

**Explanatory Memorandum to the revised Code of Practice on the exercise of social services functions in relation to charging and financial assessment under part 4 and part 5 (Charging and Financial Assessment) of the Social Services and Well-being (Wales) Act 2014.**

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before Senedd Cymru in conjunction with the above code of practice and in accordance with Standing Order 27.14

**Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the revised code of practice on the exercise of social services functions in relation to charging and financial assessment under Part 4 and 5 of the Social Services and Well-being (Wales) Act 2014.

**Julie Morgan AM**  
**Deputy Minister for Health and Social Services**

**4 February 2022**

## **Part 1**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 (the “Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support, and carers who need support. The Act provides the foundation, along with regulations and codes of practice made under it, to a statutory framework for the delivery of social care in Wales to support people of all ages as part of families and communities.

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

Regulations governing local authorities discharging their discretion to set a charge, contribution or reimbursement were made under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016. A Code of Practice on financial assessment and charging to accompany these regulations was also made under the Act and came into effect on 6 April 2016.

To introduce a number of policy changes since the regulations came into effect, several amendments were applied through regulations which came into force on 10 April 2017, 9 April 2018, 8 April 2019 6 April 2020 and 12 April 2021. These were necessary to update several sets of regulations made under Parts 4 and 5 of the Act. Revisions to the Code of Practice were also put in place to reflect the changes made by regulations. A revision of the Code came into force on 10 April 2017, 9 April 2018 and 8 April 2019 respectively. The Code has not been updated since that time as no specific changes have been made in legislation that would warrant a revision of the Code being necessary.

Changes are now proposed to one set of regulations made under the Act, namely the Care and Support (Financial Assessment) (Wales) Regulations 2015. These changes are to come into force on 11 April 2022. They reflect a number of new compensation schemes that have been put in place by other UK governments in recent years and subsequently brought to the attention of the Welsh Government and, capture any put in place by Welsh Government more recently. Producing a revised Code also presents an opportunity to add a reference to amending charging and financial assessment regulations that have come into effect since the previous revision. This will ensure the Code remains up to date and effective. Amendments to the Code are the subject of this Explanatory Memorandum.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this revised Code. This final version of the revised Code will be laid before the Senedd for 40 days after which time, if no resolutions are made, Welsh Ministers

must issue it. There are no other matters the Minister wishes to bring to the Committee's attention.

### **3. Legislative background**

The powers enabling the making of this Code are contained in Sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under section 145. It is proposed that this revised Code comes into force on 11 April 2022.

### **4. Purpose & intended effect of the legislation**

This revised Code has been amended to reflect a number of compensation schemes by making an addition to the lists of forms of capital and income that should be fully disregarded in the financial assessment for charging for all forms of social care and support. Schemes are typically new pieces of legislation introduced by other UK governments, or the Welsh Government, that make monetary awards to individuals who have suffered harm, abuse or injury and are to receive payments in recognition of their suffering.

The schemes to be added to the Code are the:

- Historical Institutional Abuse (Northern Ireland) Act 2019;
- Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
- Victims Payment Regulations 2020; and
- Any payments made under the payment scheme for former British child migrants established by the Secretary of State.

In addition, there are a number of infected blood and blood products compensation schemes applied to a person infected by contaminated blood products. They are the:

- Wales Infected Blood Support Scheme;
- Northern Ireland Infected Blood Support Scheme.

Producing a revised Code also presents an opportunity to add a reference to amending charging and financial assessment regulations that have come into effect since the previous revision. To this effect the Care and Support (Charging) (Wales) (Amendment) Regulations 2021 have been referenced on the revised Code as appropriate and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022. This is for completeness as the both sets of regulations amend principle regulations referred to in the Code.

### **5. Consultation**

As the revised Code includes a limited number of amendments which could affect an extremely small number of individuals, and does not reflect a change in Welsh Government policy, a formal public consultation has been undertaken in this instance. The revisions are merely a technical adjustment to ensure the Code accurately reflects each compensation schemes identified above to ensure any awards made to individuals, are protected for social care and support charging.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Introduction**

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

### **MINIMUM INCOME AMOUNT (MIA)**

#### **Options and Benefits**

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

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

### **Background**

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

#### Option 1 – do nothing

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

- **Costs**

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

- **Benefits**

There would be no benefits for care home residents supported by their local authority as they would be unable to retain any of the increase applied to their state pension nor would those seeing uplifts applied to any welfare benefit they receive, see a benefit. Instead

these funds would increase residents' weekly contributions to local authorities for the cost of their care, so as to benefit the income stream authorities receive from supported care home residents.

#### Option 2 – make the amending regulations

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

- **Costs**

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

- **Benefits**

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

#### **Conclusion**

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

#### **COMPENSATION SCHEMES**

##### **Options and Benefits**

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

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

#### **Background**

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

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

#### Option 1 - do nothing

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

- **Costs**

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

- **Benefits**

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

#### Option 2 – make the amending regulations

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

- **Costs**

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

- **Benefits**

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

#### **Conclusion**

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

## Competition Assessment

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

## Post Implementation Review

The Act contains provisions to allow Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. The Welsh Ministers may require these bodies to report on their duties in implementing these amending regulations.

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

