

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 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 5 of the Social Services and Well-being (Wales) Act 2014.

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

Part 1

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 and 9 April 2018 and 8 April 2019 respectively. These were necessary to update several sets of regulations made under Parts 4 and 5 of the Act. Revisions to the code of practice were also put in place to reflect the changes made by the regulations which also came into force on 10 April 2017, 9 April 2018 and 8 April 2019 respectively.

Changes are now proposed to one set of regulations made under the Act, namely the Care and Support (Charging) (Wales) Regulations 2015. These changes are to come into force on 6 April 2020. These changes do not of themselves make any consequential changes to the code of practice. Instead revisions to the code are required to incorporate an update in two places to reference the new regulations that are to become effect from 6 April 2020. Amendments to the code of practice are the subject of this Explanatory Memorandum.

2. Matters of special interest to the Legislation, Justice and Constitution 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 revised code comes into force on 6 April 2020.

4. Purpose & intended effect of the legislation

This revised code of practice has been amended to reference the regulations coming into force on 6 April 2020. These are “The Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020”. This is for completeness as the new regulations amend the principle regulations referred to in the code of practice. They also correct an inaccuracy in the current process by which local authorities can register a charge on land or property to recover social care and support costs where a debt has occurred, or where a person does not wish to enter into a deferred payment arrangement, or is not eligible to enter into such an arrangement. These amendments are set out under Chapter 5 paragraph 5.1 and at Annex F paragraph 6.1 of the revised code.

5. Consultation

No consultation has been undertaken in this instance. This is due to the revisions being merely of a technical nature to ensure the code accurately reflects each set of amending regulations that have come into force since the code first came into effect in April 2016.

Part 2 - REGULATORY IMPACT ASSESSMENT

The amendments to this code of practice are to reference the regulations to be introduced on 6 April 2020 and 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.