation in a care home of a person's choice, it must provide a statement that stipulates the specific condition(s) which has not been met and the reason for this.

#### **5. Consultation**

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. In total 61 substantive written responses were received from a wide range of individuals, representative groups, local authority officers and professional organisations. Overall these Regulations were well received with respondents generally supportive of the proposed continuation of local authorities' ability enable a person to exercise choice over their care home placement and for the continuation of the

provision of additional costs being met in certain circumstances. Where responses have resulted in small 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 and Benefits**

This Regulatory Impact Assessment considers the following options and their benefits:

- “do nothing” and not make any regulations (option 1);
- make regulations but only to implement the same choice of accommodation arrangements as those that currently exist (option 2); and
- make regulations to implement choice of accommodation arrangements but with appropriate revisions (option 3).

#### **Option 1: do nothing**

This option involves no regulations in relation to choice of accommodation being made under the relevant powers under Part 4 of the Act referred to earlier. As a result no requirements are placed on local authorities in this respect. Consequently where a person is assessed as in need of accommodation in a care home, it will be a matter for the local authority as to whether to agree to any choice over the care home that person expresses and as to the conditions that would apply to this. As an outcome a person being placed in a care home by their local authority would be unable to express a choice for a particular care home unlike a person who is self funding their placement who will have this choice. The option therefore provides no benefits for a person requiring care home accommodation who is being placed by their local authority.

#### **Option 2: make regulations to implement the existing choice of accommodation arrangements**

This option would allow a local authority to provide or arrange accommodation in a particular care home that a person has chosen and the ability for an additional cost to be applied where that care home is more expensive than an authority would usually pay for such accommodation. This option would maintain a person’s ability to choose a particular care home as long as that home can meet their assessed needs in full. This option also allows for an additional cost to be required where such a care home is more expensive than the authority’s usual costs incurred in placing a person in such accommodation. This option benefits a person by ensuring they have greater control and real choice over the care home they are to live in. Regulations would also ensure only in genuine circumstances, where such choice can only be met by the provision of an additional cost being secured, can such a cost be required.

### **Option 3: make regulations to introduce choice of accommodation arrangements that include appropriate revisions**

Like option 2, this option would allow local authorities to provide or arrange accommodation in a specific care home which a person has chosen and the ability for an additional cost to be applied in genuine circumstances that meet the requirements set out in regulations.

However, unlike option 2, this option would allow local authorities to make such placements in care home accommodation anywhere in the UK. This option would also provide for a more stringent set of requirements being placed upon authorities in ensuring conditions of a placement are met, the person responsible for meeting any additional cost can do so for the duration of the placement and, any refusal to meet a person's preferred choice is clearly defined within a written statement issued to that person. In applying the Regulations a local authority would need to demonstrate it had good cause to request that an additional cost is required in order to place a person in the care home of their choice.

In addition to the benefits set out above and in option 2, this option has the added benefits of ensuring greater consistency in choice of accommodation. It would help ensure equality where a person is in need of care and support in a care home setting regardless of whether they are being placed by their local authority or are to self fund their placement. This option would also help ensure the person who is to pay any additional cost can do so and that such payments are sustainable for the duration of the placement giving additional security to local authorities.

### **Costs**

#### **Option 1: do nothing**

This option results in people assessed as in need of care and support in a care home having no guaranteed ability to express choice over the home or its location, unlike the position at present. As a result there are no financial implications for local authorities as they would be no barrier to them being able to place a person in a care home of the local authority's choice and pay their usual rate to the provider.

#### **Option 2: make regulations to implement the existing choice of accommodation arrangements**

The option maintains the status quo as regards current requirements and practice around choice of accommodation. This option, therefore, is cost neutral and has no additional cost implications for either local authorities or those going into residential care.

#### **Option 3: make regulations to introduce choice of accommodation arrangements that include appropriate revisions**

The option results in strengthened choice of accommodation arrangements being put in place that ensure greater clarity and consistency in such arrangements. However, these do not of themselves have any additional cost implications for either local authorities or those going into residential care as they are about a tightening up of present arrangements rather than placing additional requirements on either authorities or individuals. With regard to local authority officer familiarisation with these arrangements,

any costs associated with this would be met from the Social Care Workforce Development Grant provided by the Welsh Government to assist with the workforce costs associated with implementing the Act.

### 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 costs for new or potential suppliers that existing suppliers do not have to meet?	No
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.