

Explanatory Memorandum to the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 (direct payments and choice of accommodation) and part 5 (charging and financial assessment) 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 code of practice and in accordance with Standing Order 27.14.

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 and part 5 of the Social Services and Well-being (Wales) Act 2014.

Huw Irranca-Davies AM
Minister for Children and Social Care

Date: 2018

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. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of their families and communities.

Under the Act local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

Regulations governing local authorities discharging their discretion to set a charge, contribution or reimbursement were made under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016. A code of practice on financial assessment and charging to accompany these regulations was also made under the Act and came into effect on 6 April 2016.

To introduce a number of policy changes since the regulations came into effect, several amendments were applied through regulations which came into force on 10 April 2017. These were necessary to update three sets of regulations made under Parts 4 and 5 of the Act. A revised code of practice was also put in place to reflect the changes made by the regulations which also came into force on 10 April 2017.

Three new changes are now proposed to one set of regulations made under the Act; The Care and Support (Charging) (Wales) Regulations 2015. These are to come into force on 9 April 2018. These do not of themselves make any consequential changes to the revised code of practice. However, there is a need to amend the revised code from that date to reflect changes made by the UK Government to the Income Support (General) Regulations 1987 to introduce three new compensation schemes. There is also a need to amend the revised code for changes consequential to the UK Government’s introduction of Universal Credit as part of its reform of welfare benefits. These amendments to the revised code of practice are the subject of this Explanatory Memorandum.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this revised code of practice. This final version of the revised code of practice will be laid before the National Assembly for 40 days after which time, if no resolutions are made, Welsh Ministers must issue it.

There are no other matters the Minister wishes to bring to the Committee’s attention.

3. Legislative background

The powers enabling the making of this code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under section 145. It is proposed that the further revised code comes into force on 9 April 2018.

4. Purpose & intended effect of the legislation

This revised code of practice has been amended to introduce a small number of technical changes. A list is attached. These include:

- an addition to the list of forms of capital and income that should be fully disregarded when capital or income are taken into account in a financial assessment for charging for any form of social care and support. This is to add three new compensation schemes created to award payments to individuals who have been caused harm or suffering. The schemes are “The Scottish Infected Blood Support Scheme”, “The London Emergencies Trust” and “The We Love Manchester Emergency Fund”. These schemes have already been added by the UK Government to the Income Support (General) Regulations 1987 and as a consequence, to the financial assessment regulations made under the Social Services and Well-being (Wales) Act 2014. This is because these regulations directly read across to the Income Support regulations. This amendment is to also incorporate these new compensation schemes in the revised code of practice;
- additions in appropriate parts of the revised code to reference two sets of regulations coming into force in April 2018. These are “The Care and Support (Charging) (Wales) (Amendment) Regulations 2018” and “The Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018”. This is for completeness as both sets of regulations amend previous regulations referred to in the revised code of practice;
- an addition on the treatment of Universal Credit to the list of the forms of welfare benefit that can be taken into account if income is taken into account in a financial assessment for charging for any form of social care and support. While Universal Credit currently exists in that list, additional text is proposed to advise local authorities on which welfare benefits it is replacing and how they should treat Universal Credit where they take this into account in a financial assessment.

5. Consultation

No consultation has been undertaken in this instance. This is due to the technical nature of these amendments to the revised code, which are due to changes made by the UK Government to compensation schemes and welfare benefits, and a need to ensure the revised code accurately refers to regulations previously made.

Part 2 - REGULATORY IMPACT ASSESSMENT

The amendments to this revised code of practice are to reflect changes already applied by the UK Government to compensation schemes and welfare benefits, and a need to ensure the revised code accurately refers to regulations previously made. As such the amendments do not introduce any new legal or financial requirements on the public, private or voluntary sectors, nor on care and support recipients. On this basis a detail Regulatory Impact Assessment has not been prepared.

Amendments to the Revised Code of Practice on Charging and Financial Assessment

5. Common issues for charging

- addition at 5.1 of reference to the Care and Support (Charging) (Wales) (Amendment) Regulations 2018.

10. Choice of accommodation

- addition at 10.2 of reference to the Regulation and Inspection of Social Care (Wales) Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

Annex A – Treatment of Capital

- addition at 2.22 of reference to the Care and Support (Wales) (Amendment) Regulations 2018.

Annex A – Treatment of Capital

- addition at 2.28(g) of the Scottish Infected Blood Support Scheme, the London Emergencies Trust and the We Love Manchester Emergency Fund to the list of forms of capital which should be disregarded where capital is taken into account in a financial assessment for charging for any form of social care and support.

Annex B – Treatment of Income

- addition at 2.13 of the treatment of Universal Credit in the list of the forms of welfare benefit that can be taken into account if income is taken into account in a financial assessment for charging for any form of social care and support.

Annex B – Treatment of Income

- addition at 2.28 of the Scottish Infected Blood Support Scheme, the London Emergencies Trust and the We Love Manchester Emergency Fund to the list of forms of income which should be disregarded where income is taken into account in a financial assessment for charging for any form of social care and support.

Annex C – Choice of Accommodation and Additional Costs

- addition at 1.2 of the Regulation and Inspection of Social Care Act 2016 (Consequential Amendments to Secondary Legislation) Regulations 2018.

Annex D – Deferred Payments Agreements

- addition at 3.2(f) of the Care and Support (Charging) (Wales) (Amendment) Regulations 2018.