

Explanatory Memorandum to the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017

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, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017 in relation to choice of accommodation, charging and financial assessment under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits justify the likely costs.

Rebecca Evans
Minister for Social Services and Public Health
28 February 2017

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.

Under the Act those being placed in residential care by a local authority are able, subject to certain conditions, to have choice over the accommodation they are to be placed in. These conditions relate to the suitability of the chosen accommodation to meet the person’s assessed care needs, the availability of a place at the accommodation and that the cost of the chosen accommodation is no more than the standard rate a local authority would normally pay for accommodation of that type.

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. Regulations governing choice of accommodation were made under Part 4 (meeting needs) of the Act. These came into force on 6 April 2016. Since that time a number of policy changes have been agreed which require amendments to three sets of regulations made under Parts 4 and 5. The set of regulations subject to this Explanatory Memorandum make those amendments. In addition, they take the opportunity to introduce a small number of technical changes to those regulations to introduce clarity in certain areas which have been subject to ambiguity since the regulations became effective.

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

It should be noted that while a public consultation was held on the amending regulations which are the subject of this Explanatory Memorandum this was for a shorter period than usual. This is due to the need to bring these amendments into force on 10 April 2017 to coincide with when the Department for Work and Pensions (DWP) makes changes to welfare benefits and state pensions. This then results in local authorities only being required to undertake one financial assessment of each client at the start of the 2017-18 financial year to take account of all changes being made, rather than two if a different coming into force date for these amendments was used.

To ensure these amending regulations were laid before the National Assembly in sufficient time to achieve this, a shortened public consultation of 5 weeks was held from 21 December 2016 to 25 January 2017.

3. Legislative background

The powers enabling the making of regulations in relation to choice of accommodation are contained in Part 4 (section 57) of the Act. The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments, and the financial assessment to determine these, are also 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 (sections 61, 62, 66, 67 and 69) of the Act. Powers enabling the making of regulations in respect of financial assessments in relation to charging are contained in Part 5 (sections 64(1) and 65) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 10 April 2017.

4. Purpose & intended effect of the legislation

The overall purpose of the amending regulations is to effect a number of changes to the existing regulations governing choice of accommodation, charging and financial assessment as a result of certain policy decisions. It is also to introduce a small number of technical changes to the existing regulations to introduce clarity in certain areas which have been subject to ambiguity since the regulations became effective.

The changes the amending regulations introduce are:

The Care and Support (Choice of Accommodation) (Wales) Regulations 2015

These regulations enable a person assessed as in need of care and support in a care home to exercise choice as to their preferred accommodation, subject to certain conditions described in the regulations. Regulation 2 of the amending regulations makes a technical amendment to regulation 2 of these principle regulations. This is to clarify that a local authority's duty to provide choice of accommodation does not apply where a person's need for accommodation is only short term. The amending regulations then inset a definition in the principle regulations of short term as a period not exceeding eight weeks;

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

These 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. Regulation 3 of the amending regulations makes a number of amendments to these principle regulations as follows:

- uplifts from £60 to £70 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. These amounts are set in regulations 7(1) and 22(1) of the principle 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;

- removes from regulation 9 of the principle regulations the word “non” when referring to residential care. This was as the word “non” was erroneously included in this regulation;
- establishes in regulations 11 and 26 of the principle regulations two different capital limit levels; one to apply to charging for non-residential care to remain at £24,000 as now, and one to apply to charging for residential care of an increased level of £30,000. This is to implement the first stage in delivering a key commitment in the Welsh Government’s ‘Taking Wales Forward’ programme to uplift to £50,000 the level of the capital limit used in charging for residential care. Ministers have agreed to introduce this increase in a phased approach. This increase will allow care home residents required to pay for their residential care to retain more of their capital to use as they wish. As a consequence, the amending regulations introduce the term “relevant capital limit” at regulations 1(4), 8(3)(d), 11, 23(3)(d) and 26 of the principle regulations to cater for the fact there will in future be two capital limits;
- uplifts from £26.50 a week to £27.50 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. The amending regulations increase this amount at regulations 13 and 28 of the principle regulations. The minimum income amount is the sum of money a person in residential care, 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 uplifts to the level of the UK State Pension and Welfare Benefits;
- clarifies the arrangements as regards charging, or setting a contribution or reimbursement for direct payments, following a re-assessment of a person’s financial means. The amending regulations, therefore, alter regulations 15 and 30 of the principle regulations to provide local authorities with clearer instructions about the determination of a revised charge, contribution or reimbursement, following such a re-assessment;

The Care and Support (Financial Assessment) (Wales) Regulations 2015

These regulations govern local authorities’ financial assessment of a person’s financial means when exercising their discretion to charge for providing or arranging care and support, or support to a carer, or where they are exercising their discretion to set a contribution or reimbursement for direct payments to secure care and support. Regulation 4 of the amending regulations makes a change to these principle regulations by introducing at Schedule 1, paragraph 16, a full disregard of any War Disablement Pension (WDP) a person is in receipt of when undertaking a financial assessment of their means. At present a person is able to retain £25 per week of any such pension they receive, with the remainder taken into account in a financial assessment. The amendment will apply a full disregard of the WDP, enabling recipients to keep its full

value to help meet their daily living costs. This is to deliver the 'Taking Wales Forward' commitment to do so, given the service individuals receiving this would have given their country.

5. Consultation

A five week consultation on these amending regulations ran 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 proposed amendments, 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 short period of the consultation held, the level of the increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These are being addressed in the implementation of the amendments.

A summary report of the consultation responses is available on the Welsh Government website at <https://consultations.gov.wales/consultations/charging-social-care>.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

Four of the above changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. The remaining changes are technical, clarifying particular areas of the principle regulations or correcting erroneous text within them. As such there is little choice other than to introduce these in order to ensure the principle regulations operate correctly. Consequently these remaining changes are not considered in this assessment.

Options and Benefits

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

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce a number of changes to the principle regulations relating to charging and financial assessment for care and support under the Act.

Maximum Weekly Charge

Under the Care and Support (Charging) (Wales) Regulations 2015 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 principle regulations limit these to a maximum amount. This is currently set at £60 per week. This provision was introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for care and support of a similar nature.

The current level of the maximum has been in place since April 2015. As such Ministers have reviewed its level to take account of the increasing costs local authorities face since that time in maintaining the level and quality of care provided. These cost pressures arise from initiatives such as the UK Government's National Living Wage and inflation. As a result, Ministers propose to uplift the level of the maximum by £10 per week to £70 a week from 10 April 2017.

Option 1 – do nothing

This option retains the current level of the maximum which has been in place since April 2015. Local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support, or for direct payments to secure this, where a person had the financial means to pay this.

- Costs

There would be no new cost implication for local government from this option. It would, however, limit 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 due to uplifts in state pension and welfare benefit payments.

- Benefits

This option benefits care and support recipients, who despite their higher level of personal income, would continue to pay no more than £60 per week for the 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 by £10 per week to £70 per week. This would take account of inflation since the time the level of the current maximum was set in April 2015 and the increasing cost local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there would be an additional cost to some care recipients who currently pay the maximum. This option would generate up to an estimated £4 million per annum for local authorities in increased income from charging for care and support through the higher maximum set. This increased income would only come from care recipients whose care and support costs over the current maximum of £60 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 would raise up to £4 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 principle regulations ensure a set level of a person's income is excluded from a financial assessment for charging for care and support in

order to meet their daily living costs. The increase in the maximum under this option would not impact on this financial protection, so that only those who have been 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 this, they are required to contribute towards this cost from the majority of their weekly income. However, under the Care and Support (Charging) (Wales) Regulations 2015 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 into account the uplifts planned from 10 April 2017, Ministers plan to increase the MIA from that date from its current level of £26.50 per week to £27.50 a week. This is so as to 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 £26.50 per week. As a result all of the increase in a resident's weekly income from April as a result of uplifted state pension and welfare benefit payments goes 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 £1.7 million per annum in increased resident contributions. 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 made.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and benefits. Instead these funds would increase their contributions to local authorities for the cost of their care, so as to increase 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 10 April 2017 from its current level of £26.50 per week to £27.50. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits which would occur from that time to spend on personal items as they wish.

- Costs

This option results in local authorities receiving a reduced charge income through resident contributions. Instead authorities would receive up to an estimated £1.1 million per annum in increased resident contributions. 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 splits the increased income which local authority supported residents would have from April as a result of uplifts to their state pension and welfare benefit payments. Residents in this position would be able to retain a £1 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.

Capital Limit

The capital limit used in relation to charging for residential care, determines whether a resident pays the full cost of their care and accommodation or whether their local authority is required to provide financial support towards this cost. Under the Care and Support (Charging) (Wales) Regulations 2015 the capital limit is set at £24,000. A key 'Taking Wales Forward' commitment is to uplift the capital limit applicable in charging for residential care to £50,000. This is to enable residents to retain more of their savings and other capital without this having to be used to pay for their care and accommodation. The capital limit as it applies to charging for non-residential care would remain at £24,000.

Following engagement with stakeholders, Ministers have agreed to apply the uplift in a phased approach so as to enable care homes providers and local authorities to adjust to this increase over a period of time. As a result an initial uplift to £30,000 will be introduced from 10 April 2017, with further increases to the £50,000 commitment in future years.

Option 1 – do nothing

This option involves the amending regulations no being made so that the capital limit applicable in charging for residential care remains at its current level of £24,000.

- Costs

There would be no new cost implications for local government from this option, neither would there be any change in the charging arrangements by which residents pay for their residential care and accommodation.

- Benefits

This option provides no new benefits to people in care homes. Individuals would be unable to retain any additional amount of their capital than at present.

Option 2 – make the amending regulations

This option would make the amending regulations so that the capital limit applicable in charging for residential care and accommodation would become £30,000 from 10 April 2017. People in residential care would from this date be eligible for local authority support towards the cost of their residential care earlier than at present.

- Cost

Based on independent research commissioned by the Welsh Government, it is estimated that this increase would cost local authorities an additional £4.5 million per annum from 2017-18. This would be to fund at an earlier point the residential placement of those affected by it. Consequently, an additional £4.5 million has been included in the Revenue Support Grant for local authorities for 2017-18 to support implementation.

- Benefits

This option enables people requiring residential care to retain a higher level of their capital to spend as they wish and is the first step in delivering the Welsh Government's commitment to increase the capital limit in charging for residential care to £50,000. Residents affected by this change would be able to retain up to an additional £6,000 of their capital without this having to be used to pay for their care.

War Disablement Pension (WDP) Disregard

Under the Care and Support (Financial Assessment) (Wales) Regulations 2015 local authorities must apply certain disregards to a number of forms of income a person receives when undertaking a financial assessment for charging. Currently, the principle regulations require authorities to disregard the first £25 a week of a WDP in a financial assessment. A WDP is paid to armed forces veterans injured on active service prior to 2005. Since then those injured on active service have received payments under the Armed Forces Compensation Scheme (AFCS).

Ministers made a 'Taking Wales Forward' commitment to apply a full disregard of a WDP in a financial assessment for charging to put it on a par with the AFCS, where payments under that are already fully disregarded.

Option 1 – do nothing

This option involves not making the amending regulations so that the disregard applicable to a WDP would remain at the first £25 per week.

- Costs

There are no new cost implications for local government from this option, with no consequential change in the amount armed forces veterans are charged for their care and support.

- Benefits

There would be no new benefit for veterans in receipt of a WDP who are charged for their care and support.

Option 2 – make the amending regulations

This option involves making the amending regulations so that the disregard applicable to a WDP in a financial assessment would alter to a full disregard of the total amount of a WDP a veteran receives.

- Costs

Based on independent research commissioned by the Welsh Government, it is estimated that introducing a full disregard of a WDP would cost local authorities £0.3 million per annum in lost charge income. Consequently, this amount has been included in the Revenue Support Grant for local authorities for 2017-18 to support implementation. Veterans affected by this change may, depending upon their financial circumstances, see a reduction in their charge for their care (or their contribution or reimbursement for their direct payments) due to a higher disregard of income applied in a financial assessment.

- Benefits

Veterans in receipt of a WDP who require social care and support would be able to retain its full value to use as they wish, honouring the “Taking Wales Forward” commitment to introduce a full disregard of this in charging for social care. The value of this benefit is estimated to be £0.3million per annum.

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 capital limit, and the financial benefit for veterans of increasing the WDP disregard, “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:

	Welsh Government £m	Local Authorities £m	Care Recipients £m
Maximum Weekly Charge	0	4.0	(-4.0)
Minimum Income Amount	0	1.1	0.6
Capital Limit	(-4.5)	0	4.5
War Disablement Pension	(-0.3)	0	0.3
Total	(-4.8)	5.1	1.4

Consultation

A five week public consultation on a draft of the amending regulations was held between 21 December 2016 and 25 January 2017. The documents can be found at: <https://consultations.gov.wales/consultations/charging-social-care>

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.