

Legislative Statement on the Proposed Domiciliary Care Legislation Competence Order

27 November 2007

Deputy Minister for Social Services, Gwenda Thomas

I am pleased to be able to present this legislative competence Order before you today for your consideration. The Order will seek to allow the Assembly to have the power to pass Measures about charging for non-residential social care, a subject in which many of you have shown a keen interest over recent years.

As Members will be aware, the purpose of a legislative competence Order is to confer powers on the National Assembly to pass its own legislation, namely Assembly Measures, based on Welsh priorities, policies and timescales.

The LCO mechanism allows us to request that the power to legislate over a policy area be conferred on the Assembly. Once conferred, that power will be permanently available, so that the Assembly can bring forward Assembly Measures without further recourse to Parliament.

The primary piece of legislation governing charges for non-residential social care is section 17 of the Health and Social Services and Social Security Adjudications Act 1983. Section 17 gives local authorities a discretionary power to recover such charges as they consider reasonable from adult recipients of non-residential social services.

The only restriction on an authority's power to charge is that it shall not require users to pay more for services than would appear to be reasonably practical. This has resulted in some significant differences between the charging policies of local authorities in Wales, and therefore wide variability in the impact on service users in various areas of the country.

The Audit Commission's report 'Charging with Care', published in 2000, highlighted the scale of variation in charging by local authorities at the time. These variations were also highlighted during a survey conducted in 2005, as part of the work that Stirling University undertook for us to cost the policy of free homecare for disabled people.

The information that we have demonstrates that there is a wide range of hourly charge rates and weekly maxima set by local authorities and differing amounts can be charged by different authorities for similar services. There is also disparity in the way in which benefits and/or disability-related expenditure are treated in an individual's assessment. All of this has resulted in inequalities and uncertainties for service users, carers and their representatives.

The Assembly Government recognises that this is an area where reforms are necessary, and this was highlighted in its 'One Wales' document. We are seeking to achieve a fairer and more consistent approach to charging for all adult recipients of non-residential social services across Wales. That aim is linked to our broader 10-year strategy for social services in Wales, 'Fulfilled Lives, Supportive Communities', which emphasises the need for modernisation to provide accessible, personalised care for people, which enables them to retain control of their lives, even when they have to rely on support from others.

The strategy envisages a shift from residential care towards support for independence at home and a switch towards earlier intervention and more preventative services. We therefore need to ensure that local authority social services' charging arrangements support this vision. While the Assembly Government can provide statutory guidance to local authorities under section 7 of the Local Authority Social Services Act 1970 on the exercise of their charging

arrangements, local authorities are able to depart from such guidance. Its impact has therefore been limited.

Using the powers in section 7, the Welsh Assembly Government issued fairer charging guidance to local authorities in 2002 in an attempt to address some of the problems with the wide variation in charging policies operated in Wales. However, it remains largely a matter of good practice except for four key elements that are statutory, which are intended to ensure that service users are left with a guaranteed level of income after charging has been applied. Section 7 therefore provides a vehicle for issuing general statutory guidance in this area. However, if the Assembly Government were to issue further comprehensive guidance under section 7 in relation to charging for non-residential social care, it would need to be sure that it did not fetter the fundamental discretion that local authorities have to charge for certain services and to recover such charges as they consider to be reasonable, as set out in section 17 of the Health and Social Services and Social Security Adjudications Act 1983.

Any policy that sought to establish greater uniformity, for example, by applying maximum charges or standard charges, could not therefore be achieved using section 7 powers. If we are to achieve the improvements that we are seeking for those adults in receipt of non-residential social services, we need to make changes to the existing primary legislation. For that, we first need to request the power for the Assembly to legislate.

The Order is restricted to charges levied by local authorities in respect of non-residential social care. It would not enable the Assembly to legislate in respect of charges levied by private care providers for non-residential social care. It also encompasses the charging arrangements for those service users in receipt of a direct payment, to enable them or persons looking after them to secure non-residential social care to meet their needs.

It is too early to discuss the detail of what might be included in an Assembly Measure, but it is important that the legislative competence Order gives the Assembly Government enough flexibility to bring forward the subsequent Measure. For instance, the legislative competence Order is drafted in such a way as to allow the Assembly to legislate on the level and/or range of charging for specific services or for specific client groups, should it conclude that it is appropriate to do so in an Assembly Measure.

Therefore, the principal purpose of the legislative competence Order is to empower the Assembly to pass Assembly Measures under Part 3 of the Government of Wales Act 2006 that will enable the Assembly Government to continue its policy of improving the lives of some of our most vulnerable people. It will give us the means to support their independence further by regulating the setting of charges and removing the wide disparities that exist now. Thank you.