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Proposed Social Care Charges (Wales) Measure [AS INTRODUCED]

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Proposed Social Care Charges (Wales) Measure

[AS INTRODUCED]

A MEASURE of the National Assembly for Wales to make provision for and in connection with the imposition and recovery of charges for the provision of non-residential social care services.

1 Charging for care services: the general rule

- 5 (1) The general rule is that a local authority in Wales providing a service to which this Measure applies may (but does not have to) impose a reasonable charge for the service.
- (2) A reasonable charge is such amount as the authority concerned determines reasonable.
- 10 (3) But the general rule is subject to—
- (a) section 2 (maximum charges);
 - (b) section 3 (persons and services in respect of which charges may not be imposed);
 - (c) section 4 (means testing); and
 - 15 (d) any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003 (c. 5) (free provision of services in Wales).
- (4) A local authority has the power to recover a charge imposed under this section.
- (5) Without prejudice to the generality of subsection (4), a charge imposed under this section may be recovered summarily as a civil debt.
- 20

2 Maximum charges

- (1) In determining for the purposes of section 1(2) a reasonable charge for a service to which this Measure applies, a local authority must comply with regulations made by the Welsh Ministers under subsection (2).
- 25 (2) The Welsh Ministers may make provision in regulations for and in connection with controlling and limiting the determinations that a local authority may make under section 1(2).
- (3) The provision that may be made in the regulations includes (but is not limited to) provision—
- 30 (a) specifying an amount which must be considered the maximum reasonable charge for a service, or combination of services, to which this Measure applies;

- (b) setting out a formula for determining the amount which must be considered the maximum reasonable charge for a service, or combination of services, to which this Measure applies;
- (c) requiring, in the case of a specified service, or combination of services, a local authority to fix a charge by reference to a specified period of time;
- (d) in relation to a charge specified under (c), specifying the amount which must be considered the maximum reasonable charge;
- (e) in relation to a charge specified under (c), setting out a formula for determining the amount which must be considered the maximum reasonable charge.

3 Persons and services in respect of which charges must not be imposed

- (1) The Welsh Ministers may by regulations specify categories of person, service or combinations of services (or categories of person in respect of a particular service or combination of services) in respect of which a charge must not be imposed under section 1.
- (2) The power under subsection (1) includes (but is not limited to) power—
 - (a) to specify categories of person by reference to that or another person's entitlement to or receipt of specified payments, facilities, services or benefits in kind;
 - (b) to specify categories of person by reference to their age or their needs;
 - (c) to specify categories of service or combinations of services by reference to the period of time for which they are provided.

4 Means testing

- (1) Subsections (1) to (7) apply where—

- (a) a person—
 - (i) is offered a service to which this Measure applies by a local authority, or
 - (ii) avails himself or herself of the provision by a local authority of a service to which this Measure applies;
- (b) the person requests that the authority carries out an assessment of his or her means for the purpose of deciding whether it is reasonably practicable for him or her to pay the amount which (but for this section) he or she would be required to pay for the service; and
- (c) the person provides the authority with any information or documents in his or her possession, or under his or her control, which the authority reasonably requires in order to assess the person's means under subsection (2)(a).

- (2) Where this section applies, the local authority in question must—

- (a) assess the person's means; and
- (b) determine in the light of that assessment the amount (if any) which it is reasonably practicable for the person to pay for the service in question.

- (3) A local authority must exercise its function under subsection (2)(a) in accordance with regulations made by the Welsh Ministers.
- (4) Regulations under subsection (3) may (among other things) apply any other statutory means testing regime as it has effect from time to time, subject to any modifications specified in the regulations.
- (5) A local authority must exercise its function under subsection (2)(b) in accordance with regulations made by the Welsh Ministers.
- (6) The provision that may be made by regulations under subsection (5) includes (but is not limited to) provision—
- (a) specifying or determining the maximum amount that it is reasonably practicable for persons of specified means, or of means falling within a specified range, to pay for a particular service, or combination of services;
 - (b) identifying cases in which it is not reasonably practicable for persons of specified means, or of means falling within a specified range, to pay any amount for a particular service, or combination of services.
- (7) In imposing charges under section 1(1), a local authority must give effect to any determination made under subsection (2)(b).
- (8) Before deciding to impose a charge under section 1(1), a local authority must invite a person to whom it provides, or intends to provide, a service to which this Measure applies to make a request under subsection (1)(b) (unless such a request has already been made).

5 Provision of information about charges

- (1) A local authority must make arrangements to bring information about the matters referred to in subsection (2) to the attention of persons—
- (a) who receive a service to which this Measure applies; or
 - (b) who may receive such a service.
- (2) The matters are—
- (a) the services in respect of which charges are and are not imposed;
 - (b) the standard charges imposed for different types of service (that is the charges that would be imposed if there were no means testing applied under section 4); and
 - (c) the operation of section 4.
- (3) The arrangements must—
- (a) provide for the provision of information in a range of accessible formats (including in writing) about the matters referred to in subsection (2) in response to a request made by a person referred to in that subsection; and
 - (b) be framed so that any information is provided free of charge.

(4) Where a local authority decides to impose a charge under section 1, it must provide the person upon whom the charge is imposed with a statement in writing, and in any other accessible format that the person reasonably requests, which—

- (a) describes the service, or combination of services, to which the charge relates;
- (b) describes the standard charge for the service, or combination of services, in question (that is the charges that would be imposed if there were no means testing under section 4);
- (c) explains how the charge was calculated (including details of any assessment of the person's means under section 4 and how this affected the calculation);
- (d) describes the person's rights to challenge or complain about the charge or the clarity with which the statement is expressed;
- (e) contains any other matter which regulations made by the Welsh Ministers require to be included in the statement.

(5) A statement under this section must be provided—

- (a) free of charge; and
- (b) within twenty one days of the date on which the charge to which the statement relates was imposed.

6 Reviews of charging decisions

(1) The Welsh Ministers may by regulations make provision for and in connection with the review of decisions taken by local authorities under this Measure.

(2) The provision that may be made by regulations under subsection (1) includes (but is not limited to) provision—

- (a) conferring a right upon an individual to whom a statement has been provided under section 5(5) to request a review and an obligation upon the local authority that provided the statement to carry out a review and implement its findings;
- (b) as to the decisions in respect of which the individual has the right to request a review;
- (c) as to the steps that must be taken in order for a person to exercise the right to request a review and the time by which such steps are to be taken;
- (d) as to the procedure to be followed and steps to be taken in connection with, and following, the review;
- (e) as to the type of officer or group of officers of the local authority who are to take the decision on the review;
- (f) requiring a local authority to provide specified information and assistance to a person who has exercised the right to request a review.

7 Care services to which this Measure applies

(1) This Measure applies to a service provided under the enactments mentioned in subsection (2) unless the service is provided in the form of residential care.

(2) The enactments are—

5 (a) section 29 of the National Assistance Act 1948 (c. 29) (welfare arrangements for blind, deaf, dumb and crippled persons etc);

(b) section 45(1) of the Health Services and Public Health Act 1968 (c. 46) (welfare of old people);

10 (c) Schedule 15 to the National Health Service (Wales) Act 2006 (c. 42) (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);

(d) paragraph 1 of Part II of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (meals and recreation for old people) other than the provision of services for which payment may be required under section 22 or 26 of the National Assistance Act 1948;

15 (e) section 2 of the Carers and Disabled Children Act 2000 (c. 16) (services for carers).

8 Amendments to the Health and Social Services and Social Security Adjudications Act 1983

20 (1) Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) is amended as follows.

(2) In subsection (1) after "authority" insert "in England".

(3) In subsection (2)(c) omit "or Schedule 15 to the National Health Service (Wales) Act 2006".

25 (4) After subsection (2) insert—

"(2A) Subject to subsection (3) below, an authority in Wales providing a service to which this section applies in the form of residential care may recover such charge (if any) for it as they consider reasonable."

9 Amendment to the Local Authority Social Services Act 1970

30 (1) The Local Authority Social Services Act 1970 (c. 42) is amended as follows.

(2) At the end of the table in Schedule 1 to the Act insert—

"

Social Care Charges (Wales) Measure 2010	Charges for local authority welfare services
Sections 1, 2, 4, 5 and 6	

".

10 Orders and regulations

(1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.

(2) Any order or regulations under this Measure—

5 (a) may make different provision for different cases and purposes; and

(b) may make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate.

(3) The Welsh Ministers may by order make such provision as the Welsh Ministers consider necessary or expedient for the general purposes, or any particular purposes, of this Measure, or in consequence of, or for giving full effect to, any provision made by this Measure.

(4) An order under subsection (3) may amend, repeal or revoke any provision of—

(a) any Act of Parliament or Act or Measure of the National Assembly for Wales (including this Measure); and

15 (b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).

(5) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.

(6) A statutory instrument containing an order which includes provision (alone or with other provision) mentioned in subsection (4)(b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales. But this does not apply if the order also includes provision mentioned in subsection (4)(a).

(7) A statutory instrument containing provision (alone or with other provisions) mentioned in subsection (4)(a) must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

11 Commencement and interpretation

(1) In this Measure “local authority” means a county council or county borough council.

(2) The provisions of this section and sections 10 and 12 come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.

(3) The remaining provisions of this Measure come into force in accordance with provision made by the Welsh Ministers by order. Different days may be appointed for different purposes.

12 Short title

This Measure may be cited as the Social Care Charges (Wales) Measure 2010.