

SL(5)504 – The Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020

Background and Purpose

These Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the 2015 Regulations”) and the Land Registration Rules 2003 (“the Rules”).

The 2015 Regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging or propose to provide or arrange in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”). The 2015 Regulations also contain parallel provisions setting out requirements which apply where a local authority makes direct payments to meet a person’s need for care and support.

These Regulations amend Part 2 of the 2015 Regulations (charging under Part 5 of the Act) as follows:

- the amount of the maximum weekly charge for non-residential care and support is increased from £90 to £100, and
- the weekly minimum income amount where a person is provided with accommodation in a care home is increased from £29.50 to £32.

These Regulations amend Part 4 of the 2015 Regulations (contributions and reimbursements for direct payments) as follows:

- the amount of the maximum weekly contribution or reimbursement for non-residential care and support is increased from £90 to £100, and
- the weekly minimum income amount where a person is provided with accommodation in a care home and receives direct payments under the Act is increased from £29.50 to £32.

These Regulations amend the Rules to correct an error made in the Social Services and Well-being (Wales) Act 2014 (Consequential Amendments) (Secondary Legislation) Regulations 2016. These Regulations insert the correct reference to the relevant provision of the 2014 Act into Part 8 and Schedule 4 of the Rules.

Procedure

Negative.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument:

Standing Order 21.2 (vi) - that its drafting appears to be defective or it fails to fulfil statutory requirements



1. Regulation 2(c) amends regulation 22(1) of the 2015 Regulations, however the wording 'in paragraph (1)' (which should be included to provide a clear and complete reference to the provision that is being amended) is omitted. Whilst the intention to amend paragraph (1) could arguably be inferred, the approach would be inconsistent with corresponding provisions which have previously amended regulation 22(1), namely –

- a. Regulation 2(d) of the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019,
- b. Regulation 2(d) of the Care and Support (Charging) (Wales) (Amendment) Regulations 2018, and
- c. Regulation 3(h) of the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Miscellaneous Amendments) (Wales) Regulations 2017.

Merits Scrutiny

The following points are identified for reporting under Standing Order 21.3 in respect of this instrument:

Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Assembly

2. Regulation 3(b) amends the 'Form MM' entry in Schedule 4 to the Rules. It is unclear why it is amended in the order prescribed by regulation 3(b) – 3(b)(i) amends paragraph (2), 3(b)(ii) amends the heading and 3(b)(iii) amends paragraph (1). This seems an illogical way to amend as it does not follow a discernible order, thus resulting in a lack of clarity for the reader.

3. We note the uplift from £90 to £100 regarding 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. As described in the Explanatory Memorandum to these 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.

Implications arising from exiting the European Union

No implications are identified for reporting under Standing Order 21.3 in respect of this instrument.

Government Response

The technical scrutiny point (point 1) is noted. However, the Welsh Government consider the provision, as drafted, is clear and will have the required legislative effect.

The merit scrutiny point (point 2) is noted. However, the Welsh Government consider the provision, as drafted, will have the required legislative effect.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 2 March 2020 and reports to the Assembly in line with the reporting points above.

