

Explanatory Memorandum to the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Adult Social Services Policy Division of the Health and Social Services Directorate General and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM,
Deputy Minister for Social Services
9 March 2011

Description

1. The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011 will come into force from 11th April 2011. They will be in relation to the financial assessments of individuals for charging for residential care:

- increase the capital limit (the value of property or savings held to determine whether the resident or their local authority funds their residential care) from £22,000 to £22,500;
- increase the personal expenses allowance (the weekly sum of money that local authorities must enable a resident in care to retain to spend on personal items) from £22.50 to £23.00 per week;
- make a technical amendment to the regulations governing the assessment of a resident's resources to provide clarity on the operation of the capital limit with regard to individuals who have capital below the value of the limit;
- make an amendment to those regulations to apply a disregard in respect of payments to individuals as a consequence of a personal injury, except where that payment is specifically to cover the cost of care;
- make an amendment to those regulations to apply a disregard in respect of certain charitable and voluntary payments of income made to individuals.

Matters of special interest to the Constitutional Affairs Committee

2. None.

Legislative Background

3. The powers exercisable by the Secretary of State under the National Assistance Act 1948 have been transferred to the Welsh Ministers. The changes now put forward can be effected by regulations made by the Welsh Ministers. The Welsh Ministers make the regulations in exercise of the powers conferred upon the Secretary of State by sections 22(4) and (5) of the National Assistance Act 1948 now vested in them by paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

4. This Statutory Instrument follows the negative resolution procedure.

Purpose and Intended Effect of the Legislation

Policy Objective

5. It is the Welsh Assembly Government's policy to undertake an annual review of the National Assistance (Sums for Personal Requirements) Regulations 2001, and the National Assistance (Assessment of Resources) Regulations 1992, in the light of current welfare benefits, financial, legal and operational circumstances. This is to ensure that the requirements in place under these Regulations, made under the National Assistance Act 1948, in relation to local authority financial assessment of those in residential care are appropriate and properly take into account these factors.

Effects

6. Under the National Assistance Act 1948 local authorities are required to charge residents for residential accommodation, whether directly provided or arranged with an independent home, 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 the National Assistance (Assessment of Resources) Regulations 1992. The Assembly Government has made a commitment previously to keep under review the capital limit local authorities use in the assessment of a person's ability to pay for accommodation. There is also a commitment to review the amount of the personal expenses allowance 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 Assembly Government keeps under review the disregards used in such financial assessments, which take account of income-related benefits and payments. All these reviews are undertaken annually.

7. The amendments to the regulations introduce a number of changes, which are described below. While these generally match those being undertaken by the other three UK administrations there is distinct Welsh provision in relation to the capital limit and personal expenses allowance amendments. This is in relation to the policy of the Assembly Government not to have a lower capital limit so as to proportionally assist more residents in Wales with their residential care costs than in the rest of the UK and to set an amount of the personal expenses allowance slightly higher than elsewhere in the UK.

Increase in Capital Limit

8. Until April 2010 the Assessment of Resources Regulations provided for two capital limits. An individual with capital over an upper capital limit was required to meet the full cost of their residential accommodation from their own resources. For capital between this and a lower capital limit, an income for charging purposes of £1 per week was assumed for each complete £250, or part of £250, the individual held (known as the tariff system). No account was taken of capital held below the lower capital limit. Individuals in that position received maximum local authority financial support and contributed whatever income was deemed appropriate by their residential accommodation financial assessment as set out within the Assembly Government's statutory guidance "*Charging For Residential Accommodation Guide*".

9. The Assembly Government, as part of its response in 2000 to the Royal Commission on Long Term Care, made a commitment to keep the capital limits used in residential charging under review. Limits are reviewed annually and in April 2010, the Assembly Government decided to introduce a single capital limit in Wales of £22,000. This was to remove the tariff system, simplify the operation of the capital limits and for proportionally more residents in Wales to be supported by their local authority with their residential accommodation costs than elsewhere in the UK. The rest of the UK continues to operate two capital limits with those in England and in Northern Ireland set at £23,250 and £14,250, and those in Scotland set to be £23,500 and £14,500. The Regulations seek to increase the level of the capital limit applicable in Wales from £22,000 to £22,500 from 11th April 2011.

Capital Limit - Minor Technical Amendment

10. Concern has previously been raised over the wording within the Assessment of Resources Regulations which is not as clear as it could be with regard to the treatment of individuals with capital below the capital limit. Consequently the Regulations amends the wording in the Assessment of Resources Regulations to make it clear that a resident may not be required to pay for, or contribute to the costs of, their accommodation from their capital where this falls below the value of the capital limit.

Increase in Personal Expenses Allowance

11. Local authorities are to assume that individuals in residential care need a weekly sum for their personal requirements, known as their personal expenses allowance (PEA). Such weekly sums can be prescribed by the Welsh Ministers under section 22(4) of the National Assistance Act 1948. It is custom and practice to uprate the PEA each year. The current amount of PEA in Wales is £22.50 per week. The Regulations seek to increase this amount to £23.00 per week from 11th April 2011. This maintains a slight increase over that planned in the rest of the UK where it is planned to increase PEA from £22.30 to £22.60 per week from the same date.

Treatment of Personal Injury Awards

12. Previously the Department of Health and Northern Ireland Executive introduced an amendment to their Assessment of Resources Regulations that reflected amendments that DWP made to the Income Support Regulations. This applied a full disregard in the financial assessment for residential care charging for up to 52 weeks from the date of receipt of first payment to any form of payment for a personal injury made to an individual assessed as requiring residential care. The only exception to this was in respect of any payment made specifically to cover the cost of care. Consequently, individuals were able to retain payments made to them to compensate for injuries or harm but not payments made to pay for their care.

13. The timing of the introduction of this change meant that it was not possible to introduce this in Wales simultaneously. As a result the Regulations seek to introduce from 11th April 2011 a similar disregard in the Assessment of Resources Regulations applicable to Wales to put those in receipt of such payments on an equal footing as elsewhere in the UK.

Disregard of certain Charitable and Voluntary Payments

14. At the same time as the amendments mentioned above were made to the Income Support Regulations, an amendment was made to them to apply a full disregard in the treatment of payments of income from certain voluntary and charitable sources. This change arose as a direct consequence of the London bombings in 2007. Following these a review of the treatment of charitable and personal injury payments within Income Support and Jobseekers Allowance was commissioned as a result of concerns that it would be hard to justify treating payments from the London Bombing Charitable Relief Fund differently from payments made as a result of other traumatic events. Consequently, the Department of Health made amendments to the Assessment of Resources

Regulations applicable to England to cater for the full disregard of such payments of income from voluntary and charitable sources. The Regulations seek to introduce from 11th April 2011 a corresponding disregard in the Assessment of Resources Regulations applicable to Wales to put residents who may be in receipt of such payments on a level footing with elsewhere in the UK.

Implementation and Risk if Legislation is not made

15. It is intended that the Regulations are laid so as they will come into force on 11th April 2011. If this date is not achieved then individuals in residential care in Wales will be disadvantaged in relation to those in residential care in the rest of the UK. The assessment of resources undertaken by local authorities, as part of residential charging, will not be updated to take account of the changes outlined in the sections above.

Consultation

16. The proposed amendment to the capital limit and the personal expenses allowance for residential charging assessments are part of a regular annual exercise, which stakeholders (i.e. local authorities) are aware of, to simply increase existing levels. Additionally, the proposed changes to introduce certain disregards in the assessment of resources of residents are part of the annual exercise of ensuring that the Assessment of Resources Regulations are up to date and reflect changes which have occurred in benefits or the Income Support Regulations. Stakeholders are also aware of this. As such it is not considered necessary to consult on these changes (a similar stance is taken by the other UK administrations). Local authorities in Wales have already been given written advance notice by officials of the proposed changes to enable them to plan ahead.

Regulatory Impact Assessment – Options, Cost and Benefits

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

17. In calculating a resident's charges, local authorities are required to allow residents to keep an amount of their weekly income for their personal expenses. This requirement is laid down in the National Assistance Act (Sums for Personal Requirements) Regulations 2001.

Option 1: Do Nothing

18. This would mean that the PEA is maintained at the level of £22.50 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 PEA would also result in care home residents receiving a lower PEA than care home residents in the rest of the UK, where it is planned to increase PEA from £22.30 to £22.60 per week from 11th April 2011. No change in the PEA would result in Wales no longer maintaining a slightly higher level of the PEA than in the rest of the UK.

Cost

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

Benefits

20. This option would provide no new benefits to care home residents in Wales.

Option 2: Make the Legislation

21. Implementing the Regulations will mean that individuals in residential care keep an increased amount of their income each week for their personal expenses. This will provide for an increase in the level of PEA of 50 pence per week, from £22.50 to £23.00 per week, to those individuals supported financially by their local authority and results in a slightly higher allowance for residents in Wales than that applicable in the rest of the UK.

Costs

22. The option results in local authorities allowing residents to retain from 11th April 2011 an additional £0.355m p.a. in total of the increase residents they support financially will receive to their state pensions and welfare benefits. The uprate to the PEA of 50 pence per week represents a 2.2% increase. This compares with an increase to state pensions in 2011-12 of 4.4%, and to welfare benefits of 3.1%. Consequently this uprate to the PEA is considered affordable given that the balance of the increase in state pensions and benefits that residents receive above the increase in the PEA, local authorities will be able to retain to help meet the costs of those residents' residential care.

Benefits

23. The increase will enable individuals in care to receive an increase in the amount of money they retain for their personal expenditure and will maintain Wales' PEA at a slightly higher level than the rest of the UK.

Impact of the Proposed Capital Limit Increase and Minor Technical Amendment

24. Under the National Assistance (Assessment of Resources) Regulations 1992 local authorities may not financially contribute to the care costs of residents who have assets, including the value of their home, above the capital limit. Such residents are, therefore, expected to meet the full costs of their residential accommodation and care from their own resources. If individuals have assets at or below the capital limit then they will receive maximum state financial support and contribute whatever income is deemed applicable by the regulations.

Option 1: Do Nothing

25. This would mean that the capital limit applied within the financial assessment would be maintained at £22,000. The Welsh Assembly Government has made a previous commitment to keep the capital limit under review. Therefore, there is an expectation that this will be considered and increased annually. In addition, not to make the technical amendment proposed would result in the Assessment of Resources Regulations continuing to be not as clear as they should be on the treatment in the assessment of resources of individuals with capital below the capital limit.

Cost

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

Benefits

27. This option provides no new benefits to individuals in residential care. Individuals would be unable to retain any additional amount of their personal assets or savings than at present.

Option 2: Make the Legislation

28. Making the Regulations will apply a modest uplift of £500 to the current limit and would make up some of the lost ground on the upper capital limit which is applicable in the rest of the UK. The rest of the UK continues to operate two capital limits with those in England and in Northern Ireland set at £23,250 and £14,250, and those in Scotland set to be £23,500 and £14,500. The single limit in Wales would remain lower than the upper limit in the rest of the UK but taken with the absence of a lower limit, provides for better protection for residents with low levels of capital as proportionally more of these will be financially supported by their local authorities with their residential care costs than elsewhere in the UK. Making the Regulations would also provide clarity to local authorities that residents may not be required to pay for, or contribute to the costs of, their residential care from their capital where this falls below the value of the capital limit.

Cost

29. Implementing the Regulations would result in an increase in the capital limit of 2.2% and would equate to an increased cost to local government of £0.175m per annum. This is considered broadly affordable for local authorities to apply in the light of the recent local government settlement which included an element of protection for social services over the 3 year period of the settlement, with an increase in funding of these services of £35m p.a. in total by 2013-14. There is no additional cost attached to the proposed technical amendment to the Assessment of Resources Regulations as this is merely a clarification of the current position.

Benefits

30. Introducing a modest £500 uplift to the level of the capital limit is considered reasonable as it maintains the differential between this and the upper capital limit in place in the rest of the UK with the minimum impact on local authorities. It provides for authorities to financially support proportionally more residents in care homes in Wales than authorities will do elsewhere in the UK. In addition, making the technical amendments to the Assessment of Resources Regulations will ensure that authorities do not require residents to pay for, or contribute towards, their residential care costs from their capital where this falls below the value of the capital limit as the Regulations intend.

Disregard of Personal Injury Payments

31. To reflect amendments made to the Income Support Regulations the Department of Health and the Northern Ireland Executive previously amended their Assessment of Resources Regulations to apply a full disregard in the financial assessment of a resident regarding any form of personal injury award payment for a period of up to 52 weeks from the day of receipt of the first payment. The only exception to this was in respect of any element of the award made specifically to cover the cost of care. Consequently, individuals are able to retain awards made to them to compensate them for injuries or harm suffered but not payments to cover for care costs. The timing of the introduction of this change meant that it was not possible to introduce this in Wales simultaneously. As a result the Regulations seek to introduce from 11th April 2011 a similar disregard in the Assessment of Resources Regulations applicable to Wales.

Option 1: Do Nothing

32. This would mean that the treatment of personal injury award payments within the financial assessment for residents in Wales would remain out of line with the Income Support Regulations and the assessment regulations applicable elsewhere in the UK.

Cost

33. There would be no cost implications for local authorities from this option.

Benefits

34. There would be no changes to the way in which awards are currently treated and so no changes for local authorities to consider as part of their financial assessment process. Residents receiving such payments would be disadvantaged as awards made to compensate for harm or injury would be taken into account in their financial assessment.

Option 2: Make the Legislation

35. Making the Regulations would bring the Assessment of Resources Regulations applicable in Welsh in line with the Income Support Regulations and those Assessment of Resources Regulations applicable elsewhere in the UK. It would ensure a fair and equitable treatment of the personal injury awards that residents receive.

Cost

36. Precise information on the financial implications for local authorities is not available as such information is not held by authorities. However, individuals receiving such awards will be the exception rather than the rule and even fewer would be in residential care. Consequently, the numbers involved in Wales will be very small. Additionally, complex individual cases would be eligible for continuing healthcare that will be fully funded by the NHS and not local authorities. On balance, therefore, it is considered that in view of this the financial implication for local authorities will be negligible, especially as the disregard only applies for the first 52 weeks of a placement.

Benefits

37. Implementing the Regulations puts the treatment of personal injury award payments within the residential care financial assessment on a fair and equitable basis with elsewhere in the UK and ensure that residents in receipt of these can retain them where they are awarded to compensate for harm or injury.

Disregard of Certain Charitable and Voluntary Payments

38. To reflect amendments made to the Income Support Regulations the Department of Health and the Northern Ireland Executive previously amended their Assessment of Resources Regulations to apply a full disregard in the financial assessment of income a resident received from certain charitable or voluntary sources. This change arose as a direct consequence of the London bombings in 2007 where, following a review of the treatment of charitable and personal injury payments within Income Support and Jobseekers Allowance, it was agreed to provide for a full disregard of such payments of income in the financial assessment for residential care charging. The Regulations seek to introduce from 11th April 2011 a corresponding disregard in the Assessment of Resources Regulations applicable to Wales to put residents who may be in receipt of such payments on a level footing with elsewhere in the UK.

Option 1: Do Nothing

39. The treatment of such payments would remain out of line with the Income Support Regulations and the application of the assessment regulations applicable elsewhere in the UK.

Cost

40. There would be no cost implication for local authorities from this option.

Benefits

41. There would be no changes to the way such payments are currently treated and so no changes for local authorities to consider as part of their financial assessment process.

Option 2: Make the Legislation

42. This option will bring the Assessment of Resources Regulations applicable in Wales in line with the Income Support Regulations and the Assessment of Resources Regulations applicable elsewhere in the UK and ensure the treatment of such charitable payments is fair and equitable.

Costs

43. Precise information on the financial implications for local authorities is not available as such information is not held by authorities. However, individuals receiving such payments will be the exception rather than the rule and even fewer would be in residential care. Consequently, the numbers involved in Wales will be very small. Additionally, complex individual cases would be eligible for continuing healthcare that will be fully funded by the NHS and not local authorities. On balance, therefore, it is considered that in view of this the financial implication for local authorities will be negligible.

Benefits

44. Making the Regulations puts the treatment of these charitable and voluntary payments within financial assessments for residential care on a fair and equitable basis with elsewhere in the UK. It allows residents in receipt of these to retain them for their benefit as intended rather than them being taken into account for residential care charging.

Competition Assessment

45. Not applicable.

Post Implementation Review

46. The effect of the changes will be monitored by officials via their regular written contact with local authority financial assessment officers.

Summary

47. These Regulations will benefit those in residential care in Wales. They will ensure that all residents with capital of £22,500 or less no longer need to contribute towards their care costs from these funds. They will also enable residents to retain an additional amount of their income for their personal expenses in the form of an increase in PEA.

The proposals will also provide greater clarity for local authorities on the treatment of capital below the capital limit, as well as ensuring that those in receipt of personal injury awards or payments from charitable or voluntary sources are treated in line with the Income Support Regulations and on a par with the arrangements for financial assessments for residential care charging in the rest of the UK.