

Explanatory Memorandum to the National Assistance (Sums for Personal Requirements) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2015

This Explanatory Memorandum has been prepared by the Developing Policy for Children & Adults Division of the Social Services & Integration Directorate of the Department for Health & Social Services 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 National Assistance (Sums for Personal Requirements) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Mark Drakeford AM,
Minister for Health and Social Services
13 March 2015

Description

1. The National Assistance (Sums for Personal Requirements) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2015 (“the 2015 Regulations”) will come into force on 6 April 2015. They relate to the financial assessment of individuals for charging for both residential and non-residential care and will:

Residential Care and Support

- increase the personal expenses allowance (PEA) (the weekly sum of money that local authorities must enable a resident in care to retain to spend on personal items) from £25.00 to £25.50 per week;

Non-residential Care and Support

- increase the maximum amount a local authority may determine to be a reasonable charge for the provision of care and support or combination of care and support, and the maximum amount a local authority may determine to be a reasonable amount for a contribution or reimbursement for receiving a direct payment, from £55 per week to £60 per week.

Matters of Special Interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative Background

Residential Care and Support

3. The amount of the PEA is set out in Regulation 2 of the National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2014. In order to amend the amount, this Regulation will need to be revoked and the new amount prescribed in Regulations. This can be achieved under section 22(4) of the National Assistance Act 1948 (“the Act”). This grants power to the Secretary of State to prescribe such sums that a local authority must assume that a person provided with accommodation under the Act will need per week for their personal requirements. This power was transferred to the Secretary of State for Health by virtue of the Secretary of State for Social Services Order 1968 and the Transfer of Functions (Health and Social Security) Order 1988. Article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 transferred this power to the National Assembly for Wales and was subsequently transferred to the Welsh Ministers by virtue of paragraphs 30(1) and (2)(d) of Schedule 11 to the Government of Wales Act 2006.

4. Section 63(3) of the Act sets out that Regulations made under the Act shall be subject to the negative procedure.

Non-residential Care and Support

5. Regulation 5 of the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011, when first made, prescribed that the maximum reasonable charge that a local authority could

impose under section 1 of the Measure for the provision of care and support, or combination of care and support was £50 per week, at that time. Similarly, Regulation 5 the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 prescribed that the maximum reasonable amount of a reimbursement or contribution payable that a local authority could impose for securing the provision of care and support through a direct payment was also set at £50 per week. In order to introduce an amendment to these weekly maxima, amendments are required to both sets of Regulations. The maxima was uplifted to £55 per week in both Regulations on 7 April 2014. The powers to make the amending Regulations are exercisable by Welsh Ministers under sections 2(2), 7(2), 12(2) and 17(2) of the Measure. Section 17(5) of the Measure sets out that Regulations made under those sections of the Measure shall be subject to the negative resolution procedure.

Purpose and Intended Effect of the Legislation

Residential Care and Support

Policy Objective

8. It is the Welsh Government's policy to undertake an annual review of the Regulations governing charging for residential care and support to ensure they are up to date and support social care policy objectives so as to ensure residents in Wales are not disadvantaged financially. This is in the light of current welfare benefits, financial, legal and operational circumstances. This is to ensure that the requirements in place under Regulations relating to a local authority's financial assessment of those in residential care are appropriate and properly take into account these factors.

Effects

9. Under the Act local authorities are required to charge residents for residential accommodation, whether directly provided or arranged with the independent care sector, with the aim of recovering as much as possible of the costs. The way a local authority is to assess a person's ability to pay is laid down in Regulations. The Welsh Government has a longstanding commitment to review the amount of the PEA that individuals in receipt of financial support from their local authority towards their residential care are able to retain for personal use. In addition, the Welsh Government keeps under review the disregards used in such financial assessments which take account of income-related benefits and payments.

10. The 2015 Regulations introduce changes which are described below. These are generally in line with those being undertaken by the other three UK administrations as regards an uplift to the level of the PEA.

Increase in Personal Expenses Allowance

11. Under section 22(4) of the Act, local authorities are to assume that those individuals in residential care who they support financially require a weekly sum for their personal requirements; this is known as the PEA. Such weekly sums can be prescribed by the Welsh Ministers under section 22(4) of the Act. It is custom and practice to uprate the PEA each year. The current amount of

the PEA in Wales is £25.00 per week, as prescribed in the National Assistance (Sums for Personal Requirements) (Assessment of Resources) and Social Care Charges (Wales) (Miscellaneous Amendments) Regulations 2014.

12. The 2015 Regulations seek to increase this amount to £25.50 per week from 6 April 2015. This maintains a slightly higher level of the PEA in Wales than that planned elsewhere in the UK as PEA is to increase from £24.40 to £24.90 in England and in Northern Ireland and from £24.55 to £25.05 in Scotland.

Non-residential Care and Support

Policy Objective

13. It is the Welsh Government's policy to undertake an annual review of the Regulations governing charging for non-residential care and support to ensure they are up to date with social care policy objectives so as to ensure those receiving community based care and support in Wales are not disadvantaged financially. This is in the light of current welfare benefits, financial, legal and operational circumstances.

Effects

14. Under the Measure local authorities have discretion to charge a reasonable amount for the cost of non-residential care and support they provide; they also have discretion to impose a reasonable reimbursement, or contribution, for the provision of non-residential care and support through a direct payment. The way in which a person is financially assessed for these is laid down in the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011. The Welsh Government keeps under review the disregards used in such financial assessments which take account of income related benefits and payments. These reviews are undertaken annually.

15. The 2015 Regulations introduce changes, which are described below, in the form of a revision of the weekly maxima for charging referred to earlier.

Revision of the Maximum Reasonable Charge and Maximum Reasonable Reimbursement or Contribution

16. Where local authorities exercise their discretion under the Measure to make a reasonable charge for non-residential care and support, Regulation 5 of the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 prescribes that the maximum reasonable charge that can be made for care and support, or combination of care and support. This is currently £55 per week. Similarly, where local authorities exercise their discretion to impose a reasonable reimbursement or contribution for the provision of services through a direct payment, Regulation 5 the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011

prescribes that the maximum reasonable amount. This is also currently £55 per week.

17. The level of the maximum charge was originally set at £50 when the First Steps Improvement Package was first introduced from April 2011 and remained at that level until 7 April 2014 when it was increased to the current maximum of £55 per week.

18. The 2015 Regulations will uprate the level of the reasonable maximum charge, and the reasonable maximum reimbursement or contribution, from £55 to £60 per week. The uplifts are being introduced in view of the increase in inflation (around a 10% increase over 3 years since 2011) and the levels of the state pension and welfare benefits (around 7.5% increase over 3 years since 2011). As a result the uplift to be effected on 6 April 2015 continues to maintain the real terms affect of these increases and provides additional income for authorities to cover lost income but not unduly add to the financial burden on care and support recipients.

Implementation and Risk if Legislation is not made

19. The 2015 Regulations will come into force on 6 April 2015. If this date is not achieved then individuals in residential care in Wales will be disadvantaged in their financial assessments over those elsewhere in the UK as they will not be able to retain any element of their increased pension and/or benefit from April 2015. The maxima for local authority charging for non-residential care and support will not have an adverse effect on individuals but it would result in local authorities being unable to receive an increase in charges from individuals for the provision of care and support.

Consultation

Residential Care and Support

20. The proposed amendment to the PEA for residential charging assessments are part of a regular annual exercise, which stakeholders (i.e. local authorities) are aware of and which simply review and increase existing levels as appropriate. As such it is not considered necessary to consult on these changes (a similar stance is taken by the other UK nations). Local authorities in Wales have already been given written advance notice by officials of the proposed changes to enable them to plan ahead.

Non-residential Care and Support

21. Local authorities have discretion to make a reasonable charge for the non-residential care and support they provide or arrange for a person. Where an authority applies its discretion and makes a charge, unlike residential charging, a maximum weekly limit applies to the amount a person is required to pay. The regulations applied by local authorities in assessing a person's ability to pay up to the maximum charge as reviewed regularly. The former Deputy Minister for Social Services held a consultation on the proposals for increasing the maximum charge so as to retain its real term affect as set out in paragraph 18. The consultation, in general, supported the increase introduced in April last year and the forthcoming increased.

Regulatory Impact Assessment – Options, Cost and Benefits

Residential Care and Support

Impact of the proposed changes to the Personal Expenses Allowance (PEA)

22. In calculating a resident's charges, local authorities are required to ensure residents keep an amount of their weekly income for their personal expenses. This requirement is laid down in section 22(4) of the Act.

Option 1: Do Nothing

23. This would mean that the PEA is maintained at the level of £25.00 per week. It has become practice to uprate the PEA annually and therefore, there is an expectation by local authorities and care home residents that the amount of the PEA will be increased. To freeze the level of the PEA would result in individuals not benefitting from any amount of the increases applied to state pensions and benefits from April 2015 as all of this increase would be used by local authorities to contribute towards a person's accommodation and care costs.

Costs

24. There would be no new cost implication to local government from this option.

Benefits

25. The consequences of this option is that residents in receipt of PEA would not retain any of the increases to pensions (and benefits) from April 2015 for their personal use. Instead the increases would form part of their eligible income against which authorities apply a charge.

Option 2: Make the Legislation

26. Making the 2015 Regulations will provide for an increase in the level of PEA from £25.00 to £25.50 per week. This will enable individuals in residential care who are supported financially by their local authority to retain a slightly increased amount of their income each week for personal expenses.

Implementing the Regulations will also result in a slightly higher level of PEA for residents in Wales than that applicable in the rest of the UK.

Costs

27. From 7 April 2015 the amount of the state pension will increase by 2.5% (in monetary terms the higher rate of the state pension will increase by £2.83 per week) and the increase in the level of the standard minimum guarantee income (applied to individuals of state pension age) will equate to 2.0%. The weekly income care home residents receive, against which local authorities charge for accommodation and care costs, will therefore increase accordingly.

28. Consequently this increase to the PEA (by 2.0%) is considered affordable given that the increase in state pensions is slightly above the percentage increase in the PEA. Hence local authorities will benefit from an element of this increase to help meet the costs of those residents they support financially.

Benefits

29. The increase will enable individuals in care to receive a slight increase in the amount of money they retain for personal expenditure whilst generating an increase in revenue for local authorities through an increase in the level of contributions received from the residents they support.

Non-residential Care and Support

Revision of the Maximum Reasonable Charge and Maximum Reasonable Reimbursement or Contribution

30. In assessing the reasonable charge for non-residential care provided, or the reasonable reimbursement or contribution to impose for non-residential care provided through a direct payment, a local authority must not set these at a level above maxima set out in the 2011 Regulations. This maxima was originally set at £50 per week, but was increased to £55 in April 2014.

Option 1: Do Nothing

31. This would retain the current level of the maxima set and take very limited account of the changes which have occurred since its introduction to the level of state pensions and benefits, care and support provision costs or inflation.

Costs

32. There would be no new cost implications from this option to those in receipt of non-residential care and support. There would be for local authorities as the value of the current maxima would in real terms have diminished since its introduced due to the factors outlined above. This would, as a consequence, reduce in real terms the charge income they are able to recover from those in receipt of non-residential care

Benefits

33. This option would have no benefits for local authorities. It would, however, reduce for individuals (in real terms) the level of the maximum reasonable charge a local authority could make for non-residential care, and the level of the maximum reasonable reimbursement or contribution that can be imposed for non-residential care and support provided through a direct payment.

Option 2: Make the Legislation

34. Making the 2015 Regulations will increase the weekly maxima for charges, reimbursements and contributions, by a modest amount of £5 per week from £55 to £60. This would come into effect from 6th April 2015. This increase acknowledges the level of inflation, and the changes in the level of state pensions, benefits and care and support costs, which have occurred since the previous maxima of £50 per week was introduced under the 2011 Regulations. It would in real terms put the current level of the maxima on a par with its level when it was introduced. This would be the second revision of the weekly maxima since it was introduced.

Costs

35. There will be an additional cost of £5 per week to those in receipt of non-residential care and support where that person is assessed as eligible to pay the maximum charge. This is regardless of whether care and support is arranged through their local authority or through a direct payment. This is considered affordable given the rises in state pensions and disability related benefits which have occurred since 2011. It will raise for local authorities an estimated additional £1.367 million p.a. in charge income.

Benefits

36. Increasing the maxima would provide additional income for local authorities to meet increased care and support costs since the level of this was first set. It would also honour the Welsh Government's commitment to local government through the Partnership Agreement to ensure that the financial consequences of initiatives placed upon them are met. It would also, for both individuals and local authorities alike, place the real terms affect of the maxima back on a par with that when its present level was first set in 2011.

37. Welsh Ministers considered the consultation responses and on balance, decided to revise the maxima by £5 per week to £55 in April 2014 and £60 per week in April 2015 as was proposed in the consultation. This was on the basis that all local authorities wished to see an increase, with a substantial number supporting this level of increase. While third sector organisations wished to see no change or a reduction in the maxima, agreeing to this request would have meant a funding shortfall for local authorities. This would have resulted in the Welsh Government not honouring its commitment to local authorities under the Partnership Agreement to ensure the financial consequences of initiatives placed on them are met. It would also have meant that the real terms affect of the maxima would have reduced over the period since it was first introduced in 2011.

Competition Assessment

38. Not applicable.

Post Implementation Review

39. The effect of the changes will be monitored by officials via their regular contact with local authority financial assessment officers and with third sector organisations.

Summary

Residential Care and Support

40. The 2015 Regulations will benefit those in residential care in Wales by enabling residents to retain an additional amount of their income for their personal expenses in the form in an increased level of PEA from £25.00 to £25.50.

Non-residential Care and Support

41. The 2015 Regulations will also increase the weekly maxima for charges, reimbursements and contributions, by £5 per week from £55 to £60 per week. This would acknowledge the level of inflation, and the changes in the level of state pensions, benefits and care and support costs, which have occurred since the maxima was first introduced in 2011. It would put in real terms the level of the maxima on a par with its level when it was first introduced.