

## **Explanatory Memorandum to the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020**

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 (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 in relation to charging for social care and support under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014 and in respect of the registration of land charges in connection with this under the Land Registration Rules 2003. I am satisfied that the benefits justify the likely costs.

**Julie Morgan**  
**Deputy Minister for Health and Social Services**  
**12 February 2020**

## **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 wellbeing of people who need social 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.

The Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging Regulations. Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018, and; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019.

The Act, under section 71, enables local authorities to create a charge in its favour over a person’s interest in land to recover costs for care and support where a debt has occurred and the person declines the option of a deferred payment agreement (“DPA”) or does not meet the eligibility criteria for a DPA. To do so local authorities must register such a charge with HM Land Registry under the Land Registration Rules 2003 (“the Rules”).

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the Charging Regulations to reflect uplifted sums of money that apply to specific areas of charging for social care and support. The regulations also introduce an amendment to the Rules to correct an error where local authorities seek to register a charge in the circumstances mentioned above.

### **2. Matters of special interest to the Legislation, Justice and Constitution Committee.**

There are no specific matters of special interest.

### **3. Legislative background**

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (section 61) of the Act.

The power enabling the amendment to the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016 is section 198 of the Act. Section 198 provides for consequential amendments to be made for the purpose of giving full effect to any provision of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 6 April 2020.

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

The overall purpose of the amending regulations is to effect several changes to the existing regulations as a result of certain policy decisions. These existing regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these. In addition, the amending regulations will effect a technical correction to the Rules.

The changes the amending regulations make are:

#### **The Care and Support (Charging) (Wales) Regulations 2015**

Regulation 2(a) to 2(d) of the amending regulations amend the Charging Regulations as follows:

- uplift from £90 to £100 - the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the Charging Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;
- uplift from £29.50 a week to £32.00 a week - the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of the Charging Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pension and welfare benefits.

## **Land Registration Rules 2003**

Regulation 3(a) to 3(b) of the amending regulations amend the Rules as follows:

- in part 8, rule 93(x), section 68(2) is replaced with section 71 of the Act to reflect the correct provision in relation to persons regarded as having sufficient interest to apply for a restriction.
- in Schedule 4, standard forms of restrictions, under the heading “Form MM”, section 68(2) is replaced with section 71(1) or (5).

### **5. Consultation**

A five week consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These have been addressed in the implementation of the amendments being made since that time.

Consultation on the amendment to the Rules has not been necessary. Welsh Government lawyers and HM Land Registry lawyers have worked together to agree the amendments to resolve the issue identified by the HM Land Registry.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Introduction**

The changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the Charging Regulations operate in accordance with the policy intention. They also ensure local authorities can place a charge on a property or land in order to recover costs for care and support through the correct process and at a slightly lower cost than at present.

### **Options and Benefits**

This Regulatory Impact Assessment considers two options in relation to the three changes identified above:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce several changes to the Charging Regulations in relation to charging for care and support, and to amend the Rules to enable a standard, less complex process to be followed in circumstances where a charge is to be placed on a person’s property or land to recover charges due. This is the preferred option.

### **Maximum Weekly Charge**

Under the Charging Regulations a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the Charging Regulations set a limit and provide a maximum amount. This is currently set at £90 per week. This provision was originally introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases received by care and support recipients through annual uplifts applied to UK state pensions and welfare benefits, Ministers have applied annual uplifts over recent years. To complete this process Ministers have agreed to uplift the level of the maximum by £10 a week to £100 a week from 6 April 2020. The additional income this will secure for local authorities will help meet increasing cost pressures associated with maintaining the level and quality of the care and support they provide or arrange.

#### Option 1 – do nothing

This option retains the maximum charge at its current level and halts completion of Ministers’ intentions to apply a £100 a week maximum charge by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- Costs

There would be no new cost implication for care recipients or local government from this option. It would, however, limit local authorities' ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This is at a time when recipients' income would have increased as a result of uplifts to state pension and welfare benefits.

- Benefits

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £90 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

#### Option 2 – make the amending regulations

This option would increase the level of the maximum charge by £10, from £90 to £100 per week. This would take account of increases applied from April 2020 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there could be an additional cost to some of the 9,165 care recipients local authorities reported as at October 2019 as paying the current maximum charge of £90 a week. This option could generate up to an estimated £4.8 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs more than the current maximum of £90 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- Benefits

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.8 million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the Charging Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

#### **Minimum Income Amount (MIA)**

Where a person is in residential care, and is in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents' weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 6 April 2020 from its current level of £29.50

per week to £32.00 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

#### Option 1 – do nothing

This option maintains the level of the MIA at £29.50 per week. As a result all of the increase in a resident's weekly income from April 2020 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- Costs

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £4.2 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts applied.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and welfare benefits and therefore see no benefit. Instead these funds would increase their contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

#### Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £29.50 to £32.00 per week. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits to spend on personal items as they wish.

- Costs

This option results in local authorities receiving a smaller increase in charge income than if the regulations were not made, of up to an estimated £2.1 million per annum through contributions from the 16,144 residents over state pension age. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- Benefits

This option shares the increased income which local authority supported residents would have from April 2020 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £2.50 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

### **Registration of Land Charges**

Under section 71 of the 2014 Act, local authorities are able to register a charge to be placed on an interest in land in order to recover costs for care and support where a debt has occurred and the person declines the option of a DPA, or does not meet the eligibility criteria for a DPA. However, HM Land Registry has identified that due to the current inaccuracy in the Rules, local authorities are currently required to follow the process for

a non-standard restriction which incurs a slightly higher than standard fee. To enable a more standard process to be followed in such situations requires an amendment to be made to the Rules. Section 198 of the Act provides for consequential amendments to be made for the purposes of giving full effect to any provisions of the Act. Hence the amending regulations that are the subject to this EM seek to correct the Rules and reference the relevant section of the Act by which a charge can be placed over an interest in land.

#### Option 1 – do nothing

No changes will be applied to the Rules and therefore local authorities who wish to place a charge on a person's land or property in order to recover costs for social care and support will need to continue to follow a non-standard restriction process which is more complex and more expensive.

- **Costs**

This option maintains the current position and process local authorities must follow in order to register a charge on land or a property in order to recover costs for care and support. This option incurs no new or additional costs, although local authorities will continue to pay HM Land Registry a higher than necessary fee each time they wish to register a charge, owing to the more complex process that needs to be followed.

- **Benefits**

There are no benefits to this option.

#### Option 2 – make the amending regulations

This option ensure changes are applied to the Rules that will enable local authorities, who wish to place a charge on a person land or property in order to recover costs for social care and support, to do so through a standard process that is clearer, less complex and attracts a lower fee.

- **Cost**

The options incurs no new or additional costs. Instead it will likely reduce the level of the fee local authorities are required to pay HM Land Registry each time a charge is registered.

- **Benefits**

The option provides for an easier registration process and will attract a lower fee for local authorities on registering a charge.

#### **Conclusion**

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount, and the process and financial benefits of making an amendment to the Rules, "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:



	<b>Welsh Government £m p.a.</b>	<b>Local Authorities £m p.a.</b>	<b>Care Recipients £m p.a.</b>
Maximum Weekly Charge	0	4.8	(-4.8)
Minimum Income Amount	0	2.1	2.1
Registration of Land Charges	0	0.1	0
<b>Total</b>	<b>0</b>	<b>7.0</b>	<b>(-2.7)</b>

### Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017.

### 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 Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

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