

Explanatory Memorandum to the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before Senedd Cymru 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 Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022 in relation to charging for social care and support under Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits justify the likely costs.

Julie Morgan MS
Deputy Minister for Health and Social Services
4 February 2022

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 wellbeing of people who need social care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of families and communities.

Under the Act, local authorities have discretion to charge for the care and support they provide or arrange for a person, or the support they provide or arrange for a carer. They also have discretion to set a contribution or reimbursement for direct payments they provide to a person to enable them to arrange their care and support themselves. This applies to care and support in a person’s own home, within the community, or in residential care. Where an authority wishes to apply this discretion to set a charge, contribution or reimbursement, regulations made under the Act govern the arrangements applicable to this.

The Care and Support (Charging) (Wales) Regulations 2015 “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 Act. These came into force on 6 April 2016. The Care and Support (Financial Assessment) (Wales) Regulations 2015 “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.

Since then a number of policy changes have been agreed which required amendments to the:

Charging Regulations - Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019; the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 that came into force on 6 April 2020 and the Care and Support (Charging) (Wales) (Amendment) Regulations 2021.

Financial Assessment Regulations - Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019.

The regulations subject to this Explanatory Memorandum are required to introduce an update to the Charging Regulations to reflect an uplifted sum of money that applies to people in receipt of residential social care and support and the Financial Assessment

Regulations to reflect a number of Compensation Schemes that have come into effect since these regulations were last updated.

2. Matters of special interest to the Legislation, Justice and Constitution Committee.

None.

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (section 61) of the Act. Powers enabling the making of regulations in respect of financial assessments in relation to charging are contained in Part 5 (sections 64(1) and 65) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 11 April 2022.

4. Purpose and intended effect of the legislation

The overall purpose of the amending regulations is to effect a change to the existing regulations to apply an uplift to the minimum income amount in residential care charging and to reflect new pieces legislation on compensation schemes. The Care and Support (Charging) (Wales) Regulations 2015 “the Charging Regulations”. These govern local authorities’ determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities’ determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these. The Care and Support (Financial Assessment) (Wales) Regulations 2015 the “Financial Assessment Regulations” govern local authorities’ assessment of a person’s financial resources to meet a charge.

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. 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.

5. Consultation

Consultation on amending the Charging Regulations is not required. A consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. Changes do not reflect a change in Welsh Government policy but instead act to update regulations to keep pace with the uplifts applied to state pension and benefits. As such consultation on an annual basis is not undertaken.

Consultation on amending the Financial Assessment Regulations is not required. Amendments could affect an extremely small number of individuals, and does not reflect a change in Welsh Government policy and are merely a technical adjustment to ensure the regulations accurately reflect each compensation schemes identified above to ensure any awards made to individuals, are protected from social care and support charging.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing the changes will ensure the Charging Regulations and the Financial Assessment Regulations are up to date and can operate effectively.

MINIMUM INCOME AMOUNT (MIA)

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to making these changes:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce changes to the Charging Regulations in relation to charging for care and support. This is the preferred option.

Background

Where a person is in residential care, and in receipt of financial support from their local authority towards the cost of their care, they are required to contribute towards this cost from the majority of their weekly income. However, under the Charging Regulations a person must be able to retain an amount of their income to spend on personal items as they wish. This is known as the MIA. The level of the MIA is reviewed annually to take account of annual uplifts to UK state pensions and welfare benefit payments, which form the basis of care home residents' weekly income. Taking these uplifts into account, Ministers propose to increase the MIA from 11 April 2022 from its current level of £33.00 per week to £35.00 a week. This will allow residents to retain a slightly higher amount of their income to spend as they wish on personal items.

Option 1 – do nothing

This option maintains the level of the MIA at £33.00 per week. As a result all of the increase in a resident's weekly income from April 2022 as a result of their uplifted state pension and welfare benefit payments will benefit their local authority in the form of charge income to pay towards their care.

- **Costs**

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £3.5 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019 (no data of this nature has been collected since that time) This would be due to the increased income residents would have resulting from the uplifts in the amount (£4.25 pw) of the basic state pension alone. Residents in this position would not retain any of the uplift applied.

- **Benefits**

There would be no benefits for care home residents supported by their local authority as they would be unable to retain any of the increase applied to their state pension nor would those seeing uplifts applied to any welfare benefit they receive, see a benefit. Instead these funds would increase residents' weekly contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

Option 2 – make the amending regulations

This option would make the amending regulations so as to increase the MIA from its current level of £33.00 to £35.00 per week. This would allow local authority supported residents to retain around half of the uplift they receive to spend on personal items as they wish.

- **Costs**

This option results in local authorities receiving a smaller increase in charge income, than if the regulations were not made, of around an estimated £1.9 million per annum through contributions from the 16,144 residents over state pension age alone. This would be due to the increased income residents would have resulting from the uplifts in state pensions. Residents would retain a proportion (collectively around £1.6 million per annum) of this uplift to spend on personal items as they wish.

- **Benefits**

This option shares, almost equally, the increased income which local authority supported residents would have from April 2022 as a result of uplifts to their state pensions. Residents in this position would be able to retain £2.00pw of this uplift to spend on personal items, while authorities would receive the balance in increased contributions from residents towards the cost of their care. Also, an increase in the MIA would lessen the impact of recent cost of living increases and ensures the value of the MIA is not eroded in real terms.

Conclusion

In view of the financial benefit seen by care home residents, while enabling local authorities to receive an increase in revenue to use towards the provision and quality of the care and support they provide or commission, “Option 2 - make the amending regulations” is recommended. As a result local authorities are set to gain an increase in residential care charge income of some £1.9 million pa from care home residents in receipt of the basic rate state pension alone. It also ensures care home residents in receipt of such pensions are able to retain, collectively, around £1.6 million pa to spend as they wish.

COMPENSATION SCHEMES

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to making these changes:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce disregards to the Financial Assessment Regulations to ensure recipients of payments, made under the named schemes, are not required to use these payments towards the cost of their social care and support. This is the preferred option.

Background

A number of compensation schemes have been put in place in recent years that need to be recognised in the Financial Assessment Regulations. Schemes are typically new pieces of legislation introduced by other UK governments, or the Welsh Government, that make monetary awards to individuals who have been caused harm, abuse or injury and are to receive payments in recognition of their suffering.

Compensation schemes need to be recognised in legislation to ensure that, where a person is to receive an award under one of the listed schemes, the payment they received should be disregarded when assessing income and/or capital as part of their financial assessment. The schemes are identified in Part 1.

Option 1 - do nothing

This option would mean that no changes are applied to the forms of capital or income that must be disregarded in full in a person’s financial assessment. Any compensation payment a person receives from such schemes would form part of their eligible financial resources and be taken into account in full in assessing their ability to meet a charge for social care and support.

- Costs

There would be no new cost implications for local authorities from this option. Instead they would be able to take the full amount of these compensation payments into account in financial assessments which could result in a person having to pay a higher charge for their social care and support.

- Benefits

This option provides no benefit to individuals in receipt of such payments and would instead deny them the ability to benefit from these payments made to compensate for the harm or injury they have suffered. Instead it is possible that a person could be required to pay a charge for the care and support they require which would not have otherwise been the case.

Option 2 – make the amending regulations

This option would make amending regulations so that any amount of compensation received by a person from one of the names schemes can be retained in full and not used towards the cost of their care and support.

- Costs

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

- Benefits

This option would disregard the full value of compensation payments received by a person from any of the named schemes. As a result they would benefit in full from payments awarded as they were intended.

Conclusion

In view of the fact that awards made under compensation schemes are intended to recognise suffering, harm and abuse caused to a person, Option 2 – “make the amending regulations” is recommended as both appropriate and necessary in such circumstances.

Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
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 Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

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