

SL(6)152 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022

Background and Purpose

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022 ([“the Regulations”](#)) are made by the Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 64(1), 64(2)(b), 66, 69 and 196(2) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Financial Assessment Regulations”).

The Charging Regulations govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the 2014 Act. The Financial Assessment Regulations set out the method by which local authorities must carry out an assessment of a person’s financial resources in order to determine a charge where appropriate. Both sets of regulations came into force on 6 April 2016.

The changes that amend the Charging Regulations will uplift from £33.00 a week to £35.00 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, by amending regulations 13 and 28. The minimum income amount is the sum of money a person in residential care, and 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 the weekly uplifts applied to UK state pensions and welfare benefits.

The changes that amend the Financial Assessment Regulations will recognise a number of compensation schemes awarded to people who have been caused harm, abuse or injury and are to receive payments in recognition of their suffering. Schemes are typically new pieces of legislation introduced by other UK governments, or the Welsh Government. This will be achieved by amending Schedule 1 and Schedule 2 to the Financial Assessment Regulations to include payments made under:

- The Historical Institutional Abuse (Northern Ireland) Act 2019;
- The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
- The Victims Payment Regulations 2020; and



- Payments made under the payment scheme for former British child migrants established by the Secretary of State.

In addition, there are a number of infected blood and blood products compensation schemes applied to a person infected by contaminated blood products that need to be recognised under Schedule 1 and Schedule 2 of the Financial Assessment Regulations. An approved infected blood support scheme and the Scotland Infected Blood Support Scheme are already recognised under Schedule 1 and Schedule 2. The 2022 Regulations amend the Financial Assessment Regulations to also include the:

- Wales Infected Blood Support Scheme; and
- Northern Ireland Infected Blood Support Scheme.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

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

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires.

The preamble to the Regulations sets out the 2014 Act enabling powers relied upon by the Welsh Ministers. However, it is unclear why section 64(2)(b) is included specifically, but not 64(2)(a). The former provision requires that regulations dealing with financial assessments must make provision for assessing capital, and the latter for assessing income. It is noted that regulation 3(a) of the Regulations amends Part 1 of Schedule 1 (sums to be disregarded in the calculation for income) to the Financial Assessment Regulations with regard income to be disregarded when carrying out a financial assessment. This being the case, it is unclear why regulation 64(2)(a) is not also cited as an enabling power, and whether its absence impacts vires in this regard.

Further, the Explanatory Memorandum, at paragraph 3, purports to quote the enabling powers in the Regulations. Whilst some are omitted, it also includes section 65 of the 2014 Act, which is not cited in the Regulations. This disparity between the Regulations and the Explanatory Memorandum is, in itself, potentially confusing to the citizen. But, further, Section 65 is a specific power to disapply the duty to carry out a financial assessment. This being the case, it is unclear why this enabling power is not included in the Regulations, and what impact this may have on vires, bearing in mind the changes made to the Financial



Assessment Regulations with regards the disregarding of payments under the specified compensation schemes when carrying out a financial assessment.

Merits Scrutiny

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

2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

It is noted that, according to the Regulatory Impact Assessment set out in Part 2 of the Explanatory Memorandum, the amendments made by the Regulations will result in a potential increase in charge income to local authorities in the sum of £1.9 million per annum.

3. 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 Senedd

It is noted that the Explanatory Memorandum has not been laid in Welsh. The relevant Notice of Laying form states, "This document is laid in English only, in accordance with Standing Order 15.4, as it is not considered appropriate in the circumstances or reasonably practicable to lay it in English and Welsh." The Committee would welcome clarification on this reason, particularly whether a bilingual version has not been produced due to lack of resource.

Welsh Government response

Technical Scrutiny point 1:

The Government acknowledges, given section 64(2)(b) is cited in the preamble, and that the provisions cover both income and capital, that it would be helpful if section 64(2)(a) was also cited. We appreciate this may be potentially confusing for the citizen but on analysis, the Government is not concerned that the omission of section 64(2)(a) impacts vires.

Our reason for this view is that section 64(2)(a) and (b) are an elaboration of the overarching power already contained in section 64(1), which is cited in the preamble. In support of this interpretation we respectfully refer to the preamble to the Care and Support (Financial Assessment) (Wales) Regulations 2015 ("the principal Regulations"). The principal Regulations cite only section 64(1) and do not separately cite the other parts of section 64 which set out different ways that the section 64(1) power can be exercised. This approach found favour with the predecessor committee and did not draw comment.

Although arguably confusing for the reader to have cited paragraph (b) but not (a), we point out that the accompanying Code of Practice, which incorporates the same changes in detail



as regards to income and capital which are to be disregarded, will assist Local Authorities and members of the public to have clarity.

With regard to the reference to section 65 of the Act at paragraph 3 in the Explanatory Memorandum, the reference appears in a paragraph headed "Legislative Background". The paragraph sets out the powers relevant to the general scheme for local authority charging rather than specifying those powers which have been drawn on in the drafting of these Regulations.

Section 65 is not cited in the preamble to the Regulations as the amending regulations do not make any provision about circumstances when a financial assessment is not required. The provisions merely add a number of compensation schemes to be disregarded when the financial assessment is conducted.

Merit Scrutiny point 1:

The Government is committed to increasing the number of Explanatory Memorandum and Regulatory Impact Assessment for Statutory Instruments that are laid bilingually in the Senedd, however, these documents are not automatically laid bilingually at the moment. While we are gradually laying more of these documents bilingually, we are also having to prioritise our translation resource carefully; over the past two years Covid and Brexit related legislation and guidance for the public have become our top priority, and other documents are carefully considered within this context.

Standing Order 15.4 of the Senedd requires all documents to be laid bilingually where reasonably practicable, and Standard 47 of the Welsh Language Standards (the statutory duties imposed on the Welsh Government by the Welsh Language Commissioner) requires us to consider the subject matter and the anticipated audience of certain documents to prioritise their translation. Under guidance provided by the Commissioner's office (in their Code of Practice on the Welsh Language Standards (No. 1) Regulations 2015), in prioritising these documents for translation at this time we considered issues such as whether the Regulations related to issues affecting the Welsh language directly, whether the Regulations were of great interest to Welsh speaking groups in particular, and whether a high proportion of the documents' audience would be Welsh speaking. As these Regulations are procedural, are amended annually, are of a technical nature and affect only an extremely small percentage of the population, they have not been deemed a priority at this time.

Committee Consideration

The Committee considered the instrument and Government response at its meeting on 14 February 2022 and reports to the Senedd in line with the reporting points above.

