

Explanatory Memorandum to the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 in relation to charging and financial assessment 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 AM

Deputy Minister for Health and Social Services

13 February 2019

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 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 their 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.

In determining a charge, contribution or reimbursement the Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Financial Assessment Regulations”) govern local authorities’ financial assessment of a person’s financial means to meet these when exercising their discretion to set them. These also came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the Charging and Financial Assessment Regulations. Amending regulations to effect those changes (the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017, and the Care and Support (Charging) (Wales) (Amendment) Regulations 2018) came into force on 10 April 2017 and 9 April 2018 respectively.

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the Charging Regulations, and the Financial Assessment Regulations, to reflect uplifted sums of money that apply to specific areas of charging for social care and support and to introduce a full disregard of certain forms of capital in a financial assessment.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no specific matters of special interest.

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments, and the financial assessment to determine these, 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 (sections 61, 62, 66, 67 and 69) 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 8 April 2019.

4. Purpose & intended effect of the legislation

The overall purpose of the amending regulations is to effect a number of changes to the existing regulations as a result of certain policy decisions. These existing regulations 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. In addition they govern, in both cases of setting a charge, the assessment of a person's financial means to meet these where they are set.

The changes the amending regulations make are:

The Care and Support (Charging) (Wales) Regulations 2015

Regulation 2(a) to 2(e) of the amending regulations amend the Charging Regulations as follows:

- uplift from £80 to £90 the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the Charging Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;
- uplift from £40,000 to £50,000 the relevant capital limit as it applies to charging for residential care by amending regulation 11 in paragraph 2(a) of the Charging Regulations. This is to implement the third and final stage in delivering a key commitment in the Welsh Government's *'Taking Wales Forward'* programme to put in place a £50,000 capital limit in charging for residential care by the end of its current term;
- uplift from £28.50 a week to £29.50 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 of

the Charging Regulations. 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 pension and welfare benefits.

The Care and Support (Financial Assessment) (Wales) Regulations 2015

Regulation 3 of the amending regulations amends the Financial Assessment Regulations as follows:

- in Schedule 2 (capital to be disregarded) after paragraph 34 make an insert, is to be applied as paragraph 35, which requires any payment made to a person in relation to their disabilities which have been caused by their mother taking during pregnancy a preparation containing the drug “Thalidomide” to be disregarded in full in a financial assessment. Such payments are already disregarded under paragraph 73 of Schedule 10 to the Income Support Regulations 1987.

5. Consultation

A five week consultation on the principle of the changes being made by the amending regulations was originally held between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These are being addressed in the implementation of the amendments being made.

A summary report of the consultation responses is available on the Welsh Government website at: <https://beta.gov.wales/charging-social-care>

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The four changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the Charging Regulations and the Financial Assessment Regulations operate in accordance with the policy intention.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to the four changes identified above:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce a number of changes to the Charging Regulations and the Financial Assessment Regulations relating to charging for care and support, and financial assessment for charging for care and support, under the Act. In each case, this is the preferred option.

Maximum Weekly Charge

Under the Charging Regulations a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the Charging Regulations limit these to a maximum amount. This is currently set at £80 per week. This provision was introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers have committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases to be received by care and support recipients through uplifted UK state pensions and welfare benefits, Ministers propose to uplift the level of the maximum by £10 a week to £90 a week from 8 April 2019. The additional income this will secure for local authorities will help meet increasing cost pressures associated with maintaining the level and quality of the care and support they provide or arrange.

Option 1 – do nothing

This option retains the maximum charge at its current level and halts progression towards Ministers' intentions to apply a £100 a week maximum charge by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- **Costs**

There would be no new cost implication for care recipients or local government from this option. It would, however, limit local authorities' ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This is at a time when recipients' income would have increased due to uplifts in state pension and welfare benefits.

- **Benefits**

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £80 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

Option 2 – make the amending regulations

This option would increase the level of the maximum charge by £10, from £80 per week to £90 per week. This would take account of increases applied from April 2019 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- Costs

Under this option there would be an additional cost to some of the 8,655 care recipients local authorities reported as at October 2018 as paying the current maximum charge of £80 a week. This option could generate up to an estimated £4.5 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs over the current maximum of £80 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- Benefits

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.5million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the Charging Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

Minimum Income Amount (MIA)

Where a person is in residential care, and is 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 8 April 2019 from its current level of £28.50 per week to £29.50 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 £28.50 per week. As a result all of the increase in a resident's weekly income from April 2019 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- Costs

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £2.6 million per annum in increased contributions from the 15,371 care home residents recorded in data published by Welsh Government on October 2018. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts made.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and benefits. Instead these funds would

increase their contributions to local authorities for the cost of their care, so as to increase 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 £28.50 per week to £29.50. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits to spend on personal items as they wish.

- **Costs**

This option results in local authorities receiving a smaller increase of up to an estimated £1.8 million per annum in charge income through contributions from the 15,371 residents referred to in option 1. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- **Benefits**

This option splits the increased income which local authority supported residents would have from April 2019 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £1 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Capital Limit

The capital limit used in relation to charging for residential care, determines whether a resident pays the full cost of their care and accommodation or whether their local authority is required to provide financial support towards this cost. Under the Charging Regulations the capital limit is set at £40,000. This current level applied the second stage of implementation of a key '*Taking Wales Forward*' commitment to uplift the capital limit applicable in charging for residential care to £50,000 within the term of this Assembly. This is to enable residents to retain more of their savings and other capital without this having to be used to pay for their care and accommodation.

Ministers plan to increase the capital limit in relation to charging for residential care from its currently level of £40,000 to £50,000 as the third and final stage of implementation of the commitment to put in place a capital limit of £50,000.

Option 1 – do nothing

This option involves the amending regulations not being made so that the capital limit applicable in charging for residential care remains at its current level of £40,000. This would also halt progress in delivering on a key Government commitment.

- **Costs**

There would be no new cost implications for local government from this option, neither would there be any change in the charging arrangements by which residents pay for their residential care and accommodation.

- **Benefits**

This option provides no new benefits to people in care homes. Individuals would be unable to retain any additional amount of their capital than at present.

Option 2 – make the amending regulations

This option would make the amending regulations so that the capital limit applicable in charging for residential care increase from £40,000 to £50,000 from 8 April 2019. People in residential care would from this date be eligible for local authority support towards the cost of their residential care earlier than at present.

- **Cost**

Based on independent research commissioned by the Welsh Government, it is estimated that this increase would cost local authorities an additional £7 million per annum from 2019-20. This would be to fund at an earlier point the residential placements of those benefiting from an increase to the limit. This amount is consistent with the additional spend local authorities have reported in the data collected to support implementation of this policy. Consequently, an additional £7 million has been included recurrently in the Revenue Support Grant for local authorities from 2019-20 to support implementation.

- **Benefits**

This option enables people requiring residential care to retain a higher level of their capital to spend as they wish and completes the delivery of the Welsh Government's commitment to increase the capital limit in charging for residential care to £50,000. Residents affected by this change would be able to retain up to an additional £10,000 of their capital without this having to be used to pay for their care.

Disregard capital payments made under or by a trust to people affected by the drug "Thalidomide"

Where a local authority uses its discretion and charges a person for some form of care and support they are to provide or arrange, or levies a reimbursement or contribution for the provision of direct payments to secure that care and support, the authority must undertake an assessment of the person's financial ability to pay these. In undertaking such an assessment the Financial Assessment Regulations specify how particular forms of income and capital a person may have are to be treated for the purposes of that assessment. These regulations set out a number of disregards of forms of income and capital that must be applied (either in part or in full). This includes capital payments made in the form of compensation awarded to individuals for loss or harm they have suffered in a particular situation.

Ministers propose to apply a new addition to the forms of capital to be disregarded in full in a financial assessment. This is to ensure capital compensation payments made to a person from a trust, established for the purpose of giving relief or assistance to people whose disabilities are the result of their mother taking during pregnancy a preparation containing the drug "Thalidomide", are not required to use any of this money towards a charge for care and support, or a reimbursement or contribution for receiving direct payments to secure that care and support. It is not known how many people in Wales receive payments from such trusts or if they, how many if any are charged for social care and support.

Option 1 - do nothing

This option would mean that no change is applied to the forms of capital that must be disregarded in full in a person's financial assessment. Any capital compensation

payment a person receives from such a trust would form part of their eligible capital and would be taken into account in full in assessing a person's ability to meet a charge, reimbursement or contribution.

- **Costs**

There would be no new cost implications for local government from this option. Instead they would be able to take the full amount of these compensation payments into account in financial assessments with a resultant increased charge income.

- **Benefits**

This option provides no benefit to individuals in receipt of such payments and could instead deny them the ability to benefit from these payments made to compensation for the harm they have suffered. Instead it is possible that a person could be required to pay a charge, reimbursement or contribution 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 capital compensation received by a person from a trust established to assist people affected by the drug "Thalidomide" can be retained in full and not used towards the cost of their care and support

- **Costs**

There would be no new costs implications for local government from this option.

- **Benefits**

This option would disregard in full capital compensation payments received by a person from trusts to assist them in connection with a disability caused by their mother taking a preparation containing the drug "Thalidomide" during pregnancy. It would therefore enable them to benefit in full from this payment given the harm they have suffered.

Conclusion

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount and the capital limit and, the financial benefit for all care and support recipients of introducing a full disregard for capital compensation payments made by a trust in connection with the drug "Thalidomide", "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:

	Welsh Government £m p.a.	Local Authorities £m p.a.	Care Recipients £m p.a.
Maximum Weekly Charge	0	4.5	(-4.5)
Minimum Income Amount	0	1.8	0.4
Capital Limit	(-7.0)	0	7.0
Capital	0	0	Full level of

Compensation Payments			payments made
Total	(-7.0)	6.3	2.9

Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017. The documents can be found at: <https://beta.gov.wales/charging-social-care>

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 will 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.