

Explanatory Memorandum to the Care and Support (Financial Assessment) (Wales) Regulations 2015 made under Parts 4 and 5 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 Regulations 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 (Financial Assessment) (Wales) Regulations 2015 in relation to charging for social care and support made under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford
Minister for Health and Social Services
27 October 2015

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, into a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to focus on well-being, rights and responsibilities.

The existing financial assessment and charging statutory framework for social care and support is derived from separate pieces of legislation that originally stem from the National Assistance Act 1948, as regards charging for residential accommodation with care, and the Social Care Charges (Wales) Measure 2010, in respect of charging for non-residential, community based care and support. As such the framework is made up of a number of separate pieces of legislation, some of which have existed for a number of years so that they are now fragmented and out of date.

The current statutory framework does, however, provides a good basis for local authorities’ charging for the provision or arrangement of care and support, ensuring that only those who can afford to pay for their care and support are required to do so. We see no merit in moving away from this framework and propose that the framework for local authority financial assessment and charging under the Act is akin to the existing framework. That said, we propose to take the opportunity to revise the statutory framework where we consider it appropriate to do.

The Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Regulations”) seek to do this by introducing a single financial assessment framework where local authorities intend to use their discretion to impose a charge under section 59 of the Act for the provision or arrangement of care and support, or support to a carer. The Regulations also do this in relation to a contribution or reimbursement being set under sections 50, 52 and 53(3) of the Act in relation to direct payments provided to a person to enable them to secure care and support, or support in the case of a carer.

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

No specific matters have been identified.

3. Legislative background

The powers enabling the making of the Regulations in relation to direct payments are contained in Part 4 of the Act (sections 50(1), 52(1) and 53(3)), while the powers enabling their making in relation to care and support, and support to a carer, are contained in Part 5 of the Act (sections 64(1), 65).

These Regulations are subject to the negative procedure. They will come into force on 6 April 2016.

4. Purpose and intended effect of the legislation

The overall purpose of the Regulations is to govern local authorities' financial assessments when exercising their discretion to charge for providing or arranging care and support (or support to a carer) and their discretion to set a reimbursement or contribution for a person receiving direct payments to secure their care and support (or support in the case of carers). This is where local authorities use their discretion to charge or set a contribution or reimbursement under sections 50, 52, 53(3) and 59 of the Act respectively. As a result the Regulations impose the following requirements where local authorities undertake a financial assessment:

- specify under regulation 3 the information which a local authority must provide to a person which is the subject of a financial assessment (eg details of its charging policy, its financial assessment process and the information and documentation it will require from the person to undertake this);
- specify under regulation 4 the time limit that the person has to provide any information and documentation requested to undertake the financial assessment (ie a minimum of 15 working days) and that an authority must agree to any reasonable request to extend this if requested;
- specify under regulation 5 that the information provided by an authority under regulation 3 must be in electronic or paper format and appropriate to the communication needs of the person (eg large print or Braille);
- specify under regulation 5 that the information and documentation provided by the person must be in electronic or paper format and other such format that the authority agrees to accept (eg Braille);
- specify under regulation 7 the circumstances in which there is no duty to undertake a financial assessment (eg that it is in relation to care and support for which a charge cannot be imposed or for which a flat rate charge is imposed);
- specify under regulation 8 that a local authority may carry out a new assessment where one has been undertaken previously where the person's financial means, or where the care and support or direct payments they require, changed:
- set out under regulation 9 the procedure for undertaking a financial assessment (eg disregarding the value of their main home where a person is being assessed in relation to non-residential care and support, whether it is being provided or arranged by the local authority or where the person is to receive direct payments to secure this);
- set out under regulation 10 that where a person is being assessed in relation to a proposed charge for a short term stay in residential care, this must be made as if the person was receiving non-residential care and support (eg where someone was receiving short term respite care);
- specify under regulation 14 that earnings must be disregarded in a financial assessment (so as to support a person's ability to live independently);
- specify in regulation 15 and Part 1 of Schedule 1 other forms of income that must be disregarded in a financial assessment in accordance with Part 2 of that Schedule (eg working tax credit, any guardian's allowance, various compensation payments connected with contracting HIV or Hepatitis C);
- specify in regulations 16 and 17 the forms of capital that for the purposes of an assessment must be treated as income, and income that a person must be assumed to have even though they may no longer be in possession of this

- (eg capital paid by instalments, or where a person has deprived themselves of income to avoid or reduce a charge);
- specify under regulation 18 the calculation of the capital of a person to be taken into account in an assessment and set out in Schedule 2 which forms of capital must be disregarded in that calculation (eg the surrender value of an annuity or insurance policy, or a person's main home where it is occupied by a qualifying relative, such as a spouse or partner);
- specify in regulation 19 the forms of income that for the purposes of an assessment must be treated as capital and capital that a person must be assumed to have even though they may no longer be in possession of this (eg any holiday pay or where a person has deprived themselves of capital to avoid or reduce a charge);
- specify under regulation 24 how jointly held capital is to be treated in a financial assessment (ie unless there is evidence to the contrary, each person is treated as having an equal share of the capital).

5. Consultation

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. There were 61 substantive written responses to this received from a wide range of individuals, representative groups, local authority officers and professional organisations. Overall the Regulations were well received with respondents generally supporting the proposed continuation of the present financial assessment and charging framework. Where responses have resulted in material changes to the Regulations, these have been reflected in the final version of the Regulations being laid.

A summary report of the consultation responses is available on the Welsh Government website at:

<http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

PART 2 – REGULATORY IMPACT ASSESSMENT

Options

This Regulatory Impact Assessment considers the following options:

- “do nothing” and not make any regulations (option 1);
- make regulations but only to implement exactly the same financial assessment as presently exists (option 2); and
- make the Regulations to implement the existing financial assessment but with appropriate revisions (option 3).

Option 1 – do nothing

This option involves no regulations in relation to a financial assessment to inform the determination of a charge being made under the relevant powers under Parts 4 and 5 of the Act referred to earlier. As a result no requirements are placed on local authorities in this respect beyond those placed upon them by the relevant sections contained within Parts 4 and 5.

This would result in local authorities having a discretion to impose a charge for the provision or arrangement of care and support, or support to a carer. They would also have discretion to impose a contribution or reimbursement in relation to direct payments provided to a person to enable them to secure care and support, or support in the case of a carer. However, while authorities would be required to undertake a financial assessment of a person upon whom it proposed to impose a charge, it would be a matter for authorities as to what forms of income and capital to take into account in these, and as to what disregards, if any, to apply in these.

As a result this situation has the potential to lead to wide variations in local authorities charging policies, with inconsistency of practice between authorities, and no guarantee that current financial protections of certain income and capital being disregarded from an assessment would continue.

Option 2 – make regulations to implement the existing financial assessment framework

This option involves making regulations in relation to financial assessments under the relevant powers under Parts 4 and 5 of the Act as referred to earlier. This would, however, merely replicate the current financial assessment framework under the Act to that currently in place under present legislation with no revisions.

While this removes the risks of inconsistency associated with option 1, it would mean that the revisions proposed to the framework to update it would not occur. This would include:

- the introduction of a single, consistent financial assessment for charging for both non-residential care and support, and residential care. At present differing assessments apply between the two and this would continue under this option;
- the introduction of a set time period within which a person must provide any information or documentation required to undertake an assessment. Currently this only applies with regard to assessments relating to non-residential care and support with no such limit in relation to residential care;
- the introduction of an increased disregard for War Disablement Pension in the assessment. The Regulations propose to adjust the level of this from £10 per week to £25 per week to take account of the contribution war veterans have made to their country;
- the disregard of working tax credit, and payments under the Welsh Independent Living Grant, so as to put this on a par with the current disregard of earnings in an assessment and of payments under the ILF respectively.

For these reasons this option is not considered appropriate.

Option 3 – make the Regulations to introduce the existing financial assessment framework with appropriate revisions

Under this a single, consistent financial assessment for charging for both non-residential care and support, and residential care, would be introduced. The disadvantages associated with option 2 above would not occur so that this assessment would be revised to introduce the changes proposed for the benefit of care and support recipients.

Authorities would be precluded from deciding for themselves which forms of income and capital to take into account in an assessment and to determine what disregards, if any, to apply.

Hence under this option it removes the inconsistency risks associated with option 1 and allows the proposed updates to the framework to take place and for these reasons, it is the preferred option.

Costs

Option 1 – do nothing

This option removes the present legislative requirements placed on local authorities by regulations when undertaking a financial assessment in determining a charge to be imposed. As such, it presents them with the ability to increase their charge income dependent upon the charging policies they adopt for the content of their assessments with the corresponding financial impact on care and support recipients.

Option 2 – make regulations to implement the existing financial assessment framework

As this option is effectively the status quo, it is a cost neutral option.

Option 3 – make the Regulations to introduce the existing charging framework with appropriate revisions

This option also effectively maintains the status quo but does introduce a small number of updates in relation to local authorities' financial assessment and hence their ability to impose a charge (such as the adjustment to the disregard for War Disablement Pensions and the introduction of a disregard for working tax credit).

However, the financial impact on authorities' charge income is minimal. This is partly because a number of authorities already provide disregards in their assessments which are higher than those they are required to operate by the present regulations. It is also partly due to the fact that these affect relatively small numbers and so even where they do not have a higher disregard currently, the effect will be minimal (eg it is estimated that there are only around 300 War Disablement Pensioners in Wales receiving care and support, a proportion of which due to their financial circumstances will already be receiving this free of charge). In addition, the introduction of a disregard in a financial assessment of any payment made under the Welsh Independent Living Grant is merely a replacement of the current disregard of any payment made under the Independent Living Fund, given that Fund has now been closed by the UK Government.

With regard to local authority officer familiarisation with these arrangements, any costs associated with this would be met from the Social Care Workforce Development Grant provided by the Welsh Government to assist with the workforce costs associated with implementing the Act.

Benefits

Option 1 – do nothing

While it could be argued there are benefits of allowing local authorities more of a free hand to setting their own financial assessments when imposing charges for care and

support and hence increase their charge income, this comes with major risks. The current restrictions on taking certain forms of income and capital into account, so as to afford consistent financial protections for those charged, are removed with the inherent risks these pose. On balance this option will have major dis-benefits for those upon whom charges are imposed.

Option 2 – make regulations to implement the existing financial assessment framework

This option would not have the risks associated with option 1 and would, therefore, have the benefits of continuing the present statutory financial assessment framework with the safeguards it operates for those charged.

It would, however, have the dis-benefits of perpetuating the separate frameworks applicable for assessing in relation to non-residential care and support, and residential care. It would also not introduce the revisions proposed so that certain individuals, who have particular forms of income and capital, would continue to be disadvantaged in the financial assessment process.

Option 3 – make the Regulations to introduce the existing financial assessment framework with appropriate revisions

This option also does not have the risks associated with option 1 and so also has the benefits of continuing the present statutory charging framework with the safeguards it operates.

It has the additional benefits, however, of implementing a number of updates to this framework in relation to local authorities' financial assessments. These include: the introduction of a single, consistent assessment framework in relation to both non-residential care and support, and residential care; the introduction of a set time period within which a person must provide any information or documentation required to undertake an assessment; the introduction of an increased disregard for War Disablement Pensions in the assessment; and the disregard of working tax credit, and payments under the Welsh Independent Living Grant, so as to put this on a par with the current disregard of earnings in an assessment and of payments under the ILF respectively. This financial assessment framework with its revisions would greatly assist disadvantaged groups, such as disabled people, by ensuring there are appropriate financial protections taken in account when an assessment is made for charging for care and support.

Consultation

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. The documents can be found at:

<http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new	No

regulation, does any firm have more than 10% market share?	
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 for the Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these Regulations.

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