

National Assembly for Wales
Legislation Committee No. 5

Proposed Social Care Charges (Wales)
Measure

Stage 1 Committee Report
November 2009



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Legislation Committee No. 5

Committee Members

Mark Isherwood (Chair)	Welsh Conservative Party	North Wales
Mick Bates	Welsh Liberal Democrats	Montgomeryshire
Alun Davies	Labour	Mid and West Wales
Lesley Griffiths	Labour	Wrexham
Darren Millar	Welsh Conservative Party	Clwyd West
Leanne Wood	Plaid Cymru	South Wales Central

Summary of conclusions and recommendations

Please refer to the relevant section of the Report for our full recommendations.

General principles of the proposed Measure and the need for legislation

i. We agree with the general principles of the proposed Measure. We note the broad support for the proposed Measure in the evidence we received. We agree that there is a need for the proposed Measure to address the inconsistency in charging policies across the local authorities to ensure a fairer system for those who pay for domiciliary care services. (Paragraph 3.14.)

ii. However, we also acknowledge and share some of the key concerns raised about how the proposed Measure will be implemented. These have to be addressed when the regulations are being developed and we therefore welcome the Deputy Minister's commitment to consult widely on the draft regulations. (Paragraph 3.15.)

The Scope of the proposed Measure

iii. We welcome the Deputy Minister's intention to bring all those in receipt of direct payments within the scope of the proposed Measure, once the Assembly has acquired the necessary legislative competence via the draft Legislative Competence Order on Carers. (Paragraph 4.7.)

Section 1 and 2 – Charging for Services and the Maximum charge

iv. While we note the concerns expressed about how the maximum charge should be determined, we are satisfied that the delegation of powers to Welsh Ministers will allow the required flexibility to adapt the policy for charging, to ensure it meets the policy objectives of the Government of the day. (Paragraph 5.21)

v. However, we agree with the Coalition on Charging Cymru and other witnesses that the underlying principle of the proposed Measure should be that no service user should be worse off as a result of its introduction. The proposed Measure should be amended to include this principle. (Paragraph 5.22)

vi. We believe that any regulations under section 2 of the proposed Measure should be subject to the affirmative procedure, which would strengthen the Assembly's opportunity to scrutinise and decide on the appropriateness of Welsh Ministers' proposals. (Paragraph 5.26)

vii. In light of the evidence heard, we also recommend that Welsh Ministers monitor the impact of the regulations and that the proposed Measure should be amended to include a duty to review the regulations on an annual basis. (Paragraph 5.27)

Section 3 - excluding categories of persons, service or combination of services from charging

viii. We believe that Welsh Ministers should be given the power to decide which categories of persons, service or combination of services should be excluded from charging. Again, this will give Welsh Ministers the power to adapt the policy according to changing circumstances. (Paragraph 6.18)

ix. However, we are also concerned that there are significant equality implications raised by this provision. We therefore believe that any regulations under this section should be subject to the affirmative procedure. (Paragraph 6.19)

Section 4 - the right of service users to have their means assessed

x. We acknowledge the views of witnesses on section 4. These mainly concern how means testing will be implemented and what income may be disregarded. These are issues which will be addressed through regulations. (Paragraph 7.22)

.xi. Given the potential impact of these regulations on the standard of living of people receiving care, we recommend that any regulations made under section 4 should be subject to the affirmative procedure. (Paragraph 7.23)

Section 5 - provision of information about charges and means testing

xii. We welcome the express obligation on local authorities to provide the information in a range of accessible formats in the proposed Measure and recommend that it should also include an obligation to provide the information in plain language, easy-read versions or face-to-face. (Paragraph 8.17)

xiii. We are concerned that service users may on occasion be charged for services they have received before they are informed about the outcome of their financial assessment. We therefore recommend that section 5 should be amended to oblige local authorities to provide information about charges the service user will be expected to pay and the outcome of any means testing before the charge is levied. (Paragraph 8.19)

Section 6 - the right to request a review of charging decisions

xiv. We recommend that section 6 should be amended to make it clear that carers or an independent advocate could request a review on behalf of the service user. (Paragraph 9.14)

xv. We agree with the evidence presented that the proposed Measure does not distinguish clearly between a right to “a simple review”, which is set out in the proposed Measure, and a right to an appeal, and what the appeal mechanism should look like. (Paragraph 9.15)

xvi. We therefore recommend that section 6(2) is amended to give individuals a right to an appeal as distinct from a review. We also recommend that any

appeal mechanism should be independent of the local authority. (Paragraph 9.15 and 9.16)

The financial and wider implications of the proposed Measure

xvii. We note the evidence from local authorities, the voluntary sector and care agencies, regarding the potential impact of the proposed Measure on local authorities' care services. We share their concerns that if the proposed Measure is implemented, and if the reimbursement is insufficient, it could lead to local authorities raising the eligibility criteria for care services, limiting what is available to those in need. (Paragraph 12.41)

xviii. As recommended above, our view that no service user should be worse off in respect of the amount they pay for their services, applies equally here. No user should suffer any reduction in the level of services they receive. (Paragraph 12.42)

xix. We realise that the proposed Measure will not affect local authorities' discretion to set their own eligibility criteria, as it is not within the scope of the Assembly's legislative competence. However we believe that the Welsh Government should aim to achieve a greater level of consistency across Wales in this area as well, otherwise the unfairness will persist. We therefore recommend that the Welsh Government should seek legislative competence in this area as well. (Paragraph 12.43)

xx. In light of these concerns and their likely financial consequences, we stress the importance of the Welsh Government's commitment "to reimburse local authorities for the cost of any additional financial burden" We note the concerns of the WLGA / ADSS Cymru that this should not be at the expense of future funding of current services which they consider essential. (Paragraph 12.44)

1. Introduction

1.1. The Proposed Social Care Charges (Wales) Measure ('the proposed Measure') and Explanatory Memorandum were laid before the Assembly by the Deputy Minister for Social Services Gwenda Thomas AM on 29 June 2009 in accordance with Standing Order 23.14

1.2. At its meeting on 30 June 2009, the Business Committee agreed to refer the proposed Measure for detailed consideration to Legislation Committee No.5 ("LC5") and that the LC5 must report on the proposed Order by no later than 3 November 2009.

Scope of the Committee's scrutiny

1.3. We considered the proposed Measure for the first time on 7 July 2009 when we agreed the following framework for our work:

1.4. The Committee would consider:

- (i) the need for a proposed Measure to deliver the stated objectives:
 - to provide for the introduction of a new regime for charging which will ensure that local authorities across Wales adopt a more consistent approach to charging service users for non-residential social care services;
 - to establish a new legislative framework which will allow for detailed provisions to be set out by Welsh Ministers in regulations and statutory guidance to be made under the proposed Measure, covering the types of services and client groups which are excluded from charging, standard or maximum charges, and the financial assessment process (means testing);
 - to introduce a clear and consistent approach in relation to the information users receive from local authorities about their charges and the way in which request to review will be handled.
- ii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its stated objectives;
- iii) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- iv) the views of stakeholders who will have to work with the new arrangements

Evidence

1.5. The Committee sent a consultation letter to key stakeholders within the field of Social Care Charges and those who may have an interest in the proposed Measure. A copy of the consultation letter is attached at Annex 1. A general call for evidence was also issued. The deadline for consultation responses was Friday 28 August. The Committee received 25 written

submissions from organisations. List of Consultation Responses and Additional Evidence is attached as Annex 2.

1.6. The Committee took oral evidence from a number of witnesses. The schedule of oral evidence sessions is attached as Annex 3.

1.7. At the request of the Committee, further written evidence was received from Welsh Local Government Association. Details of additional evidence submitted are attached as Annex 3. Supplementary written evidence from Deputy Minister for Social Services dated July 2009 is attached at Annex 4.

1.8. The Subordinate Legislation Committee and Finance Committee have also reported on the proposed Measure. Their reports are at Annex 5 and 6 respectively.

1.9. The following report and recommendations represent the conclusions we have reached based on the evidence received during the course of our work.

2. Policy Background

The National Assembly's legislative competence to make the proposed Measure

2.1. The principal power to enabling the National Assembly to make a Measure in relation to social care charges for non-domiciliary care is contained in matter 15.1 of Schedule 5 to the Government of Wales Act 2006. This Matter is set out in full in Annex 7.

Background to the proposed Measure

2.2. This is a Government proposed Measure and seeks to ensure a more consistent approach to charging for non-residential social care services following concerns that charges made by local authorities in Wales vary widely depending on where the service user lives.

2.3. The proposed Measure would only apply to services provided by local authorities and not to those delivered by private providers. The Welsh Government has indicated that its current intention is that the proposed Measure will not be used to regulate charging for children's services.

2.4. Non-residential social care services that could fall within the scope of this proposed Measure include:

- Home care;
- Day care centres;
- Transport;
- Meals;
- Laundry; and
- Rehabilitation services.

2.5. Much of the proposed Measure is enabling in nature, and it will therefore be for Welsh Ministers to bring forward secondary legislation and statutory guidance to provide the detail within the new legislative framework at a later date.

Explanatory Memorandum

2.6. The Explanatory Memorandum states that the proposed Measure will provide Welsh Ministers with the power to make regulations on the following:

- “...a) the types of services for which charges may or may not be made (e.g. home care, day care centres, transport, meals, laundry, rehabilitation services);
- b) the client groups that may or may not be charged (e.g. those in receipt of certain benefits, carers, those over a certain age threshold);
- c) the financial assessment process (including what may and may not be taken into account and the minimum level of income that service users must be left with after charging);
- d) the standard or maximum charge that may be made for an individual service or for any package of services to an individual;
- e) the setting of a maximum charge or a range of maximum charges for individual service users;

- f) the exemption from charging of certain prescribed services for a prescribed period of time;
- g) reviews of charging decisions taken by local authorities...”

2.7. The Explanatory Memorandum clarifies that “...under the proposed Measure local authorities will continue to be able to set such charges for non-residential social care services as they consider reasonable.” However, this discretion will be subject to “specific limitations” to be set out in future regulations. The Explanatory Memorandum states also that local authorities will still be able to decide not to charge at all or to charge less than what would be reasonable should they decide to do so.

2.8. According to the Explanatory Memorandum, the proposed Measure will oblige local authorities to provide information about charges. Local authorities will be required to

“...provide existing and prospective service users with information about the services for which charges are made, their standard charges and means testing. This information should be provided free of charge in a variety of several accessible formats.”

2.9. Where local authorities decide to charge a user, they must provide information to the person about the proposed charge and how it can be reviewed. The Explanatory Memorandum states:

“...this will introduce a clear and consistent approach in relation to the information users receive about their charges and the way in which requests to review them will be handled.”

3. General principles of the proposed Measure and the need for legislation

3.1. The majority of evidence received in relation to the general principles of the proposed Measure was positive. There is broad support from the statutory and voluntary sectors, as well as service users, for any legislation that would provide some uniformity in charging for non-residential social care services across Wales. It would introduce a fairer system and address inconsistencies in the approach of local authorities for charging.

3.2. The Welsh Local Government Association (WLGA) and the Association of Directors of Social Services (ADSS) qualified their support by expressing concern about the financial implications of the proposed Measure¹ (addressed in greater detail below: section 12). Voluntary sector representatives have also raised concerns about the potential knock-on effect for services if local authorities' are not adequately reimbursed for the loss in income from limiting charging.

3.3. Several witnesses referred to the evidence of the inconsistencies presented in the LE Wales report which was commissioned by the Welsh Government to inform the development of the proposed Measure. Age Concern Cymru and Help the Aged in Wales presented it as follows:

“Whilst there is a need to ensure that services are tailored to reflect different local contexts, a variation of £16.20 to £200 in maximum weekly charge for homecare services levied by different local authorities, with 7 authorities not setting a maximum charge at all, is evidently inequitable and far too large to be defended in terms of differences in the cost of providing or commissioning services. In addition being required to provide a contribution of £200 or more per week for care services would be likely to cause the majority of people or their family significant financial hardship.”²

3.4. The Care Council for Wales agrees that there is a need for the proposed Measure to promote a fairer system for service users and carers and that it should be “easier to explain and to administer by the social care workforce”. However they also raise a caution:

“Inconsistencies will, of course, continue to exist as Councils will still be able to make local policy in relation to eligibility criteria for services. Action may need to be taken to ensure that Councils have sufficient resources to implement the policy change in order to avoid tightening of eligibility criteria to “afford” the change.”³

3.5. Age Concern Cymru and Help the Aged in Wales also believed that the fact that the proposed Measure does not address potential variations in eligibility criteria was a “significant limitation” of the proposed Measure. By not addressing this, the proposed Measure does not go far enough in providing consistency across Wales.⁴ Scope Cymru also said:

¹ WLGA and ADSS, written evidence, SCC8

² Age Concern & Help the Aged in Wales, written evidence, SCC13

³ Care Council for Wales, written evidence, SCC1

⁴ Age Concern & Help the Aged in Wales, written evidence, SCC13

“Although we welcome greater consistency we hope eligibility thresholds will not be set too high because this will still lead to a postcode lottery.”

3.6. The proposed Measure is in the form of framework legislation which will empower Welsh Ministers to bring forward regulations to implement their policy. Many of the issues raised in evidence therefore relate to concerns about the kind of detail which will be included in the regulations.

3.7. The Wales Neurological Alliance is critical of the extent of the powers delegated to Welsh Ministers, in particular those relating to the levels of charges and the persons who are excluded from charges (see also below: section 11).⁵ Some respondents to the consultation stated that it was difficult to comment on the proposed Measure given that the detail of the provisions which would affect them would be brought forward in regulations at a later date.

3.8. Most witnesses therefore raised the importance of consulting widely on the draft regulations before they are made and the issue that the timescales for implementation were tight (the First Steps Package is due to be implemented by April 2011).

3.9. A few witnesses also commented that the proposed Measure was timely in that it will coincide with the restructuring of the National Health Service in Wales. The new trusts will cover more than one local authority and therefore it makes sense that on discharge, there should be less noticeable differences in the charges to service users across the area of the health trust.

3.10. The Older People’s Commissioner welcomes the proposed Measure as a means of addressing the “post code lottery”. She makes a specific request for the Welsh Government or an Assembly Committee to undertake a full equality and human rights impact assessment of the proposed Measure.⁶

Evidence from the Deputy Minister

3.11. The Deputy Minister stated that she firmly believes that there is a need for this proposed Measure given the “significant variations” in how local authorities set their charges, the range of services that users have to pay for, and in the financial assessment process. She explained that they “cannot use the powers given to Welsh Ministers in section 7 of the Local Authority Social Services Act 1970 to achieve the degree of consistency and fairness that we are seeking”:

“we remain firmly of the opinion that the only way in which to deliver a consistent and fair approach to charging is by bringing forward this proposed Measure.”⁷

3.12. The Deputy Minister has given assurances that local authorities will be fully reimbursed and that they will not lose out as a direct result of the

⁵ Wales Neurological Alliance, written evidence, SCC21

⁶ Older People’s Commissioner for Wales, written evidence, SCC25

⁷ RoP, paragraph 7, 14 July 2009, Legislation Committee No.5

introduction of the proposed Measure.⁸ She also gave assurances that she would consult on the proposed regulations which will follow the proposed Measure, saying:

“...it is crucial that we consult widely with stakeholders.”⁹

3.13. With respect to the concerns regarding the discretion of local authorities to raise the eligibility criteria for services, the Deputy Minister explained that this was outside the scope of the proposed Measure and would remain within the discretion of local authorities.¹⁰

Our View

3.14. We agree with the general principles of the proposed Measure. We note the broad support for the proposed Measure in the evidence we received. We agree that there is a need for the proposed Measure to address the inconsistency in charging policies across the local authorities to ensure a fairer system for those who pay for domiciliary care services.

3.15. However, we also acknowledge and share some of the key concerns raised about how the proposed Measure will be implemented. These have to be addressed when the regulations are being developed and we therefore welcome the Deputy Minister’s commitment to consult widely on the draft regulations.

⁸ RoP, paragraph 86, 14 July 2009, Legislation Committee No.5

⁹ Ibid, paragraph 11

¹⁰ RoP, paragraph 206, 1 October 2009, Legislation Committee No.5

4. The Scope of the proposed Measure

4.1. Several witnesses questioned how the proposed Measure would impact on recipients of Direct Payments.¹¹

4.2. The Coalition on Charging Cymru raised the related issue of councils paying direct payments net of charges which, it says, may lead some service users to reduce their services if they cannot afford the charge.¹²

Evidence from the Deputy Minister

4.3. The Deputy Minister stated that the proposed Measure does not apply to those in receipt of direct payments, as the Health and Social Care Act 2008 extended the categories of persons to whom direct payments may be made beyond the scope of the competence set out in the Domiciliary Care Legislative Competence Order. Therefore not all categories of persons in receipt of direct payments would have been within the Assembly's legislative competence as it stands.

4.4. The Deputy Minister explained that this was due to the timing of the passage of the Health and Social Care Bill and the proposed LCO which proceeded through Parliament and the Assembly respectively at the same time. However, she is addressing this as the Welsh Government is seeking additional legislative competence to cover all categories of direct payments by means of the draft Legislative Competence Order on Social Welfare, which should receive Royal Assent in November 2009.¹³

4.5. The Deputy Minister has indicated her intention to table amendments during Stage 2 of the scrutiny of the proposed Measure to widen the scope of the proposed Measure to apply to the full range of direct payments.¹⁴

4.6. On the issue of paying direct payments net of charges, the Deputy Minister indicated that this related to the administration of direct payments, which is not within the scope of the proposed Measure. However, her officials are discussing it with the direct payment overview group and it will be addressed outside the framework of the proposed Measure.¹⁵

Our View

4.7. We welcome the Deputy Minister's intention to bring all those in receipt of direct payments within the scope of the proposed Measure, once the Assembly has acquired the necessary legislative competence via the draft Legislative Competence Order on Carers.

4.8. However, we note that the original Legislative Competence Order was drafted in such a way that did not allow sufficient flexibility to accommodate changes in the related Parliamentary legislation, the Health and Social Care Bill.

¹¹ Care Council for Wales, written evidence, SCC 1; Wales Neurological Alliance, RoP, paragraph 173, 24 September 2009

¹² Coalition on Charging Cymru, written evidence, SCC12

¹³ RoP, paragraph 266, 1 October 2009, Legislation Committee No.5

¹⁴ RoP, paragraph 23, 14 July 2009, Legislation Committee no.5; see also letter from the Deputy Minister, July 2009, (see Annex 4)

¹⁵ RoP, paragraph 153, 1 October 2009, Legislation Committee No.5

4.9. We believe that as the proposed Order on Domiciliary Care and the Bill were progressing through their respective parliamentary procedures to parallel timescales, it should have been possible to amend the proposed Order to take account of the definition included in the Bill. As this did not happen, we are concerned that it suggests a lack of communication between the UK Government and Welsh Government about the implications of Bills for Wales.

4.10. We believe that it also demonstrates the advantages of drafting legislative competence orders broadly in future. This would avoid having to seek additional powers through other Orders as the Deputy Minister has had to do now. Fortunately, on this occasion, we note that it should not delay the progress of the proposed Measure.

4.11. We note the dissatisfaction expressed about deducting charges at source for direct payments. We are satisfied with the Deputy Minister's explanation and that this issue is being dealt with outside the scope of the proposed Measure.

5. Section 1 and 2 – Charging for Services and the Maximum charge

5.1. The Explanatory Memorandum states that section 1 of the proposed Measure specifies:

“...a general rule of law that a local authority in Wales providing a service to which the Measure relates may charge for that service such an amount as it considers reasonable”.¹⁶

5.2. Section 2 of the proposed Measure provides that when considering what is a reasonable charge for a service, local authorities must comply with regulations to be made by Welsh Ministers which would control or set a maximum charge.

5.3. Ministers would be able to:

- set a maximum charge either for a service or combination of services to which the proposed Measure applies (section 2.(3)(a));
- set out a formula for determining the maximum charge (section 2(3)(b));
- or fix it in this way for a specified period of time (section 2(3)(c)-(e)).

Evidence from witnesses

5.4. The proposal to set a maximum charge, whilst welcomed as a step towards consistency, did cause some concern. The memorandum provided by the Coalition on Charging Cymru states:

“The regulations must also be clear that any maximum charge set by the Welsh Assembly Government applies for the full range and combination of services a family receives rather than for individual services, to ensure that people’s full contribution to local authority organised care does not amount to more than the maximum charge.”¹⁷

5.5. The Wales Carers Alliance believes that the provision should be tightened to state that the maximum charge is for any combination of services a service user receives including carers’ services.¹⁸

5.6. Some felt that any maximum charge could be seen as a target level for charges to reach or a standard charge.¹⁹ This could, in theory, result in some service users being worse-off as a result of the proposed Measure as their charge would increase.²⁰

5.7. The memorandum provided by the Coalition on Charging Cymru states:

“We are concerned also that the proposed maximum weekly charge of £50.00 may be interpreted by local authorities as the standard charge regardless of number of hours care provided or the income of the service user. Such a move could leave many disabled people worse off and introduce a new form of inequality where there is inconsistency and

¹⁶ Explanatory Memorandum, page 23

¹⁷ Coalition on Charging Cymru, written evidence, SCC12

¹⁸ See also The National Autistic Society Cymru, SCC11

¹⁹ Wales Carers Alliance, written evidence, SC22 ; The National Autistic Society Cymru, Wales; Older People’s Commissioner, written evidence, SCC25; Unison, written evidence, SCC3; Scope Cymru

²⁰ Wales Carers Alliance, written evidence, SC22

variation over the number of hours support bought from the charge imposed, albeit capped at £50 per week.”²¹

5.8. Diane and John Llewellyn, who are a service user and carer, also expressed concerns that introducing a maximum charge could have a negative effect. They state:

“We can’t presently identify any practical safeguards to prevent a service user being charged £50 for one hours care.”²²

5.9. Some witnesses questioned whether the proviso that it had to be “a reasonable charge” would offer sufficient protection against the possibility of local authorities raising charges which are not proportionate to the services received. The National Autistic Society Cymru stated:

“There is no definition or legal precedent regarding what is, or is not, a reasonable charge for social care. Any future regulations made by the Minister in respect of this Measure should be mindful of the fact that what is considered to be a reasonable charge from the perspective of a local authority may be completely unreasonable from the perspective of a service user.”²³

5.10. Some witnesses have suggested that a formula or structure for calculating maximum charges should appear on the face of the proposed Measure rather than giving the Deputy Minister the power to decide. For example, the Wales Carers Alliance states:

“The Measure should devise a formula or at least a structure for calculating maximum charges rather than deferring the decision to the Minister through Statutory Orders. Reasonable is difficult to define and is open to interpretation.”²⁴

5.11. They are also concerned that the Deputy Minister is not obliged to introduce a maximum charge.²⁵

5.12. The Coalition on Charging Cymru strongly urges that the underlying principle should be that no service user should be worse off as a result of the proposed Measure. They also suggested:

“Whatever is introduced, an independent impact assessment needs to be made to see whether it does meet the principles of consistency, simplicity, fairness and efficiency.”²⁶

5.13. Unison make a similar plea that any system has to be “fair, transparent and consistent throughout Wales to allow for equality of access”.²⁷

²¹ Coalition on Charging Cymru, written evidence, SCC12

²² Diane and John Llewellyn, written evidence, SCC4,

²³ The National Autistic Society Cymru, written evidence, SCC11; see also Age Concern & Help the Aged in Wales, written evidence, SCC13

²⁴ Wales Carers Alliance, written evidence, SCC22

²⁵ Ibid

²⁶ RoP, paragraph 143, Legislation Committee No. 5, 24 September 2009; see also Age Concern & Help the Aged in Wales, written evidence, SCC13

²⁷ Unison, written evidence, SCC3

5.14. The ADSS/WLGA memorandum states:

“We accept that some authorities already set a maximum charge whilst others do not. The power to set a universal maximum charge is clearly an easy way in which to bring some consistency to the system. However, arriving at what that maximum charge should be is not easy. The decision to set this using 2009-10 prices and current levels of demand has some merit in that a time frame needs to be found but we are concerned that levels of demand and the full effects of poor Council settlements may well mask the true costs of these changes that will not become clear for several years.”²⁸

5.15. In relation to the proposed £50 maximum weekly charge, they believe that more work is needed to clarify which services should be included within this maximum charge and what the appropriate amount should be.²⁹ All witnesses agree that there should be detailed consultation on the proposed regulations and the maximum level. Some suggest that the impact of the regulations on services and service users should be closely monitored once they are in place.

Evidence from the Deputy Minister

5.16. The Deputy Minister stated that the provisions for a maximum charge would not take away the discretion of local authorities to develop their own charging policies and to charge less than this. She stated:

“in my view, definitely no service user should lose out directly as a result of this proposed Measure.”³⁰

5.17. She explained that only two councils in Wales currently have maximum charges below the maximum weekly charge which she has proposed as part of the First Steps Improvement package (£50 per week), but that Rhondda Cynon Taf has proposed introducing a maximum charge of £75 a week from 1 August 2009. She explained that the fairer charging guidance introduced in 2002 and enhanced in 2007, already protects those on the lowest income, and the proposed Measure would introduce a statutory duty in respect of this.³¹

5.18. The Deputy Minister did not believe that local authorities would use the proposed Measure as an opportunity to view any maximum charge as a standard charge:

“Setting a reasonable charge is also subject to regulations. The existing fairer charging policy is required by law; I think that you are required by law to set a reasonable charge. This proposed Measure does not change that principle. While considering what a reasonable charge would be, we would not, for example, expect a local authority to charge more than it costs to deliver the service.”³²

²⁸ ADSS Cymru and WLGA, written evidence, SCC8

²⁹ See also Cardiff County Council, written evidence, SCC10; Torfaen County Borough Council, written evidence, SCC14

³⁰ RoP, paragraph 19, Legislation Committee No. 5, 14 July 2009

³¹ RoP, paragraph 182, Legislation Committee No. 5, 1 October 2009

³² RoP, paragraph 170, Legislation Committee No. 5, 1 October 2009

5.19. The Deputy Minister explained that this obligation will offer service users sufficient protection against being charged the full maximum rate regardless of the level of service they receive. She also dismissed any suggestion that local authorities could profit from the introduction of a maximum charge. The cost to local authorities of providing care services is around £350 million. Charges are raised to cover around 10 - 12% of the cost (£36 million).³³

5.20. In response to calls for free domiciliary care, the Deputy Minister stated that it was not affordable within their budget to abolish all charges:

“I believe that moving towards consistency and fairer charging is what we can afford to do at present.”³⁴

Our View

5.21. While we note the concerns expressed about how the maximum charge should be determined, we are satisfied that the delegation of powers to Welsh Ministers will allow the required flexibility to adapt the policy for charging, to ensure it meets the policy objectives of the Government of the day.

5.22. However, we agree with the Coalition on Charging Cymru and other witnesses that the underlying principle of the proposed Measure should be that no service user should be worse off as a result of its introduction. The proposed Measure should be amended to include this principle.

5.23. The regulation making power does give Welsh Ministers wide discretion in respect of identifying an appropriate level of charges or a formula. We therefore welcome the Deputy Minister’s commitment to consult widely on the draft regulations where the concerns raised can be properly explored.

5.24. We believe that the Regulatory Impact Assessment undertaken for any future draft regulations, will be key to identifying the most effective implementation option.

5.25. While a summary of consultation responses is normally included in Regulatory Impact Assessments, we request that Welsh Ministers commit to publishing the individual responses to the consultation so that they can be taken into account when the Assembly considers the draft regulations once made by the Welsh Ministers.

5.26. We believe that any regulations under section 2 of the proposed Measure should be subject to the affirmative procedure, which would strengthen the Assembly’s opportunity to scrutinise and decide on the appropriateness of Welsh Ministers’ proposals. (See also section 11 and the Report of the Subordinate Legislation Committee).

³³ Ibid, paragraphs 179-180

³⁴ RoP, paragraph 46, Legislation Committee No. 5, 14 July 2009

5.27. In light of the evidence heard, we also recommend that Welsh Ministers monitor the impact of the regulations and that the proposed Measure should be amended to include a duty to review the regulations on an annual basis.

6. Section 3 - excluding categories of persons, service or combination of services from charging

6.1. The Explanatory Memorandum states:

“Section 3(1) provides for Welsh Ministers to make regulations excluding certain categories of persons or services from charging, for example, because they are in receipt of a particular benefit or because they are of a certain age.”³⁵

6.2. The Deputy Minister has announced her intention to prohibit local authorities from charging for the provision of transport to day centres as part of her intended initial package of reforms, the First Steps Improvement Package which will be introduced from April 2011.

Evidence from witnesses

6.3. There was broad support for this provision, however, some witnesses also believe that the exclusion of certain groups of service users through the proposed Measure could be problematic in terms of risks of discrimination or breaching equality laws.

6.4. The Coalition on Charging Cymru memorandum states:

“Removing particular client groups from charging may be in breach of equality laws particularly in relation to age or disability. Furthermore types of service vary amongst service user groups with daycare being more oriented towards people with learning difficulties and some older people, whereas people with physical impairments are more likely to receive support at home...

Thus removing specific services may favour one group of people over another purely on grounds of impairment and historic approaches to service design and delivery.”³⁶

6.5. Mandi Glover, a service user also expressed reservations about this power – she was concerned that Welsh Ministers would have to exclude certain groups or services from charging.³⁷

6.6. Similarly, WNA was:

“...concerned that Section 3 [of the proposed Measure] gives a Welsh Minister and the Welsh [...] Government sweeping powers to include or exclude large groups of people who would be excluded from social care charges.”³⁸

6.7. Witnesses have suggested that decisions around the exemption of certain services and groups should be considered by an independent advisory group.

³⁵ Explanatory Memorandum, page 24

³⁶ Coalition on Charging Cymru, written evidence, SCC12

³⁷ Mandi Glover, written evidence, SCC18

³⁸ Wales Neurological Alliance, written evidence, SCC21

6.8. Some witnesses called for the exclusion of certain groups of service users to be included on the face of the proposed Measure. The Wales Carers Alliance memorandum states:

“Carers should be an excluded group for charging but cannot lose current rights, for example, right to an assessment. This needs to be equality tested and has the potential to discriminate between service users.”³⁹

6.9. The Wales Neurological Alliance believes that people living with neurological conditions, as well as other disabled people, should be excluded in this section. However they acknowledged that “the Welsh Assembly Government cannot afford to exclude large groups of people from charges.”⁴⁰

6.10. ADSS/WLGA memorandum states:

“Whilst we welcome a national approach to allow for clear and defined standards, there is also a need for local flexibility at the point of delivery, in order to decide who is entitled to support and what they are entitled to. Local Authorities will require further detailed guidance; ...In arriving at this decision better population modelling will be essential to understand the true impact and also robust communication and engagement with service users to be able to explain why some are exempt and others are not.”⁴¹

6.11. The Care Council for Wales states that:

“action may need to be taken to ensure that this [exclusions] does not adversely impact on service provision, e.g., act as a disincentive to the development of “exempted” services where charging policy income is currently relied on to contribute to resourcing the service.”⁴²

6.12. The Older People’s Commissioner makes a specific request for the Welsh Government or an Assembly Committee to undertake a full equality and human rights impact assessment of the proposed Measure.⁴³

6.13. We also note the comments of the Equality and Human Rights Commission to the Task and Finish Group’s Report to the Minister:

“we anticipate that, once the Assembly Measure is drawn up, it will be subject to an equality and human rights impact assessment; and will be presented to the policy gateway. We also advocate review by an independent scrutiny committee of AMs, as is the case for Bills in the Westminster Parliament where the Joint Committee on Human Rights fulfils this role for MPs and Peers.”⁴⁴

³⁹ Wales Carers Alliance, written evidence, SCC22; see also the National Autistic Society Cymru, written evidence, SCC11

⁴⁰ Wales Neurological Alliance, written evidence, SCC21

⁴¹ Written evidence, answer to (2b); see also Torfaen County Borough Council, written evidence, SCC14

⁴² Care Council for Wales, written evidence, SCC1

⁴³ Older People’s Commissioner for Wales, written evidence, SCC25, p7

⁴⁴ “Report to the Deputy Minister for Health & Social Services on the Options for Introducing More Consistency in Local Authority Charging for Non-residential Social Care Services”, Assembly Measure on Charging for Non-residential Social Care Task & Finish Group, February 2009

Evidence from the Deputy Minister

6.14.. When questioned on whether the proposal to exclude certain categories of users or services could breach equality laws, the Deputy Minister stated:

“Equality and the protection of human rights are integral considerations in all of the work of the Assembly Government and, as a result, the stakeholder task and finish group included representation from the Equality and Human Rights Commission. Due to the detailed provision in the revised charging regime, which will primarily be set out in the proposed regulation, it is more appropriate and useful for us to carry out a full equality and human rights assessment as part of the regulation-making process, and we intend to do that.”⁴⁵

6.15. The Deputy Minister did not believe that it would be necessary to involve a third party to help advise on equalities but she was open to the suggestion.⁴⁶

6.16. In respect of suspending charges on discharge from hospital, powers to make regulations under section 16 of the Community Care (Delayed Discharges etc.) Act 2003 would be used. However the Deputy Minister clarified that the Welsh Government has no immediate policy intentions to use this power and the six-week free homecare policy was implemented through the introduction of a local authority grant scheme and accompanying guidance.⁴⁷

6.17. The Deputy Minister explained the rationale behind introducing free transport to day services in future regulations as part of the First Steps Improvement Package. She stated:

“Although we do not know exactly how many people use transport to day centres, we know that around 32,000 people in Wales use day services. The cost of introducing this is £1.4 million. Therefore, I think that it would benefit people. There was also the cost of the administration of this—red tape—to collect around 40p a day. Therefore, it is sensible to introduce this, and it was an aspect of the proposed Measure that was welcomed by the task and finish group.”⁴⁸

Our View

6.18. We believe that Welsh Ministers should be given the power to decide which categories of persons, service or combination of services should be excluded from charging. Again, this will give Welsh Ministers the power to adapt the policy according to changing circumstances.

6.19. However, we are also concerned that there are significant equality implications raised by this provision. We therefore believe that any

⁴⁵ RoP, paragraph 186, Legislation Committee No.5, 1 October 2009

⁴⁶ Ibid, paragraph 188

⁴⁷ RoP, paragraph 50, Legislation Committee No.5, 14 July 2009

⁴⁸ Ibid, paragraph 52

regulations under this section should be subject to the affirmative procedure.

6.20. We suggest that the Equality of Opportunity Committee may wish to consider the draft regulations while they are subject to consultation by Welsh Ministers.

6.21. The Equalities and Human Rights Commission should also be consulted on the impact of the draft regulations, and their views taken into account when the Welsh Government undertakes the Regulatory Impact Assessment.

7. Section 4 - the right of service users to have their means assessed

7.1. Section 4 would give the service user the right to demand a means test. Service users would also retain the right to opt out of a means test. Currently, local authorities may offer a means test, but there is no obligation on local authorities to undertake one.

7.2. Section 3.5 of the LE Wales baseline assessment report explains the approach of local authorities to financial assessment of ability to pay. LE Wales found that it is quite similar and driven by the 2007 Fairer Charging guidance.

7.3. As part of the First Steps Package, the Deputy Minister has announced her intention to require local authorities to disregard Constant Attendance Allowance (CAA) and Severe Disablement Allowance (SDA) if the proposed Measure is approved.

7.4. Both benefits are for people who need high levels of support. Severe Disablement Allowance is paid to individuals who, prior to April 2001, were assessed as being 80 per cent disabled and who were unable to work for more than 28 weeks due to disability or illness. No new claims can now be made for Severe Disablement Allowance. Constant Attendance Allowance can be claimed by disabled people who need daily care and who receive Industrial Injuries Disablement Benefit or a War Disablement Pension.

Evidence from witnesses

7.5. The responses from local authorities indicated that it is already common practice for a local authority to carry out a means test of service users ability to pay for services. However, Cardiff County Council raised concerns that means testing would not address equality and fairness if the proposed Measure applies a maximum charge that can be imposed on service users who have capital over a certain amount. This, in the opinion of Cardiff County Council, would see those with substantial capital being subsidised for the services they receive.⁴⁹

7.6. Unison comment that means testing should take into account not just essential expenditure on food and heating, but also:

“...factors such as social inclusion, attending education classes, attending activities such as swimming and physiotherapy which are beneficial to people’s health and wellbeing.”⁵⁰

7.7. Pensioners Forum Wales was hostile to means testing, stating that:

“...means testing is used too freely as an exclusion tool to prevent those with needs from receiving care services.”⁵¹

7.8. WNA commented that whilst they supported means testing as a way of ensuring the most vulnerable are exempt from charges, it would be desirable

⁴⁹ Cardiff County Council, written evidence, SCC10

⁵⁰ UNISON Cymru, written evidence, SCC3

⁵¹ Pensioners Forum Wales, written evidence, SCC7

for the Welsh Ministers to use regulations to specify how a means test should be carried out.⁵²

7.9. Unison also requested that local authorities should make public the formula and explanatory notes that a local authority uses to determine what is a reasonable contribution to home care needs.⁵³

7.10. A number of the responses queried those welfare benefits specifically excluded in the proposed Measure from any financial assessment that may be carried out. Coalition on Charging Cymru states that Severe Disablement Allowance is no longer available to new claimants; whilst Constant Attendance Allowance is only payable to a minority of claimants. Therefore, relatively few service users are likely to be helped by these two benefits being disregarded.⁵⁴

7.11. The Coalition on Charging Cymru and Carers Alliance both express views on the benefits that should be disregarded in charging assessments. The Coalition on Charging Cymru states:

“In the task group COCC argued for DLA [Disability Living Allowance], AA [Attendance Allowance] and SDP [Severe Disability Premium] to be disregarded as these would have significant impact on service users and substantially reduce charges payable. It would also recognize that these benefits are paid in recognition of the increased costs associated with being disabled which go beyond care needs.”⁵⁵

7.12. This point was explained by Jenny Hambridge, a service user, in her oral evidence to the Committee:

“It is supposed to contribute to the cost of disability as a whole, not just your care costs, and yet it is seen by most local authorities, because they are allowed to charge against it under the regulations, as being only about care. That does not take into consideration all the costs of disability that we have to bear... We have heard a lot about the cost to local authorities, Government and society, of which we seem sometimes not to be a part. However, we are a part of society, and we have a right to this standard of living as well as the rest of the community.”⁵⁶

7.13 Scope Cymru also made this point:

“Disabled people feel very strongly that benefits should not be counted as income when applying the means test (they are in some local authorities) as these monies were intended to pay for other essential items like food and housing costs, not support.”⁵⁷

7.14. The Older People’s Commissioner, whilst stressing that there should be no direct or indirect discrimination on the grounds of age, notes that those

⁵² Wales Neurological Alliance, written evidence, SCC21

⁵³ UNISON Cymru, written evidence, SCC3

⁵⁴ Coalition on Charging Cymru, written evidence, SCC12, p6; also Torfaen County Borough Council, written evidence, SCC14; Mandi Glover, written evidence, SCC18

⁵⁵ Coalition on Charging Cymru, written evidence, SCC12

⁵⁶ RoP, paragraph 177-178, 24 September 2009, Legislation Committee No.5

⁵⁷ Scope Cymru, written evidence, SCC26

in receipt of occupational pensions will not have this income disregarded.⁵⁸ The Pensioners Forum Wales⁵⁹ and Coalition on Charging Cymru made the same point:

“We have also consistently argued that to disregard earned income but not occupational or personal pensions in charging assessments is a clear example of age discrimination and this should be addressed in the Measure or subsequent regulations.”⁶⁰

7.15. The Wales Carers Alliance memorandum states:

“In the Fairer Charging Policy issued by WAG in 2002 there is a section on page 16 XIV relating to services for carers and we would wish this to be written into the proposed Measure so that it becomes law. We would also wish Carers Allowance (which has replaced Invalid Care Allowance ICA) to be completely exempt from any part of a charge assessment.”⁶¹

Evidence from the Deputy Minister

7.16. As part of the First Steps Package, the Deputy Minister has announced her intention to make the statutory elements of the existing Fairer Charging Guidance mandatory. This would then “ensure that the local authority cannot opt out of it.”⁶² The Deputy Minister outlined the statutory elements of the guidance in her additional evidence to the Committee in July 2009 (see Annex 4).

7.17. The Deputy Minister explained the purpose of section 4 and whether pensions could be taken into account:

“This proposed Measure establishes a framework that provides for regulations to be made as to the assessment of a person’s means. These could include provision for the exclusion or treatment of certain types of income when assessing an individual’s ability to pay service charges. That provision could certainly include pensions. Initially, we are proposing to take the steps that I have outlined to improve the fairness and consistency of charging arrangements, but future Assembly Governments may want to consider whether it would be feasible to also require local authorities to disregard pension income.”⁶³

7.18. The Deputy Minister estimates that the cost of disregarding Constant Attendance Allowance and Severe Disablement Allowance is £3.6m.⁶⁴ She gave figures on recipients of these allowances in her evidence to the Committee on 1 October 2009, as follows:

- 190 recipients of CAA in Wales;
- 19,900 recipients of SDA in Wales.⁶⁵

⁵⁸ Older People’s Commissioner for Wales, written evidence, SCC25

⁵⁹ Pensioners Forum Wales, written evidence, SCC7

⁶⁰ Coalition on Charging Cymru, written evidence, SCC12

⁶¹ Wales Carers Alliance, written evidence, SCC22

⁶² RoP, paragraph 42, 14 July 2009, Legislation Committee No.5

⁶³ RoP, paragraph 112, 14 July 2009, Legislation Committee No.5

⁶⁴ Ibid, paragraph 88

⁶⁵ RoP, paragraph 218, 1 October 2009, Legislation Committee No.5

7.19. She explained that she had selected Constant Attendance Allowance and Severe Disablement Allowance as part of the First Steps package in order to focus on those with the highest levels of disability. She said:

“Both allowances will be phased out, but I feel that people who are now in receipt of those allowances should be considered in this proposed Measure.”⁶⁶

7.20. When questioned on whether she had assessed the impact of disregarding any other benefits, such as the Disability Living Allowance, Attendance Allowance and Severe Disability Premium, she explained that it would not be affordable in the current economic climate and gave the following figures on recipient numbers:

- 123,000 recipients of Attendance Allowance in Wales;
- 234,650 recipients of Disability Living Allowance.⁶⁷

7.21. However, it was not known how many of these persons received non-residential care nor how many were then charged for it.⁶⁸

Our View

7.22. We acknowledge the views of witnesses on section 4. These mainly concern how means testing will be implemented and what income may be disregarded. These are issues which will be addressed through regulations.

7.23. Given the potential impact of these regulations on the standard of living of people receiving care, we recommend that any regulations made under section 4 should be subject to the affirmative procedure.

⁶⁶ RoP, paragraph 104, 14 July 2009, Legislation Committee No.5

⁶⁷ RoP, paragraph 219, 1 October 2009, Legislation Committee No.5

⁶⁸ Ibid

8. Section 5 – provision of information about charges and means testing

8.1. Section 5 requires local authorities to provide information about charging and means testing to those on whom they decide to impose a charge. The information to be provided is listed in subsection 5(4). Welsh Ministers may add to this list through regulations.

8.2. The information must be made available in a range of accessible formats, free of charge and within twenty one days of the date on which the charge to which the statement relates was imposed (subsections 5(3) and 5(5)).

8.3. The Explanatory Memorandum to the proposed Measure states in relation to the requirement to provide information about charges and means testing:

“8.14 ... it is not anticipated that there will be any additional costs to local authorities in meeting these requirements in the proposed legislation.”⁶⁹

Evidence from witnesses

8.4. Some local authorities that submitted evidence commented that they already provide such information to service users, but would welcome guidance on exactly what information they should be providing in future.⁷⁰

8.5. Witnesses have expressed concerns to us about the timely provision of charging information and providing it in accessible formats and simple language.⁷¹ MS Society Cymru noted in its evidence that, in the past, service users have been provided with a care service without knowing how much they were expected to contribute towards its cost. It therefore welcomes the inclusion of section 5 within the proposed Measure.⁷²

8.6. While welcoming the provision in section 5 to make the information available in a range of accessible formats, the National Autistic Society states that section 5 should be amended to explicitly include the production of easy-read versions.⁷³

8.7. The Coalition on Charging Cymru raised the issue of timely information:

“Evidence suggests that service users are unaware of how their charges are calculated and do not know the outcome of the financial assessment until they receive their first invoice usually some weeks from the start of their care package. The Fairer Charging Guidance (2002) included the instruction that: “Charges should not be made for any period before an assessment of charges has been communicated to the user . . .” This has been widely ignored by many local authorities, leading to people facing frighteningly large bills for charges out of the blue. ...COCC would like to see the instruction to not charge for periods before the

⁶⁹ Explanatory Memorandum, page 21

⁷⁰ SCC20, p2 and SCC14, para 2(d)

⁷¹ Mandi Glover, written evidence, SCC18;

⁷² Multiple Sclerosis Society Cymru, written evidence, SCC23

⁷³ SCC11, p5

assessment has been communicated to service users made mandatory.”⁷⁴

8.8. The National Autistic Society Cymru also insists that there should be no retrospective levying of charges and that subsection 5(1) should be amended to this effect. They also believe that there should be no retrospective levying of charges during the period of an appeal.⁷⁵

8.9. The Domiciliary Care Association of Wales stated:

“We have had instances in which people have been re-assessed after a while and have ended up with a big back payment to make. Had they known at the time that it would cost them all that money, they would not have had it...The assessment is sometimes a couple of months down the line, and so people really do not know what they will have to pay. It is of great concern to them.”⁷⁶

8.10. The Wales Neurological Alliance states that it:

“... would like the proposed Measure to give service users the right to have the information explained face to face by a member of staff, rather than simply relying on written information. Service users are likely to have many questions and should have the right to query charges and their means testing with an individual.”⁷⁷

8.11. ADSS/WLGA disagree that there would be no additional costs to local authorities in implementing section 5 of the proposed Measure. Their memorandum states:

“There may be an additional cost to Councils to meet this good practice and we envisage that this will form part of the overall assessment of impact and costs to be reimbursed through moving from one position to the preferred.”⁷⁸

Evidence from the Deputy Minister

8.12. The Deputy Minister stated that the requirement to provide clear information was one of the clear messages from the task and finish group, and that they intended to build on existing good practice. She did not anticipate that section 5 should require any regular amendment, therefore, they have included the details on the face of the proposed Measure rather than leaving it to regulations.⁷⁹

8.13. The Deputy Minister agreed that ideally, services users should be informed about the likely charges before the service started. She stated:

“Ideally, the charging assessment should be made before the service starts, although that is not always necessary, and I would defend local

⁷⁴ Coalition on Charging Cymru, written evidence, SCC12

⁷⁵ The National Autistic Society Cymru, written evidence, SCC11

⁷⁶ RoP, paragraph 92, 1 October 2009, Legislation Committee No.5

⁷⁷ Wales Neurological Alliance, written evidence, SCC21

⁷⁸ ADSS Cymru and WLGA, written evidence, SCC8

⁷⁹ RoP, paragraph 114, 14 July 2009, Legislation Committee No.5

authorities that put in place a service that protects an individual in the best way possible. I also accept that, ideally, a service user should be informed of the charge before the service starts, but I do not think, for that reason, that it would be appropriate to place a prohibition on local authorities applying charges retrospectively, as there may be some good reasons for that.”⁸⁰

8.14. However, she indicated that she was open to tabling amendments to the proposed Measure or using regulations “to identify the circumstances under which it would be reasonable to start a service before a charge assessment is carried out.”⁸¹

8.15. The Deputy Minister stated that she did “not anticipate that providing this information will lead to any extra cost for local authorities”, as the need to provide this information was established in 2002 when the fairer charging regime was introduced by guidance.⁸² She referred to the LE Wales Report which shows that all local authorities provide some information, but they need to legislate to ensure the consistency and quality of the information prepared.

8.16. She also said, in respect of this issue:

“we are committed to reimbursing local authorities for the cost of the introduction of the proposed Measure.”⁸³

Our view

8.17. We welcome the express obligation on local authorities to provide the information in a range of accessible formats in the proposed Measure and recommend that it should also include an obligation to provide the information in plain language, easy-read versions or face-to-face.

8.18. Local authorities believe that this section may give rise to additional costs, although this will vary according to the local authority’s current practice. We therefore welcome the Welsh Government’s commitment to reimburse local authorities for the cost of the introduction of the proposed Measure and that any costs arising from this section should be seen as part of the overall reimbursement package.

8.19. We are concerned that service users may on occasion be charged for services they have received before they are informed about the outcome of their financial assessment. We therefore recommend that section 5 should be amended to oblige local authorities to provide information about charges the service user will be expected to pay and the outcome of any means testing before any charge is made.

⁸⁰ RoP, paragraph 232 1 October 2009, Legislation Committee No.5

⁸¹ Ibid, paragraph 234

⁸² RoP, paragraph 73, 14 July 2009, Legislation Committee No.5

⁸³ RoP, paragraph 67, 14 July 2009, Legislation Committee No.5

9. Section 6 - the right to request a review of charging decisions

9.1. Section 6 gives the Welsh Minister the power to make regulations concerning the arrangements that local authorities must make for reviewing charging decisions. These may include giving individuals the right to request a review and the procedures an authority must follow in conducting a review.

9.2. Section 3.7.3 of the LE Wales Baseline Assessment Report flags up that there is a “significant degree of variation in the review and appeals procedures offered by LAs for users that are unsatisfied with their charging assessment.”⁸⁴

9.3. It states that some local authorities have a very well codified and structured approach, whereas others are less structured. Also:

“It is common for the appeals process to have multiple stages, with successive escalation to a higher level of responsibility from one stage to the next...The highest stage of the appeal usually involves the review of the charging assessment by a more senior panel sometimes including independent members. In some instances, the individual is allowed to present their case in person to an appeals panel. If the user is still not happy with the decision by the appeals panel, they can make a formal complaint through a complaints procedure.”⁸⁵

Evidence from witnesses

9.4. The joint ADSS/WLGA submission notes that they anticipate that the number of service users requesting a review is likely to diminish as a result of the proposed Measure:

“We would hope that with simplified and clearer information available in a consistent manner that the number of cases where individuals would seek a review of the charging decision would diminish.”⁸⁶

9.5. Torfaen County Borough Council was unclear as to why new legislation was needed to deal with reviews of charging decisions.⁸⁷ Carmarthenshire County Council was anxious that any new scheme was not over complex so as not to make the review process unmanageable.⁸⁸

9.6. Witnesses have suggested that carers and advocates should have rights to request a review of the charges imposed on the person they care for. Wales Neurological Alliance in particular would like carers to be included in section 6. They would like to see the two references to “a person” and the two references to “an/the individual” in section 6(2) amended to “an individual or their carer.”⁸⁹

⁸⁴ Paragraph 57, *Non-residential social care charges: Baseline assessment, Report for the Welsh Assembly Government*, LE Wales, December 2008

⁸⁵ Ibid, paragraph 60

⁸⁶ ADSS Cymru and WLGA, written evidence, SCC8

⁸⁷ Torfaen County Borough Council, written evidence, SCC14

⁸⁸ Carmarthenshire County Council, written evidence, SCC15

⁸⁹ Wales Neurological Alliance, written evidence, SCC21

9.7. The Coalition on Charging Cymru and Wales Carers Alliance make observations about the need to improve the appeals process. Wales Carers Alliance states:

“There seems to be no complaints or appeals procedure built in to the regulations with timescales in order for a service user challenge a local authority decision. Service users should have a right to an independent review/appeal and have independent advocacy/representations at review and appeals. Any panels should not consist entirely of local authority officers and there should be independent panel members to consider reviews/appeals.”⁹⁰

9.8. The Coalition on Charging Cymru believes that this is an area which requires further thought. They say there is a need to distinguish between the procedures for review, appeal and complaint. They request clarification of the terms used in the proposed Measure and that the process should be fully outlined in the regulations:

“The words ‘review’, ‘appeal’ and ‘complaints’ are used. I do not know whether the plan was to look at that in the regulations, but if the language is not crystal clear in the proposed Measure, there will be problems in trying to address the regulation.”⁹¹

9.9. The National Autistic Society Cymru also believed that section 6 should be amended to give service users specific rights to a complaints procedure as well as to a review and an appeal, as distinct procedures: “it is essential that the right to an appeal is specifically entrenched in the Measure”. They also wished to see section 6 amended to include the right to independent advocacy on the face of the proposed Measure.⁹²

Evidence from the Deputy Minister

9.10. The Deputy Minister believes that it is important to have a “simple review procedure”, because of the inconsistency of procedures across local authorities and so as not to deter users from asking for a review.⁹³ She also explained that “service users would of course retain the right of appeal, even at the end of an appeal process.”⁹⁴

9.11. Her official explained what is intended by the section 6 review:

“The review will be a short and simple method of addressing issues such as mistakes in calculations or missing bits of information. It is meant to be a process that will not discourage users from asking for a review.”⁹⁵

9.12. The Deputy Minister stated that “it should not take away the importance of the complaints procedure”. She intends to set up a focus group to look at the details that service users would see as important to

⁹⁰ Wales Carers Alliance, written evidence, SCC22

⁹¹ RoP, paragraph 207, 24 September 2009, Legislation Committee No.5

⁹² The National Autistic Society Cymru, written evidence, SCC11

⁹³ RoP, paragraph 116, 14 July 2009, Legislation Committee No.5

⁹⁴ RoP, paragraph 244, 1 October 2009, Legislation Committee No.5

⁹⁵ RoP, paragraph 247, 1 October 2009, Legislation Committee No.5

include in the review procedure.⁹⁶ She had not considered whether there should be a right to independent representation at any hearing, but would give it further consideration.⁹⁷

9.13. As for whether a carer or advocate could request a review on behalf of the service user, the Deputy Minister stated:

“It would be my intention for regulations under this section to enable carers and advocates to request a review on behalf of an individual, where the individual lacks capacity or has agreed for someone to make that request on his or her behalf.”⁹⁸

She believed that the regulations could enable carers to make the request.

Our View

9.14. We recommend that section 6 should be amended to make it clear that carers or an independent advocate could request a review on behalf of the service user.

9.15. We agree with the evidence presented that the proposed Measure does not distinguish clearly between a right to “a simple review”, which is set out in the proposed Measure, and a right to an appeal, and what the appeal mechanism should look like. We also agree that any appeal mechanism should be independent of the local authority.

9.16. We therefore recommend that section 6(2) is amended to give individuals a right to an appeal as distinct from a review.

⁹⁶ RoP, paragraph 116, 14 July 2009, Legislation Committee No.5

⁹⁷ RoP, paragraph 250, 1 October 2009, Legislation Committee No.5

⁹⁸ Ibid, paragraph 242

10. Section 7 - the non-residential care services to which this proposed Measure applies

10.1. Section 7 lists the enactments detailing the services which have to be provided by local authorities to which the proposed Measure applies.

Evidence from witnesses

10.2. Coalition on Charging Cymru and the Wales Carers Alliance suggest that the Carers (Equal Opportunities) Act 2004 be included in the legislation cited in section 7.⁹⁹

10.3. Respite care provided in a residential facility was raised by both Age Concern Cymru/Help the Aged in Wales and also Wales Neurological Alliance as a service that should be within the scope of the proposed Measure. Wales Neurological Alliance expressed broader dissatisfaction that the legislative competence of the National Assembly only allows this proposed Measure to cover charges for non-residential social care services.¹⁰⁰

10.4. They suggested that the following Acts should be listed in section 7 as well: Community Care (Delayed Discharges) Act 2003; Health and Social Care Act 2001; and the Community Care (Direct Payments) Act 1996.¹⁰¹

Evidence from the Deputy Minister

10.5. The Deputy Minister explained that it was not appropriate to include the Carers Equal Opportunities Act 2004 in the list of applicable services in section 7:

“The Carers (Equal Opportunities) Act 2004 was not included in the list of enactments in section 7 because it does not confer any powers or duties on local authorities to provide services. Section 7 lists only those enactments under which services may be provided, but the existing duties to provide services to carers are contained in section 2 of the Carers and Disabled Children Act 2000, and that is included in the list in section 7.”¹⁰²

10.6. She clarified that charges for services to carers did fall within the scope of the proposed Measure. Respite care in a residential facility is outwith the scope of the proposed Measure, however charges for respite care in a domiciliary setting would fall within it.¹⁰³

10.7. When questioned whether children’s services could fall within the scope of the proposed Measure, the Deputy Minister explained that although the Assembly had powers under the Legislative Competence Order to address charging for children’s services, it was not their intention to address it:

⁹⁹ Coalition on Charging Cymru, written evidence, SCC12; Wales Carers’ Alliance, written evidence, SCC22; see also NAS Cymru, written evidence, SCC11; Mandi Glover, written evidence, SCC18

¹⁰⁰ Wales Neurological Alliance, written evidence, SCC22

¹⁰¹ Ibid

¹⁰² RoP, paragraph 266, 1 October 2009, Legislation Committee No.5

¹⁰³ Ibid, paragraph 149

“Local authorities in Wales currently have limited powers to charge for children’s services, although, in practice, they rarely do so. For that reason, there is currently no issue that the Assembly Government needs to or intends to address by way of legislation with regard to that.”¹⁰⁴

10.8. The Deputy Minister was also questioned on why section 7 did not include a power to amend the list of services to which the proposed Measure applies, to allow the proposed Measure to be updated in light of new legislation which could be introduced in Westminster.

10.9. The Deputy Minister did not believe that it was necessary as the section 7 list was comprehensive:

“The Order-making power in sections 10(3) and 10(4) of the proposed Measure may be used to amend the Measure, when it is passed, but only to the extent that such provision is necessary or expedient for the purpose of that Measure. Thus, if one of the listed enactments were to be repealed or revoked and you had an amended enactment that you needed to add to that list, you could do add it under section 10(3)...”¹⁰⁵

She explained that if they were to include the power to add under section 7, it would give Welsh Ministers a wide ranging power to extend the scope of the proposed Measure.¹⁰⁶

Our View

10.10. We accept the Deputy Minister’s assurance that the list of enactments in section 7 capture the complete categories of services to which the proposed Measure may apply, and that any revisions to those Acts could be dealt with by using the Welsh Ministers’ power to amend under section 10.

10.11. While other Acts may relate to services listed in the proposed Measure, such as the Carers Equal Opportunities Act 2004, as they do not actually list any duty to provide services, we agree with the Deputy Minister that it would be inappropriate to add them into section 7.

¹⁰⁴ RoP, paragraph 44, 14 July 2009, Legislation Committee No.5

¹⁰⁵ RoP, paragraph 252, 1 October 2009, Legislation Committee No.5

¹⁰⁶ Ibid, paragraph 254

11. The power to make subordinate legislation and the Report of the Subordinate Legislation Committee

11.1. The proposed Measure would allow Welsh Ministers to set out in subordinate legislation the scope and levels of charges local authorities may (but are not required to) impose on people in receipt of non-residential social care services provided or arranged by them. The subordinate legislation may specify maximum charges, persons and services in respect of which charges may not be made, the right to a means test for individuals subject to charges, and the arrangements for reviewing charging decisions.

11.2. The Explanatory Memorandum to the proposed Measure states:

“Given the nature of the proposed subordinate legislation, being concerned primarily with the financial and administrative arrangements governing the operation of the revised charging regime, the legislation, with one exception, will be subject to the **negative procedure**. The exception is that if the subordinate legislation seeks to amend an Act of Parliament or Assembly Measure it will be subject to the **affirmative procedure**.”¹⁰⁷

11.3. During our evidence sessions, we asked stakeholders if they thought the correct balance had been achieved between powers on the face of the proposed Measure and the powers given to Welsh Ministers to make regulations.

Evidence from witnesses:

11.4. Citizens Advice Cymru suggested that there should be a further opportunity for consultation at the subordinate legislation stage.¹⁰⁸ COCC also suggested that further task groups would have to be set up in order to produce high quality regulations.¹⁰⁹ A number of other submissions also recommended this approach.

11.5. In their oral evidence to the Committee, the Coalition on Charging Cymru stated:

“...if the details are set out in regulations, there is a lot more flexibility in terms of being able to respond to future situations; to put too much detail into the proposed Measure could hinder future Governments in terms of responding to those situations...what is key for us is the regulations that will come from this and how much of that will be made statutory, as opposed to guidance, which is currently the case.”¹¹⁰

11.6. There was some concern that the proposed Measure contained insufficient detail, and that too much was being left to subordinate legislation. The Wales Neurological Alliance was highly critical of the balance of power between the legislature and Welsh Ministers. Whilst they accepted

¹⁰⁷ Explanatory Memorandum, paragraph 5.4

¹⁰⁸ Citizens Advice Cymru, written evidence, SCC2, p2

¹⁰⁹ Coalition on Charging Cymru, written evidence, SCC12, p11

¹¹⁰ RoP, paragraph 124, 24 September 2009, Legislation Committee No.5

that it was appropriate to delegate powers regarding means testing, the provision of information and reviews of charging decisions they stated that it was:

“...deeply inappropriate to grant such great powers over the levels of charges and the persons who are excluded from charges.”¹¹¹

11.7. The Care Council for Wales suggests that an incremental approach to implementation seems appropriate. They also state that monitoring and evaluation of the implementation will be important.¹¹²

Evidence from the Deputy Minister

11.8. The Deputy Minister stressed the need for flexibility with respect to the detailed provisions under the proposed Measure. She believed that the Welsh Government will need “to revisit the regulations, perhaps on an annual basis.” She also stated that:

“...service users would gain from that kind of detail being put on the face of the proposed Measure.”¹¹³

11.9. She explained that these regulations will be primarily concerned with the “financial and administrative arrangements,” therefore the negative procedure was appropriate.¹¹⁴

11.10. The Deputy Minister acknowledged that it is “crucial that we consult widely with stakeholders” in developing the regulations. She said that they would start consulting in summer 2010 on the draft regulations. She was confident that the timescale of introducing the regulations by April 2011 could be achieved.¹¹⁵

Report of the Subordinate Legislation Committee

11.11. In accordance with Standing Order 15.6, the Subordinate Legislation Committee considered the subordinate legislation provisions in the proposed Measure and took oral evidence from the Deputy Minister on 30 September 2009. It considered the provisions delegating powers to Welsh Ministers and the proposed procedures for the making the subordinate legislation. The Committee laid its report before the Assembly on 14 October 2009 (see Annex 5).¹¹⁶

11.12. The Committee makes the following recommendations:

“Recommendation 1:

The Committee recommends that a formula for calculating the maximum charge appears on the face of the Measure. The Committee does not consider that this would restrict the Welsh Ministers ability to

¹¹¹ Wales Neurological Alliance, written evidence, SCC21

¹¹² See also, Citizens Advice Cymru, SCC2

¹¹³ RoP, paragraph 198, 1 October 2009, Legislation Committee No.5

¹¹⁴ RoP, paragraph 17, 14 July 2009, Legislation Committee No.5

¹¹⁵ RoP, paragraph 11-14, 14 July 2009, Legislation Committee No.5

¹¹⁶ Subordinate Legislation Committee, *The appropriateness of the subordinate legislation provisions in the Proposed Social Care Charges (Wales) Measure*, LD7741, 14 October 2009

cap maximum charges at £50 per week, as suitable provision could be inserted into the Measure to use a formula in the alternative to a maximum charge. Given the framework nature of the section together with the financial impact it could have on those in receipt of social care services, the Committee further recommends that any regulations made under Section 2 of the Measure be subject to the affirmative procedure.”

“Recommendation 2

The Committee accepts the Ministers reasons for not including details on the face of the Measure but given its framework, recommends that the provision under section 3 allowing Welsh Ministers to make regulations to exempt from charges certain persons and certain services should be subject to the affirmative procedure.”

“Recommendation 3

Given the framework nature of the Measure, together with the potential impact it may have on those in receipt of social care services, the Committee recommends that the first set of regulations made under the Measure are subject to the affirmative procedure.”

Our View

11.13. We note the recommendations of the Subordinate Legislation Committee, in particular that the affirmative procedure should apply to regulation making powers under sections 2 and 3.

11.14. We support the Subordinate Legislation Committee’s conclusions and recommendations (subject to our recommendation on section 2, paragraphs 5.21 – 5.27 above). As noted above in paragraph 7.23, we also recommend that any regulations made under section 4, means testing, should be subject to the affirmative procedure.

12. The financial and wider implications of the proposed Measure and the report of the Finance Committee

12.1. The Explanatory Memorandum provided by the Welsh Government stipulates the following information on the financial implications of the proposed Measure:

“Apart from the requirement to provide information set out above, the remaining elements of any revised charging arrangements will be set out in regulations and guidance to be made under the proposed Measure. Any implementation costs for local authorities such as loss of income and administrative and IT costs associated with the changes will be assessed accordingly as part of the Regulatory Impact Assessment for that legislation.”¹¹⁷

12.2. In relation to section 5 on the provision of information about charges, the Explanatory Memorandum states:

“...it is not anticipated that there will be any additional costs to local authorities in meeting these requirements in the proposed legislation.”¹¹⁸

Evidence from witnesses

12.3. Local authorities are concerned about the financial consequences of capping the charges they can levy on service users.¹¹⁹

12.4. The Association of Directors of Social Services (ADSS) and Welsh Local Government Association (WLGA), in their joint response, and several other witnesses expressed concern about the financial sustainability of the policy beyond the commitment given by the Welsh Government under the One Wales agreement.¹²⁰ They questioned what guarantees they would have beyond the initial 2 or 3 years of implementation of the proposed Measure.

12.5. ADSS Cymru / WLGA stress the need for adequate compensation and questioned how they would be compensated and where the funding would come from. WLGA /ADSS were concerned that, in reimbursing local authorities for the loss of income from charging, the Welsh Government will reduce the overall resources provided to them for social care services:

“...we urgently need assurances that if this money is to be found, it must be additional; it cannot come out of the totality of the pot that goes to local government now, because there simply is not enough.”¹²¹

12.6. ADSS Cymru / WLGA also believed that it was likely that some local authorities would inevitably start charging more for services and possibly have to review the range of services they provide if they lose income, even if they are compensated.¹²² They express serious doubts about the ability of

¹¹⁷ Explanatory Memorandum, paragraph 8.15, page 21

¹¹⁸ Explanatory Memorandum, paragraph 8.14, page 21

¹¹⁹ Torfaen County Borough Council, written evidence, SCC14

¹²⁰ Torfaen County Borough Council, written evidence, SCC14

¹²¹ RoP, paragraph 20, Legislation Committee No. 5, 24 September 2009

¹²² *Ibid*, paragraph 33

local authorities to implement a new charging regime and maintain current service levels:

“We are deeply concerned about the affordability of the measures in the current financial climate, particularly where authorities are under pressure to make savings at the risk of reduced service provision...Any reduction in potential income will impact negatively on the ability to maintain existing services.”¹²³

12.7. They also doubted whether it was the best use of limited Government resources:

“...we must emphasise again that of the 66,000 people who receive community based services only 14,000 are charged (less than 25%). There is an argument that the additional costs to the National Assembly Government (estimated a minimum of £12million per year) could be spent on allowing more people to receive a service if this additional money was made available to social services departments. Spending the money in this way does seem to add even greater barriers to extending the services currently on offer.”¹²⁴

12.8 When questioning where the budget would be found for funding the reimbursement, the WLGA mentioned previous experience of budget rounds where they fought to retain grants:

“The joint special working grant, for example, is worth about £10 million, and it came under considerable pressure last year to be reduced, and that would have had an awful impact on day-to-day services. Is that going to be an easy target when the Government looks for the £11 million or £13 million to fund this? All you will do is take money from one area to give to another. So we urgently need assurances that if this money is to be found, it must be additional...”¹²⁵

12.9 At the Committee's meeting on 1 October, the Deputy Minister for Social Services, Gwenda Thomas AM, mentioned two grants to social services which are ending in 2011, later confirmed as the "Promoting Independence & Well Being Grant" and the "Joint Working Grant", which could free up resources to fund the reimbursement to local authorities (see paragraphs 12.31 – 12.32 below).

12.10 We wrote to the Welsh Local Government Association and Association of Directors of Social Services Cymru for their views on the value of these grants to local authorities and the impact on care services when these grants come to an end. ADSS Cymru / WLGA were particularly concerned about the cessation of the “Joint Working Grant”:

“We understand the pressure on the public purse and wish to work constructively with the Assembly Government to make best use of the diminishing resources. It seems counter intuitive to be moving towards a scenario where we are closing down or diminishing services

¹²³ ADSS Cymru and WLGA, written evidence, SCC8

¹²⁴ Ibid

¹²⁵ RoP, paragraph 20, Legislation Committee No. 5, 24 September 2009

that will need to be at the heart of a modernised health and social care service.

If this funding ceases in 2012, the impact on service uses, partnerships and locality based early intervention schemes would be catastrophic.”¹²⁶

12.11. They stressed the need for further discussion on how the reimbursement would be calculated and pointed out that local authorities who currently manage to charge below the maximum charge will receive less compensation than those who charged the most. The Older People’s Commissioner suggested that a procedure for reviewing reimbursement disputes should be referred to on the face of the proposed Measure.¹²⁷

12.12. ADSS/WLGA note the “one-off” cost that any legislative changes will require as service users’ individual contributions are recalculated; the costs of local authorities reviewing their information and communication processes; and the cost of putting in place a mechanism to ensure that the changes are handled smoothly.¹²⁸

12.13. Anglesey County Council made it clear that any new system should be effective to administer:

“...as it would be counterproductive to spend money on bureaucratic collection or assessment procedures which will cost more to manage.”¹²⁹

12.14. The potential financial cost to local authorities is recognised not only by local authorities, but also in evidence from others. Unison, for example, note that:

“..additional financial pressures may lead to local authorities seeking more competitive prices for home care provided by external companies. Unison has concerns [about the] potential impact this may have upon the staff employed by such companies and fears that any cost would be borne by the staff.”¹³⁰

12.15. COCC believes that the proposed Measure is likely to impact directly upon its members who provide information, advice and advocacy services as service users and others seek to find out about the new system, and this may have an effect on the capacity of the organisations.¹³¹

12.16. This view was echoed in a number of responses. The Older People’s Commissioner stressed the need to communicate with older people about the changes which will come about:

¹²⁶ Welsh Local Government Association and Association of Directors of Social Services Cymru: Cessation of joint special working grant, further written evidence, SCC28

¹²⁷ Older People’s Commissioner for Wales, written evidence, SCC25

¹²⁸ See also Newport County Council, written evidence, SCC20

¹²⁹ Isle of Anglesey County Council, written evidence, SCC5

¹³⁰ UNISON Cymru, written evidence, SCC3

¹³¹ Coalition on Charging Cymru, written evidence, SCC12

“Although many older people will be pleased that their weekly cost for care is reducing, they may wonder if the level of service they receive will also diminish.”¹³²

12.17. Several witnesses made the point about the interrelation between health care which is fully funded and social care in the community. WLGA / ADSS comment:

“The distinction between fully funded health care and means tested social care is not straightforward. It will be essential that community based services and how they are funded is clear to the service recipient and their families and that clear boundaries exist between free at the point of delivery to all for healthcare and means tested for social care.”¹³³

12.18. It may also result in greater pressures on the health budget if services are cut¹³⁴, as the Coalition on Charging Cymru explains:

“...it can be presumed that further pressure will be placed on services to shunt costs to health via the continuing care route. This has been the case within several areas concerning people with physical impairments and learning difficulties.”¹³⁵

12.19. Many still insist that the aim should be free social care for all, and believe there is a need for a wider debate on the issue, which may come about as a result of the UK Government’s Green Paper on Fairer Charging.¹³⁶

Potential impact on the eligibility criteria

12.20. Several witnesses express concerns that the reduced income resulting from the new charging regime could lead local authorities to attempt to manage demand for services, for example, by raising threshold criteria. Local authorities’ discretion to determine their eligibility criteria could be used to perpetuate inconsistencies across local authorities.¹³⁷

“It is happening more and more across Wales. The eligibility criteria are critical in nearly all local authorities. It is interpreted as being as near to the undertaker as you can get. You have already heard evidence that there is a genuine crisis in funding for the services. We are cognisant of that fact, but the fear is that to compensate for lack of income, local authorities will raise the threshold for access to services even higher.”¹³⁸

12.21. The Coalition on Charging Cymru stated in its memorandum:

¹³² Commissioner for Older People, SCC25

¹³³ Welsh Local Government Association, ADSS, written evidence, SCC8

¹³⁴ National Autistic Society Cymru, written evidence, SCC11

¹³⁵ Coalition on Charging Cymru, written evidence, SCC12

¹³⁶ Unison, SCC3

¹³⁷ Care Council for Wales, Coalition on Charging Cymru, Wales Neurological Alliance, Wales Carers Alliance, the National Autistic Society Cymru, Domiciliary Care Association for Wales; Age Concern Cymru / Help the Aged in Wales, written evidence, SCC13; Scope Cymru

¹³⁸ RoP, paragraph 151, 24 September 2009, Legislation Committee No.5

“Should local authorities tighten their eligibility criteria, this may result in service users facing a reduction in services with an impact on family members and concern and anxiety about how they will manage.”¹³⁹

12.22. The Domiciliary Care Association for Wales agreed that this was a likely consequence of the introduction of maximum charges, based on their own experiences. They said they had already seen it happening, and called for uniformity in the assessment criteria as well:¹⁴⁰

“Our criteria for care now relate more to district nursing tasks. Our staff are not carers any more; they are unpaid district nurses, whether we like it or not.”¹⁴¹

12.23. Citizens Advice Cymru was concerned about the potential impact of this and, that the “objective of reducing disparities in levels of charging is not negated by variations in the level and quality of service provision.”¹⁴²

Potential impact on demand for services

12.24. Several witnesses commented on the likelihood of an increase in demand for an assessment of care and financial assessment as a result of the proposed Measure and that this should be taken into account when assessing future financial implications.¹⁴³

12.25. In their oral evidence, the WLGA / ADSS flagged up the need to take account any future demographic changes and better population modelling information. The Care Council for Wales made a similar comment:

“In progressing the Measure, it is important to consider what society will be like in the (not too distant) future, for example, increased numbers of older people and an increased demand on social care services and new types of services . It may be useful to test the Measure against the new framework of services being considered for older people (led by Graham Williams).”¹⁴⁴

12.26. The written evidence from Domiciliary Care Association of Wales states:

“It was observed that when a charging policy was introduced in North Wales some years ago (initially all care was free) people who then had to start paying privately often reduced their care package. It is probable in areas where reduced payments may occur there may be increased demand, and the reverse where charges increase.”¹⁴⁵

12.27. In their oral evidence to the Committee, they said that, they believed that some individuals do cancel or refuse services on cost grounds, or will contact the service providers directly rather than via social services, if their

¹³⁹ Coalition on Charging Cymru, written evidence, SCC12

¹⁴⁰ RoP, paragraph 38, 1 October 2009, Legislation Committee No.5

¹⁴¹ Ibid, paragraph 53

¹⁴² Citizens Advice Cymru, written evidence, SCC2

¹⁴³ Anglesey County Council, written evidence, SCC5; Cardiff County Council, written evidence, SCC10;

¹⁴⁴ Care Council for Wales, written evidence, SCC1

¹⁴⁵ Domiciliary Care Association for Wales, written evidence, SCC27

rates are lower.¹⁴⁶ They questioned whether the figure in the LE Wales Baseline Assessment was an accurate reflection of the reality on the ground.¹⁴⁷ The figure in question refers to five local authorities' records which show that only 0.3% of service users refuse a service due to the level of charges. Scope Cymru also said that the cost of services is "often prohibitive".¹⁴⁸

12.28. Wrexham County Council fears that any increase in demand would have an impact on the domiciliary care market. Newport County Council states:

"NCC would argue that the take up of services will increase (or, more accurately, existing services will not be cancelled due to financial reasons) as a result of a more generous charging policy and this should also be recognised. There needs to be a flexible funding mechanism in place that can react to this added burden on Local Authorities' budgets."¹⁴⁹

12.29. Cardiff County Council was also concerned that there would potentially be a demand in increase for services which in turn:

"...could impact directly on those who have less means if the service resources have to support a greater number of service users. It would also create a greater disparity between those who need residential and nursing care home provision who currently have to pay for the full cost of their care if they have over the current capital limits. This again may result in extra demands on non-residential care services."¹⁵⁰

12.30. The ADSS Cymru / WLGA memorandum suggested that it may also be problematic for the parts of Wales which border England:

"Councils which straddle this border or are already known 'retirement' spots are rightly concerned that positive changes to social services charging in Wales alone, and not enjoyed by England may well influence the totality of older people choosing to live and retire in Wales. Overall this will have positive and negative implications, as not all older people will need services or indeed be eligible for charges, but in the context of these discussions it is a relevant observation."¹⁵¹

Evidence from the Deputy Minister

12.31. The Deputy Minister stated that the estimated cost for the implementation of the First Steps Package is £11 million. The cost of disregarding the two allowances proposed is about £3.6 million; the free transport to day centres will cost £1.4 million, while the cost of introducing the £50 per week charge (reimbursement for loss of income) is estimated to be £6 million.¹⁵²

¹⁴⁶ RoP, paragraph 40-41 and 120, 1 October 2009, Legislation Committee No.5; see also National Autistic Society Cymru, written evidence, SCC11

¹⁴⁷ RoP, paragraph 113, 1 October 2009, Legislation Committee No.5

¹⁴⁸ Scope Cymru, written evidence, SCC26

¹⁴⁹ Newport County Council, written evidence SCC20

¹⁵⁰ Cardiff County Council, written evidence, SCC10

¹⁵¹ ADSS Cymru / WLGA, written evidence, SCC8

¹⁵² RoP, paragraph 88, 14 July 2009, Legislation Committee No.5

12.32. The Deputy Minister has given assurances that they are committed to reimbursing local authorities for the cost of the proposed Measure. In her letter to the Committee, she stated:

“...under our Partnership Agreement with local government we are committed to reimburse local authorities for the cost of any additional financial burden we place upon them. Consequently should the proposed Measure be agreed we will engage with local government to agree the detail and level of this estimate, as well as its revaluation to 2011- 2012 prices as that is when changes are planned to be implemented. This revaluation would take account of inflation, changes to DWP benefit levels and any other relevant factors that would impact upon this estimate.”¹⁵³

12.33. She stated that the compensation would be in addition to the core social services budget:

“We know that financial settlements will get tougher, so this will be contained within the social services budget. However, we also know that two grants will come to the end of their lives in 2010-11, and we will be considering how best to use the resources that are available to us. There will have to be tough decisions.”¹⁵⁴

12.34. It was later clarified that these grants are the "Promoting Independence & Well Being Grant" and the "Joint Working Grant", totalling £4.5 million and £10 million per annum respectively.

12.35. On the specific point as to whether the reimbursement system will be unfair to local authorities who have sought to keep their charges low or beneath the proposed maximum charge, the Deputy Minister explained that there is already precedent for this approach as it was tested by the fairer charging initiative that was introduced in 2007.¹⁵⁵

12.36. The Deputy Minister stated that there is no clear evidence to suggest that there would be a significant increase in demand for services as a result of the implementation of the planned First Steps Improvement Package:¹⁵⁶

“In my view, and based on the research undertaken by LE Wales as part of the development work on this proposed Measure, there is little likelihood of an increase in demand for services. I think that I set out in the letter to the committee that a number of factors need to be considered with regard to this issue, and they include the service users’ ability to satisfy local authority eligibility criteria. We are back to this point again. To get the services, they will have to meet those eligibility criteria. The LE Wales research and the advice from the Care and Social Services Inspectorate Wales maintained that there is no significant unmet demand for services.”¹⁵⁷

¹⁵³ Letter from the Deputy Minister, July 2009 (see Annex 4)

¹⁵⁴ RoP, paragraph 194, 1 October 2009, Legislation Committee No. 5

¹⁵⁵ RoP, paragraph 36, 14 July 2009, Legislation Committee No. 5

¹⁵⁶ Letter from the Deputy Minister, July 2009 (see Annex 4)

¹⁵⁷ RoP, paragraph 212, 1 October 2009, Legislation Committee No. 5

12.37. She explained that the eligibility criteria will remain firmly within local authorities' discretion and is outside the scope of the proposed Measure. Under the guidance which the Welsh Government has issued on this, the 'Health and Social Care for Adults: Creating a Unified and Fair System for Assessing and Managing Care', authorities have the discretion to set their own eligibility criteria for access to services based on the classifications of an individual's care needs.¹⁵⁸ The Deputy Minister acknowledged that the proposed Measure will not "do away with all inconsistencies...because we do not intend to take away the discretion of local authorities."¹⁵⁹

12.38. The additional evidence provided by the Deputy Minister also includes some data on increased demand for social care services in Scotland following the introduction of free personal care. The number of people receiving public funding for personal care at home increased from 27,337 in 2002 to 41,386 in 2007.¹⁶⁰

12.39. The Deputy Minister was also open to considering any evidence of the potential for an increase in demand provided by local government and would take this into account as part of the process of developing subsequent draft Regulations for consultation.¹⁶¹

12.40. The Deputy Minister acknowledged that demographic change would have an impact on the cost of providing care over the next 10 – 15 years. She referred to the UK Government's Green Paper on "Shaping the Future of Care Together", published in July 2009, which will look at the resources required for social services into the next decade. She also intends to publish her own Green Paper for Wales on Paying for Care in the autumn:

"I see this proposed Measure as a way of bringing forward improvements for service users now and not waiting for the full effects of the White Paper that will follow the Green Paper."¹⁶²

Our View

12.41. We note the evidence from local authorities, the voluntary sector and care agencies, regarding the potential impact of the proposed Measure on local authorities' care services. We share their concerns that if the proposed Measure is implemented, and if the reimbursement is insufficient, it could lead to local authorities raising the eligibility criteria for care services, limiting what is available to those in need.

12.42. As recommended above in paragraph 5.22, our view that no service user should be worse off in respect of the amount they pay for their services, applies equally here. No user should suffer any reduction in the level of services they receive.

12.43. We realise that the proposed Measure will not affect local authorities' discretion to set their own eligibility criteria, as it is not within the scope of the Assembly's legislative competence. However we

¹⁵⁸ RoP, paragraph 206, 1 October 2009, Legislation Committee No. 5

¹⁵⁹ Ibid, paragraph 174

¹⁶⁰ Letter from the Deputy Minister, July 2009 (see Annex 4)

¹⁶¹ Ibid

¹⁶² RoP, paragraph 93, 14 July 2009, Legislation Committee No. 5

believe that the Welsh Government should aim to achieve a greater level of consistency across Wales in this area as well, otherwise the unfairness will persist. We therefore recommend that the Welsh Government should seek legislative competence in this area as well.

12.44. In light of these concerns and their likely financial consequences, we stress the importance of the Welsh Government’s commitment “to reimburse local authorities for the cost of any additional financial burden”, as stated above in paragraph 12.30. We note the concerns of the WLGA / ADSS Cymru that this should not be at the expense of future funding of current services which they consider essential.

12.45. The Finance Committee has reported on the financial implications of the proposed Measure (see Annex 6).

12.46 We note the views of some witnesses that the proposed Measure is likely to result in an increase in demand for services.

12.47. Darren Millar wishes to record his concern about the potential consequences for the affordability and sustainability of this policy, if significantly more people in need of care were attracted to living in Wales following the implementation of the proposed Measure.

Annexes

Annex 1: Letter of consultation issued by Legislation Committee No.5 on the proposed Social Care Charges (Wales) Measure

Annex 2: List of consultation responses and additional evidence

Annex 3: Schedule of oral evidence

Annex 4: Supplementary written evidence from the Deputy Minister for Social Services, July 2009

Annex 5: The Report of the Subordinate Legislation Committee on the proposed Measure

Annex 6: The Report of the Finance Committee on the proposed Measure

Annex 7: The National Assembly's legislative competence to make the proposed Measure

Pwyllgor Deddfwriaeth Rhif.5
Legislation Committee No.5



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

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7 July 2009

Dear Sir / Madam

Consultation on *proposed Social Care Charges (Wales) Measure*

The National Assembly for Wales' Legislation Committee No.5 is calling for evidence on the general principles of the [proposed Social Care Charges Measure](#) which was proposed by the Welsh Government on 29 June 2009 (closing date for submissions is 28 August 2009).

What is a Measure?

A Measure is a piece of law made by the Assembly, which has a similar effect to an Act of Parliament. The Assembly is able to pass Measures on any 'matter' within its legislative competence (as listed in [Schedule 5](#) to the Government of Wales Act 2006). The proposed Social Care Charges (Wales) Measure is based on the legislative competence granted to the Assembly following the Domiciliary Care Legislative Competence Order (June 2008), regarding matters relating to charges for non-residential social care.

While a Measure is in progress through the Assembly, it is known as a 'proposed Measure'.

There is a four stage process for the consideration of a proposed Measure. Stage 1 involves consideration of the general principles of the proposed Measure by a committee (which includes inviting written from interested parties and stakeholders - which is the purpose of this letter - as well as taking oral evidence), and the agreement of those general principles by the Assembly.

What does this proposed Measure seek to achieve?

The Explanatory Memorandum that accompanies the proposed Measure states:

"The proposed Social Care Charges (Wales) Measure ("the Measure") is primarily enabling in scope. It will allow Welsh Ministers to set out, in subordinate legislation and in guidance, the detail of a fairer and more consistent framework for local authorities to adopt when charging individual service users for non-residential social care services."

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What is the committee's role?

The role of Legislation Committee No. 5 is to consider and report on the general principles of the proposed Measure. In doing so, the Committee has agreed to work within the following framework:

To consider:

- i) the need for a proposed Measure to deliver the stated objectives:
 - to provide for the introduction of a new regime for charging which will ensure that local authorities across Wales adopt a more consistent approach to charging service users for non-residential social care services;
 - to establish a new legislative framework which will allow for detailed provisions to be set out by Welsh Ministers in regulations and statutory guidance to be made under the Measure, covering the types of services and client groups which are excluded from charging, standard or maximum charges, and the financial assessment process (means testing);
 - to introduce a clear and consistent approach in relation to the information users receive from local authorities about their charges and the way in which request to review will be handled.
- ii) the key provisions set out in the proposed Measure and whether they are appropriate to deliver its stated objectives;
- iii) potential barriers to the implementation of the key provisions and whether the proposed Measure takes account of them;
- iv) the views of stakeholders who will have to work with the new arrangements.

How you can help – the consultation questions

Further details of the proposed Measure and the accompanying Explanatory Memorandum can be found on the National Assembly's website [follow the links in the left-hand column for Business / Legislation / Measures / Proposed Social Care Charges (Wales) Measure]:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-scc-2.htm>

The Committee would like to invite you to submit written evidence to assist in its scrutiny of the proposed Measure. In particular, we would welcome your views on the questions listed in **Annex 1**.

If you wish to submit evidence, please send an electronic copy of your submission to apslegislationcommitteeNo5@wales.gsi.gov.uk and entitle the e-mail *Consultation – Proposed Social Care Charges Measure*.

Ffon / Tel: 029 2089 8154
Ffacs / Fax: 029 2089 8021
Minicom: 029 2082 3280

E-bost / E-mail: apslegislationcommitteeNo5@wales.gsi.gov.uk

Alternatively, you can write to:

Olga Lewis, Deputy Committee Clerk, Legislation Office, National Assembly for Wales, Cardiff Bay, CF99 1NA.

Submissions should arrive by 28 August 2009. It may not be possible to take into account responses received after this date.

Further information on the **legislative process** can be found at:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-legislation-guidance/bus-legislation-guidance-measures.htm>

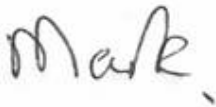
When preparing your submission, please keep the following in mind:

- your response should address the issues before the Committee. Please reference your response using the title applied above;
- please indicate whether you are responding on behalf of an organisation, or as an individual;
- the National Assembly normally makes responses to public consultation available for public scrutiny and they may also be seen and discussed by Assembly Members at Committee meetings;
- **if you do not want your response or name published, it is important that you clearly specify this in your submission and your reasons for this.** However you should be aware that it may not be given the same weight by the Committee when considering the evidence. You should also be aware that the information you have provided in your response to this consultation, including company information, may be published or disclosed in accordance with the Freedom of Information Act 2000 (FOIA);
- please indicate whether or not you would be prepared to give oral evidence to the Committee.

The Committee welcomes contributions in English and Welsh and will consider responses to the written consultation during the autumn term.

If you have any queries, please contact Anna Daniel, Committee Clerk on 029 2089 8144 or Olga Lewis, Deputy Clerk on 029 2089 8155.

Yours faithfully,



Mark Isherwood AM
Committee Chair

Proposed Social Care Charges (Wales) Measure: Consultation Questions

1. Is there a need for legislation to be made to ensure that local authorities across Wales adopt a more consistent approach to charging service users for non-residential social care services, and if so, why?
2. Are the sections of the proposed Measure appropriate in terms of reforming legislation relating to the social care charging regime? If not, how does the proposed Measure need to change?

In considering this question, consultees may wish to consider, in particular, the nature of the provisions in the proposed Measure that:

- (a) when considering what is a reasonable charge for a service, local authorities must comply with regulations to be made by Welsh Ministers which would control or set a maximum charge (**Section 2**);
 - (b) the power given to Welsh Ministers to specify in regulations which categories of person, service or combination of services are excluded from charging (**section 3**);
 - (c) the right of service users to have their means assessed and for any charge for the services to be determined in light of that assessment (**section 4**);
 - (d) the requirement on local authorities to provide information about charges and means testing (**section 5**);
 - (e) the right to request a review of charging decisions and the power given to Welsh Ministers to make regulations regarding this process (**section 6**);
 - (f) the non-residential care services to which this Measure applies (**section 7**);
3. How will the proposed Measure change what organisations do currently and what impact will such changes have, if any?
 4. What are the potential barriers to implementing the provisions of the proposed Measure (if any) and does the proposed Measure take account of them?
 5. What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Section 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.
 6. Has the appropriate balance been struck between the provisions set out in the Measure and the power delegated to Welsh Ministers to set out the detail of the revised charging arrangements in regulations, orders and statutory guidance? Are the procedures which would apply to these regulations appropriate (negative or affirmative)? (See Part 1, section 5 of the Explanatory Memorandum – “Power to make subordinate legislation”).

7. Are there any other comments you wish to make about specific sections of the proposed Measure?

List of consultation responses and additional evidence

- SCC1 - Care Council for Wales
- SCC2 - Citizens Advice Cymru
- SCC3 - UNISON Cymru
- SCC4 - Diane and John Llewelyn, Beddau (Individual Response)
- SCC5 - Isle of Anglesey County Council
- SCC6 - Cross Roads Care
- SCC7 - Pensioners Forum Wales
- SCC8 - ADSS Cymru and WLGA
- SCC9 - UNITE FEDERATION
- SCC10 - Cardiff County Council
- SCC11 - The National Autistic Society Cymru
- SCC12 - Coalition on Charging Cymru
- SCC13 - Age Concern & Help the Aged in Wales
- SCC14 - Torfaen County Borough Council
- SCC15 - Carmarthenshire County Council
- SCC16 - Cwm Taf NHS Trust
- SCC17 - Wrexham County Borough Council
- SCC18 - Mandi Glover (Individual Response)
- SCC19 - Blaenau Gwent County Borough Council
- SCC20 - Newport City Council
- SCC21 - Wales Neurological Alliance
- SCC22 - Wales Carers Alliance
- SCC23 - Multiple Sclerosis Society Cymru
- SCC24 - Royal College of Nursing Wales
- SCC25 - Older People's Commissioner for Wales
- SCC26 - SCOPE Cymru - Consultation Response to the Proposed Social Care Charges (Wales) Measure

Additional Evidence

- SCC27 - Domiciliary Care Association Wales
- SCC28 - Welsh Local Government Association and Association of Directors of Social Services Cymru: Cessation of joint special working grant. Further evidence

Responses to the consultation can be found at:

<http://www.assemblywales.org/bus-home/bus-legislation/bus-leg-measures/business-legislation-measures-scc-2/business-legislation-measures-scc-responses.htm>

Schedule of Oral Evidence

Date	Witnesses
14 July 2009	Deputy Minister for Social Services <ul style="list-style-type: none"> • Gwenda Thomas AM
24 September 2009	Welsh Local Government Association <ul style="list-style-type: none"> • Beverlea Frowen, Director for Health and Social Services
	Association of Directors of Social Services Cymru <ul style="list-style-type: none"> • Bruce McLernon, Vice President, ADSS Cymru, and Director of Social Care, Health and Housing, Carmarthenshire County Council
	Coalition on Charging Cymru <ul style="list-style-type: none"> • Rhian Davies, Chief Executive, Disability Wales (COCC Chairperson) • Graeme Francis, Policy and Public Affairs Manager, Age Concern Cymru and Help the Aged in Wales • Jenny Hambidge, Service User
	Wales Carers Alliance <ul style="list-style-type: none"> • Angela Roberts, Director of Wales
	Wales Neurological Alliance <ul style="list-style-type: none"> • Carol Thomas-Wyllie, Motor Neurone Disease Association • Joseph Carter, Policy, Press and Campaigns Manager/ Rheolwr Polisi, yr Wasg ac Ymgyrchoedd
1 October 2009	Domiciliary Care Association Wales <ul style="list-style-type: none"> • Mr Michael Rose, Chairman • Dr Peter Jones, Treasurer • Mr Paul Murphy, Wrexham Representative
	Deputy Minister for Social Services <ul style="list-style-type: none"> • Gwenda Thomas AM

Transcripts of oral evidence sessions can be found at:

<http://www.assemblywales.org/bus-home/bus-committees/bus-committees-third1/bus-committees-third-1c5-agendas.htm>

Gwenda Thomas AC/AM
Y Dirprwy Weinidog dros Wasanaethau Cymdeithasol
Deputy Minister for Social Services



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Eich cyf/Your ref
Ein cyf/Our ref

Mark Isherwood AM
Committee Chair
Legislation Committee No. 5
National Assembly for Wales
Cardiff Bay
Cardiff
CF99 1NA

July 2009

Proposed Social Care Charges (Wales) Measure

Thank you for inviting me to appear on 14th July before Legislation Committee No 5 to give evidence on the proposed Social Care Charges (Wales) Measure.

During that meeting I undertook to write to the Committee to provide you with further information on a number of issues. Those issues were:

- the statutory elements of the current Fairer Charging Guidance and the changes to these that were introduced in 2007;
- the Assembly's legislative competence in relation to the proposed Measure and its affect on service users in receipt of Direct Payments and how it is planned to include these recipients within the scope of the proposed Measure; and
- extracts from the LE Wales research regarding the possibility of new clients applying for services as a consequence of the First Steps Improvement Package I intend to introduce should the Measure be made.

Further information on all three areas is attached at Annexes 1 to 3. Whilst writing I would also like to take the opportunity to clarify the situation with regard to the estimated cost associated with my intended First Steps Improvement Package. This was touched upon during the Committee's meeting and I feel there may have been a misunderstanding over the basis of this estimate.

To clarify, based on the research undertaken by LE Wales I estimate the cost of this package to be up to £11 million per annum at current prices. This cost would be the additional income foregone by local authorities as a direct result of the changes I am proposing. As I indicated in my Policy Intention Statement of 30th June to Assembly Members and stakeholders, under our Partnership Agreement with local government we are committed to reimburse local

authorities for the cost of any additional financial burden we place upon them. Consequently should the proposed Measure be agreed we will engage with local government to agree the detail and level of this estimate, as well as its revaluation to 2011- 2012 prices as that is when changes are planned to be implemented. This revaluation would take account of inflation, changes to DWP benefit levels and any other relevant factors that would impact upon this estimate. As you will see from Annex 3, there is currently no clear evidence to suggest that one of those factors would be a significant increased demand for services as a result of the implementation of my planned First Steps Improvement Package. That said should local government or others put forward evidence of an increased demand for, or an adverse impact upon, services I will of course consider this as part of the process of developing subsequent draft Regulations for consultation to implement my initial reforms. I am clear that these potential operational implications do not in any way undermine the principles underpinning the proposed Measure or the strong case that exists to secure greater consistency in charging for non-residential social care services across Wales.

Yours sincerely

Gwenda Thomas AC/AM

ANNEX 1

FAIRER CHARGING GUIDANCE – STATUTORY REQUIREMENTS

The Fairer Charging Guidance was originally issued by the Assembly Government in 2002 using the powers contained in Section 7 of the Local Authority Social Services Act 1970. While the majority of the Guidance is good practice guidance to local authorities who chose to charge for their non-residential social care services, there are some elements which are subject to statutory guidance. These were essentially introduced to protect those service users on low incomes who are charged for the services they receive. This statutory guidance was enhanced in 2007 so that currently it is:

- to ensure that service users' net incomes are not reduced after charging below the basic level of Income Support, or below the appropriate guarantee credit level, plus a "buffer" of no less than 35% of this. This buffer was increased from an original 25% level set in 2002 to 35% from 2007;
- to ensure that all service users have a flat rate Disability Related Expenditure disregard in their charge assessments of 10% of their basic level of Income Support, appropriate guarantee credit level. This was a new requirement from 2007;
- to disregard from the charge assessment any savings credit payments received under the Pension Credit arrangements. This was introduced in 2002;
- to disregard all earnings as part of income in charge assessments. This was introduced in 2002;
- to ensure that savings and capital limits, where local authorities take these into account, are at least as generous as those set out in the Charging for Residential Accommodation Guide. This was introduced in 2002.

ANNEX 2

SERVICE USERS IN RECEIPT OF DIRECT PAYMENTS

The Legislative Competence Order (LCO) under which the proposed Social Care Charges (Wales) Measure is to be made, the National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2008, gave the National Assembly the power to bring forward legislation concerning Direct Payments to service users or persons looking after them. This was included to ensure that the scope of the LCO was wide enough to enable a subsequent Measure to be made which would make changes to the charging framework for non-residential social care services which would apply to those service users in receipt of Direct Payments as well as those in receipt of services directly from their local authority. The wording used in that LCO encompassed the making of payments to all persons to whom Direct Payments could be made at that time.

However the category of person to whom Direct Payments may be made was subsequently expanded as a result of the Health and Social Care Act 2008. Welsh Ministers now have the power, by regulation, to enable Direct Payments to also be made to a “suitable person” in certain circumstances. A suitable person is defined as:

- a) a representative of the service user; or
- b) a surrogate of the user and someone who the responsible local authority considers to be a suitable person to receive the payments for the purpose of securing provision for the user of the service concerned; or
- c) neither a representative of the user nor a surrogate but a person who the authority considers to be a suitable person to receive the payments for the purpose of securing provision for the user of the service concerned.

While any such payments would be made for the purpose of securing the provision of services for the service user, the recipient would not necessarily be required to be the service user or a person looking after them. Hence the LCO as made would no longer provide the National Assembly with the legislative competence to extend the provisions of the proposed Measure to all cases where a Direct Payment may be made. As a result, any changes made to the charging regime for these services by the proposed Measure would not apply in relation to these additional categories of persons who could receive Direct Payments. Consequently the development of a dual system of calculating Direct Payments would be unavoidable. This would run against one of the key objectives of the proposed Measure, that is to create greater consistency and simplicity in charging.

To correct this problem, an amendment to the Assembly’s competence in this area is being sought. Additional wording has been inserted into the draft National Assembly for Wales (Legislative Competence) (Social Welfare) Order 2009 which would enable the provisions of the proposed Measure to apply in all cases where a Direct Payment may be made. That particular LCO, which is currently in the final stages of its legislative process, relates to the same field

of Schedule 5 of the Government of Wales Act 2006 as the existing competence in the 2008 LCO, that is social welfare. Including this amendment in the present LCO will then enable the scope of the proposed Measure to be similarly extended by way of Government amendments to Measure which I intend to bring forward later this Autumn during its passage through the Assembly.

ANNEX 3

LE WALES RESEARCH AND THE POSSIBILITY OF NEW CLIENTS APPLYING FOR SERVICES

The research undertaken by LE Wales as part of the development work for the proposed Measure considered both the current charging policies of local authorities in Wales for non-residential social care services and the resultant position on charging itself in each authority. Based on this information it then identified a range of options for introducing more consistency in this charging and assessed the implications of those options.

In relation to the issue of any latent demand for services that might arise following implementation of changes to the charging regime, the research said the following:

LE Wales Baseline Assessment

101. In our questionnaire, we also asked local authorities how many potential service users had refused a service on the basis that charges were too high. Local authorities had great difficulty in answering this question. Only five of the 22 local authorities were able to provide some kind of estimate of these numbers. The responses suggested that these five local authorities had records of 28 (out of approximately 10,700) service users refusing a service due to the level of charges. This is equivalent to less than 0.3% of users.

1. The derivation of these figures is mixed – in some cases they relate to the numbers of service users who withdraw from a service, citing cost as the main reason, and in other cases they are based on local authority estimates. Most local authorities do not keep records of the reasons for which service users withdraw from a service.

2. One local authority indicated that of those users who were entitled to a six week period of free services, 33% ceased their service during or after the six week free period. The total of the average weekly hours of service for all these people was 380 hours per week or about 6.5% of the total service for the year. The LA noted that a proportion of these people would no longer have needed home care anyway, but that these figures provide some feel for the unmet need.

3. A number of service users/carers/representatives in Wales that we have spoken to feel that there are many people who refuse a service on the basis of high charges. We are not aware of any survey-based evidence of this

in Wales. A recent report from the Coalition on Charges¹ reports the results of a survey of service users in England in which 80% of the people who no longer used care services described charges for accessing support as playing a part in stopping usage. In addition, 22% of respondents using care services said that they were likely to reduce or stop receiving services if charges increased.

LE Wales Main Report

4. Packages that reduce the number of people subject to charges and/or that reduce the level of charges paid by those who do pay charges may lead to increases in demand for services. As services become free or cheaper for more people, those people may choose to use more services. The increase might come from those who previously had not been using services or it might come from those who were paying for some services but would be willing to pay for more services at the lower price.

5. Predicting the demand effects of a change in charges is very difficult as it involves judgements about how people might change their behaviour in response to the price change. The size of any change in demand will depend on a number of factors. These include:

a. The extent to which there are potential service users, who would pass current eligibility criteria, but who, dissuaded by existing charges, are either not currently taking up services or who are only taking a portion of the services for which they are eligible;

b. The extent to which such service users are sensitive to price changes. This might be determined by a number of factors including income levels; the size of the price change; how beneficial new or a greater level of services would be to their daily lives; the availability (and price) of alternative sources of assistance, e.g. family assistance, private care services.

c. The response of other stakeholders, such as local authorities and service providers, to price changes and to any initial impacts on demand. If, for example, local authorities are not adequately funded for any initial increases in demand, or if in the short term they have difficulty in adjusting to increased demand because of the time it takes to expand workforce and other capacity, then they may use other methods to limit any increased take up of services. For example they might raise eligibility thresholds.

6. There has been some assessment of the demand impact of reducing or eliminating charges for non residential social care services outside Wales. However evidence often arises in the context of introducing free care for some types of service and results seem to be mixed. In Scotland, for example, Audit Scotland found that the numbers of people receiving public funding for personal care at home had increased from 27,337 in 2002 to 41,386 in 2007 following the introduction of free personal care in the home for older people in 2002. In the USA and the Netherlands research has suggested that the introduction of free personal care does little to cause people to switch away from more informal care.

¹ Coalition on Charging (2008) *Charging into poverty? Charges for care services at home and the national debate on adult care reform in England*, June 2008.

7. Any demand effects in Wales will depend on the specific circumstances of services users, charging systems and policy changes in Wales and so it is difficult to draw any direct conclusions on the basis of experience elsewhere. Nevertheless consideration of demand effects is likely to be a key part of arrangements for the Welsh Assembly Government to compensate local authorities for any losses in charging income arising as a result of policy changes in this area.

Consequently while the LE Wales research raised the possibility of an increase in demand as a result of any changes introduced, the evidence which exists in relation to this is mixed as to whether this would occur in practice and if so, the level of this. In addition, in considering the LE Wales research there are a number of important factors to bear in mind which would have a significant effect on the likelihood of latent demand occurring and hence its level. These are:

- Both the LE Wales research and advice from the Care and Social Services Inspectorate for Wales maintain that there is no significant unmet demand for services, where individuals who require services are not receiving them at present. There is no evidence to suggest, therefore, that there is currently a significant number of people who are not receiving services who would wish to access services should the position with regard to their charging change. In discussions, the United Kingdom Home Care Association have indicated that the proposals to change the charging arrangements may cause some initial turbulence in the delivery of services but they have not suggested that this would be significant or could not be effectively managed;
- Those who currently pay for their services privately might not be as ready to access local authority provided services as might be first thought. At present they have the freedom to commission services from whom they wish and to receive these as they wish. Such freedom would be restricted if services were commissioned through their local authority. Those in this position might not welcome the potential need to have to switch provider to those who their local authority contracts with rather than their current provider and to having the service provided in a way that meets their assessed needs rather than what they currently purchase. The two could be very different;
- In addition, not all those who currently pay privately for their services would in any event be eligible for local authority commissioned services. Under the “Creating a Unified and Fair System for Assessing and Managing Care” guidance authorities have the discretion to set their own eligibility criteria for access to services based on classifications of an individual’s care needs. This is so that authorities have the freedom to set eligibility locally in the light of the availability of resources and local priorities in relation to service provision. As a result under the guidance authorities can set their eligibility at one of four classifications – low, moderate, substantial and critical needs. Almost all authorities in Wales now provide services to only those individuals whose needs fall into the upper two categories – substantial and critical. Hence only those individuals who are currently paying privately for their care who fell into those categories following a care

needs assessment would be eligible for a local authority service. The remainder would continue to either have to pay for their services privately or seek support from their family or friends as now;

- Where individuals access local authority commissioned services for the first time they might not welcome the possibility of having to declare their financial circumstances as part of a means test. Many find means testing intrusive and prefer not to have one, paying at present the full charge an authority makes for the services they receive irrespective of whether they should be or not. Individuals who take this position will, under the proposed Measure, be at liberty not to request a means test if they wish. Where this occurs authorities will be able to charge the set weekly maximum charge for the services provided irrespective of whether the individual's means warrant this or not;
- The First Steps Improvement Package I intend to implement does not seek to introduce free services across the board. There will still be a charge for certain services and for certain categories for service users, albeit that the charge may only be up to a maximum of £50 per week for all of the services a user receives. This is different to the situation in Scotland, for example, with the introduction of free personal care when a large latent demand for services occurred. A charge, however small, may still deter some individuals from seeking services from their local authority given the other consequences this entails in relation to freedom and means testing.

In summary, therefore, I have considered the possibility of there being an increase in demand for services following the implementation of my planned First Steps Improvement Package. However, based on the LE Wales research and the factors I outline above I do not consider it likely that there will be a significant increase in demand as a result of my plans. That said, should local government or others put forward evidence of a significant increase in demand for services I will of course consider this as part of the implementation of my initial improvement plans and in the development of the draft Regulations required to effect those plans. I am clear that these more detailed potential operational implications do not undermine the principles underpinning the proposed Measure or the strong case that exists to secure greater consistency in charging for non-residential social care services across Wales.



Cynulliad National
Cenedlaethol Assembly for
Cymru Wales

Subordinate Legislation Committee

The appropriateness of the subordinate legislation provisions in the Proposed Social Care Charges (Wales) Measure

1. Standing Orders

1.1 The Committee has the following powers under Standing Orders:

- Standing Order 15.6 (ii) states that the Subordinate Legislation Committee may consider and report on ‘the appropriateness of provisions in proposed Assembly Measuresthat grant powers to make subordinate legislation to the Welsh Ministers’.
- Whilst it is not part of the Committee’s remit to comment in the merits of the proposal which the proposed Measure is intended to implement, Standing Order 15.6(v) states that the Committee may consider and report on ‘any legislative matter of a general nature within or relating to the competence of the Assembly or Welsh Ministers’.

1.2 The purpose of this report is to inform the Assembly’s Stage 1 debate on the general principles of the proposed Measure and subsequent legislative stages.

2. Consideration

2.1 On 30 September 2009 the Committee considered the Proposed Social Care Charges (Wales) Measure and received evidence from the Deputy Minister for Social Services, Gwenda Thomas AM.

3. Background

3.1 The Welsh Government introduced the Proposed Social Care Charges (Wales) Measure to the Assembly on 29 June 2009. A Stage 1 Committee has been established to consider the general principles of the proposed Measure.

3.2 The Proposed Social Care Charges (Wales) Measure provides for the introduction of a new regime which will ensure that local authorities across Wales adopt a more consistent approach to charging service users for non – residential social care services. The Measure is primarily an enabling Measure which will leave the detailed provisions to be set out in subordinate legislation and statutory guidance to be made under the Measure.

4. Subordinate Legislation Making Powers and Procedures

4.1 The proposed Measure contains a number of provisions which confer on the Welsh Ministers, a power to make regulations and orders in relation to certain functions under the proposed Measure. The power in each case is to be exercised by the Welsh Ministers by statutory instrument. The legislation with one exception will be subject to the **negative procedure**. The Explanatory Memorandum explains that this is due to the nature of the proposed subordinate legislation, being concerned primarily with the financial and administrative arrangements. The exception is that under Section 10 (3) and (4) (a) if the subordinate legislation seeks to amend an Act of Parliament or Assembly Measure it will be subject to the **affirmative procedure**.

4.2 The following provisions contain powers to make regulations:-

Section 2 (2): power to make regulations controlling and limiting the determination by local authorities of reasonable charge. Subsection (3) gives examples of the type of provision that may be included in regulations made under this section. This includes provision for setting out the maximum that a local authority may charge for a particular service or for any combination of services and provision for establishing a maximum hourly or weekly charge.

Section 3 (1): power to make regulations excluding certain categories of persons or services from charging.

Section 4 (3) & (4): power to make regulations governing the assessment of a person's means by the local authority.

Section 4 (5) & (6): power to make regulations concerning the determination of what is reasonably practicable for a service user, to pay in light of their means assessment.

Section 5 (4) (e): power to make regulations adding to the list of information to be provided to those on whom the local authorities decide to impose a charge.

Section 6 (1): power to make regulations for and in connection with the review of charging decisions taken by local authorities.

Section 10 (3): power by order to make provision that is necessary or expedient for the purposes of the Measure, or in consequence of, or to give effect to, any provision of the Measure. Section 10 (4) provides that such an order may amend, repeal or revoke any provision of an Act of Parliament, an Assembly Measure or subordinate legislation. Where such an order amends an Act of Parliament or an Assembly Measure it will be subject to the affirmative procedure.

Section 11 (3): power for the Welsh Ministers to make an order to commence provisions of the Measure. As is normal practice for commencement orders, no procedure will apply.

5. Issues raised in evidence and recommendations of the Committee

5.1 The Committee queried why the proposed Measure gives powers to Welsh Ministers to make Regulations and Orders, and whether this restricts scrutiny and debate on many areas. The Committee believes that more detail should be contained on the face of the Measure and makes recommendations to address this.

Section 2: Maximum Charging

5.2 Whilst the Committee accepted the rationale for setting the level of a maximum charge by regulation since this would need regular updating, the Committee queried whether a formula for calculating the maximum charge should be included on the face of the Measure.

5.3 In response to this the Minister stated:

‘There is no formula as such. We are setting out a maximum charge of £50 for all services—that is the proposal..... However, if we were to use a formula and include it on the face of the proposed Measure, it would require another Measure to change it, which would complicate matters. It is far clearer and easier to rely on regulations to amend the maximum charge as and when necessary.’¹

5.4 The Committee saw evidence submitted by the Wales Neurological Alliance to Legislation Committee 5, who are considering the Measure. This evidence stated that the Alliance:

‘expected the proposed Measure to either set a maximum charge or develop a formula that would be used to set charges. This would have given ... Assembly Members the ability to contribute to the debate as to what level of charges are reasonable for people wanting access to social care.’²

5.5 The Committee also noted that section 2(3)(e) on maximum charges sets out ‘in relation to a charge specified under (c), setting out a formula for determining the amount which must be considered the maximum reasonable charge’, as such the Committee feels that a formula for the maximum charge should be contained on the face of the Measure.

Recommendation 1

The Committee recommends that a formula for calculating the maximum charge appears on the face of the Measure. The Committee does not consider that this would restrict the Welsh Ministers ability to cap maximum charges at £50 per week, as suitable provision could be inserted into the Measure to use a formula in the alternative to a maximum charge. Given the framework nature of the section together with the financial impact it could have on those in receipt of social care services, the Committee further recommends that any regulations made under Section 2 of the Measure be subject to the affirmative procedure.

¹ ROP, Paragraph 49 and 53, 30.09.09

² Wales Neurological Alliance, written evidence to LC5, SCC21

Section 3: Person and services excluded from Charging

5.6 The Committee questioned the Minister as to why details of the persons and service users exempt from charging does not appear on the face of the Measure. The Committee also queried whether this provision should be subject to the affirmative procedure to allow for debate by Members of the National Assembly.

5.7 In response to this the Minister stated:

‘...the ability to specify persons in respect of whom charging cannot be made has been left to the regulations. That is to allow for maximum flexibility in considering who those persons or groups should be..... We want maximum flexibility so that we can embrace as many groups and persons as possible, and to allow flexibility for this and future Governments.’³

5.8 The Committee also notes the evidence from the Wales Neurological Alliance to Legislation Committee 5, which states that:

‘the proposed Measure as drafted would allow the current Welsh Minister or future Welsh Minister to exclude groups of people who the government believe to be special cases without this decision being fully consulted by the National Assembly for Wales.’⁴

5.9 The Committee accepts the concerns of the Wales Neurological Alliance but notes the Ministers requirements for flexibility, and therefore thinks the affirmative procedure should be used in this instance.

Recommendation 2

The Committee accepts the Ministers reasons for not including details on the face of the Measure but given its framework, recommends that the provision under section 3 allowing Welsh Ministers to make regulations to exempt from charges certain persons and certain services should be subject to the affirmative procedure.

Section 10: Order and Regulations

5.6 The Committee is increasingly concerned by the framework nature of the Measures being proposed by the Welsh Assembly Government. The Committee questioned whether due to the framework nature of this Measure whether the first set of regulations made under the Measure should be subject to the affirmative procedure.

5.7 In response to this the Minister stated that she did not agree with this and that the one regulation subject to the affirmative procedure was satisfactory for this Measure.

Recommendation 3

Given the framework nature of the Measure, together with the potential impact it may have on those in receipt of social care services, the Committee recommends that the first set of regulations made under the Measure are subject to the affirmative procedure.

³ ROP, Paragraph 60, 30.09.09

⁴ Wales Neurological Alliance, written evidence to LC5, SCC21

NATIONAL ASSEMBLY FOR WALES
REPORT FROM THE FINANCE COMMITTEE

Report on the financial implications of the Proposed Social Care Charges Measure

Background

1. Standing Order 14.2 states:

The [Finance] Committee may also consider and, where it sees fit, report on:

- (i) financial information in explanatory memoranda accompanying proposed Assembly Measures;*

The Proposed Measure

2. The Welsh Assembly Government introduced the Proposed Social Care Charges Measure to the Assembly on 29 June 2009. It was accompanied by an Explanatory Memorandum. The Minister on 22 September submitted further evidence to the Finance Committee: a copy of her Policy Intention Statement (dated 30 June) and a further paper written to assist the Finance Committee with its consideration of the proposed Measure.
3. The Measure seeks to ensure a more consistent approach to charging for non-residential social services following concerns that charges made by local authorities in Wales vary widely depending on where the service user lives. Much of the proposed Measure is enabling in nature, and provides for the Welsh Ministers to bring forward secondary legislation and statutory guidance to provide the detail within the new legislative framework at a later date.

Evidence

4. The Finance Committee considered the Proposed Measure and the accompanying Explanatory Memorandum at its meeting on 8 October and took evidence from
 - Gwenda Thomas AM, Deputy Minister for Social Services
 - Amanda Jones, Directorate for Legal Services, Welsh Assembly Government
 - Steve Milsom, Older People and Long Term Care Policy, Welsh Assembly Government
5. The Finance Committee also considered the written evidence submitted to the Proposed Social Care Charges Measure Committee in response to their consultation exercise which had included a specific

question relating to the financial considerations of the proposed Measure:

What are the financial implications of the proposed Measure for organisations, if any? In answering this question you may wish to consider Section 2 of the Explanatory Memorandum (the Regulatory Impact Assessment), which estimates the costs and benefits of implementation of the proposed Measure.

Observation

6. The Committee notes the issues below that relate the funding of its provisions.

General Approach of the proposed Measure

7. **The proposed Measure is an enabling power.** The only powers it confers directly are in relation to the requirement on local authorities to provide information, the costs of which are likely to be negligible. The Deputy Minister [rop 129] told the Committee that regulations made under the Measure would primarily be concerned with the financial and administrative arrangements and will need to be reviewed and revised regularly. In these circumstances it is common practice for such regulations to be subject to the negative procedure. She intended to hold further discussions with stakeholders and hold public consultation before drafting regulations. They would mostly be subject to the negative procedure because this is “common practice”
8. The Deputy Minister assured the Committee that all subordinate legislation will have a full financial impact assessment. She also confirmed that the legislation would be considered by the Subordinate Legislation Committee.
9. **The Finance Committee notes** that by being an ‘enabling’ power, with most of the detail to be set out in subsequent regulations, the proposed Measure makes it impossible for any detailed and specific scrutiny to be given to the proposals. While the secondary legislation would be considered by the Subordinate Legislation Committee, the level of scrutiny at that stage of the process is far less than at the proposed Measure stage and, in particular, does not involve the Finance Committee. Given that this proposed Measure is entirely about charges, and gives the Government a wide degree of freedom in relation to these, it is concerning that an approach which bypasses the Finance Committee has been adopted.
10. The Finance Committee notes also that proposals will be subject only to negative resolution.

First Steps Improvement Package

11. The Deputy Minister has provided the Committee with an assessment of the potential cost of the provisions within the First Steps Improvement Package. This is based upon the charging characteristics of a 'base authority' and research undertaken by LE Wales. It indicates an overall cost for the First Steps package in the region of £11m a year, mainly as a result of reimbursing local authorities for loss of income due to the proposed changes in charging arrangements. The Deputy Minister said [rop 137] that this was based on research conducted on the basis of 2008-9 charging policies. She also said that she would be prepared to talk to the WLGA and individual authorities and to look at extra costs that may have developed between that time and the introduction of the measure in 2011-12. The Finance Committee was also told [rop 138] that there was a cut-off date of 30 June which meant that authorities could not increase their charges to claim back additional money from the Assembly Government.
12. The WLGA stated in its response to the Legislation Committee's consultation that it was deeply concerned about the affordability of the proposed Measure in the current financial climate, particularly where authorities are under pressure to make savings at the risk of reduced service provision. The Finance Committee notes this view but, as a policy matter, does not consider it appropriate to comment on it.

Reimbursement of local authorities

13. **The Government has said it will reimburse local authorities** for this loss of income and says that the money for this will come from the funds currently available for the "Promoting Independence and Well Being Grant" and the "Joint Working Grant" which are due to end in 2011. The former currently totals £4.5m and the latter £11m. The Deputy Minister said [rop 145] that the two grants will come to an end and that the purpose for which that grant funding was made available comes to an end at that point.
14. The WLGA has argued in a subsequent note [ref] that while these grants will come to an end the need for support for the services they underpin needs to continue. Their view is that these monies should subsequently be subsumed into the RSG.
15. **The Finance Committee notes** the Deputy Minister's statement that these two grants are coming to an end. The Deputy Minister told the Committee [rop 150] that it was always the intention that these activities would be built into and mainstreamed by local authorities. If this is the case then, under the Essex-Jones agreement, the Government has a commitment to funding these new responsibilities placed on local government. While the Finance Committee could accept that the level of future funding might not be as great as in previous years as it has been in the past, it finds it difficult to see that

there will no continuing commitment in respect of these activities – one part of which has been funded by the Joint Working Grant which has allocated local authorities some £71m between 2001 and 2008. **The Finance Committee notes that these concerns are shared by others, including the Welsh Local Government Association, and asks the Minister to provide a clear statement on the transitional arrangements for all these grants so that the Finance Committee and local government can both be clear about what is expected of Local Government and the funding support that is being provided.**

Changes to eligibility criteria

16. The WLGA and ADSS have said that due to pressure on resources many councils have in the past increased eligibility criteria for access to services in order to remain within budget. There were concerns that authorities may do this in order to manage the pressures created by the proposed Measure.
17. The Deputy Minister confirmed to the Finance Committee [rop 163] that the setting of eligibility criteria is outside the scope of the proposed Measure and will remain firmly with local authorities, although they will still be required to operate within the requirement for all charges to be reasonable. She said she did not see any circumstances arising in which local authorities would think they needed to change the criteria. She also indicated [rop 166-7] that work was in hand to provide some sort of professional guidance on charging levels. In addition, there would be no reason for any local authority to change its eligibility criteria because the Government would be reimbursing them.
18. **The Finance Committee notes these assurances.**

Maximum Charge

19. The Deputy Minister confirmed in her evidence that it was her intention to set a maximum charge and indicated that doing this by regulation provided flexibility for it to be changed over time. The Finance Committee told the Minister that it could see the benefit of flexibility in setting the level of the maximum charge but wondered why the power to set a maximum charge at any level needed to be in regulations. Members wondered if this would be more appropriate within the Measure itself. In her response [rop 189] the Deputy Minister reiterated the need for flexibility.
20. In relation to the level of charges, the Deputy Minister told the Finance Committee [rop 193] that although there would be a maximum charge of £50 a week this could only be levied where the service received by the user justified it. For this reason she did not consider the maximum charge would become a ‘standard’ charge. She was also of the view [rop 195] that a local authority would not want to reduce the quality of its services which would still be subject to inspection and

regulations. The Finance Committee is concerned that the maximum charge could quickly become the de facto charge for these services.

21. The Deputy Minister noted [rop 200] concerns that setting the charge at a fixed level would not take account of inflation and said that one of the examples of doing this by regulation was that the flexibility this approach provided would allow charges to be revisited when necessary.
22. **The Finance Committee notes** the Deputy Minister's intention to maintain complete flexibility in every aspect of this Measure. It notes her confidence in local authorities and her commitment to revisit the charges in the light of inflation.

Other issues

23. The Finance Committee notes the Ministers commitment to protect the income of the most severely disabled people through the disregard for constant attendance allowance and severe disablement allowances in charge assessments. It notes also that these will benefit only a small proportion of all disabled people.
24. It notes also her confidence that the intention to require local authorities to provide free transport to Day Centres will not lead to a diminution of transport services. However the Finance Committee recommends that the Minister monitors the level of transport services and ensures that Local Government is financially able to meet this commitment.

Conclusion

25. The Finance Committee notes that the Proposed Social Care Charges Measure is essentially an enabling Measure which will allow the Government to make a wide range of regulations in relation to charges for the provision of non-residential social care services.
26. The Finance Committee notes that overall the costs presented and those they have been able to consider were those for just the First Steps Improvement Package. That is to say these are the potential costs of the policy intention behind the measure. They do not include all the potential financial implications of the proposed Measure itself. Given that the measure is essentially an enabling power it is impossible to estimate its full financial implications.
27. The Finance Committee acknowledges the practical advantages of setting charging mechanisms through regulation to provide flexibility particularly in relation to inflation. But it notes that the scrutiny of regulations is at a lower level of detail than for proposed Measures and, while any regulations will be considered by the Subordinate Legislation Committee, they will not receive further consideration by the Finance Committee and in most cases will be approved by negative

resolution. The Finance Committee believes that seems unsatisfactory for a proposed measure that is essentially financial

28. The Finance Committee is concerned about the use of two existing grant scheme to provide funding for the First Steps Improvement Package which raises questions in relation to the Essex Jones agreement. The Finance Committee asks the Minister to provide a clear statement on the transitional arrangements for all these grants so that the Finance Committee and local government can both be clear about what is expected of Local Government and the funding support that is being provided.
29. The Finance Committee notes that while there is a need for flexibility in relation to inflation, this does not apply to the more fundamental question of whether the Government should have the power to set a maximum charge at all. We consider it would be more appropriate for the power to set a maximum charge to be contained within the measure itself. The Finance Committee sees no objection to the Government then having the power to set the level of the charge by regulation. The Finance Committee is concerned that the maximum charge could quickly become the de facto charge for these services.
30. The Finance Committee notes the Ministers commitment to reimbursing local authorities for the loss of income arising from the First Steps Improvement Package and her commitment to talk to the WLGA and individual authorities and to look at extra costs that may have developed between 2008-9 which was the base year for the charging figures and the introduction of the Measure in 2011-12. It hopes that the same approach will apply in respect of all other regulations made under this Measure.
31. The Finance Committee notes the Government's confirmation that funding for this reimbursement will come from two schemes that have now ended and looks forward to receiving the further information on these that is has requested.
32. The Finance Committee notes the Deputy Minster's confidence in local authorities that the proposed Measure will not lead, directly or indirectly, to any change in the quality of services provided by them or the criteria by which they determine eligibility.

Angela Burns
Chair, Finance Committee

The National Assembly's legislative competence to make the proposed Measure

The principal power enabling the National Assembly to make the proposed Measure is contained in Matter 15.1 of the Schedule 5 of the Government of Wales Act 2006.

Matter 15.1 of the Schedule 5 to the Government of Wales Act 2006:

“...15.1 Charges levied by local authorities for social care services provided or secured by them and payments in respect of individuals with needs relating to their well-being so that they, or persons looking after them, may secure social care services to meet those needs.

This matter does not include charges and payments for residential care...”