

**2011 No. 963 (W. 137)**

**SOCIAL CARE, WALES**

**The Social Care Charges (Direct  
Payments) (Means Assessment and  
Determination of Reimbursement or  
Contribution) (Wales) Regulations  
2011**

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 1 of the Social Care Charges (Wales) Measure 2010 (“the Measure”) gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services, which are directly provided or secured by the local authority (“service users”). The Welsh Ministers have made Regulations under the Measure, the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 (“the Charges Regulations”), with which local authorities are required to comply when exercising this power.

Section 12 of the Measure gives the Welsh Ministers a discretionary power to make provision in regulations which correspond to the provision for a service user (made in the Measure and in the Charges Regulations) for the adult recipient of direct payments (“D”) who receives such payments to secure the provision of services for himself or herself in accordance with the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011, made under section 57 of the Health and Social Care Act 2001.

These Regulations do not require a local authority to seek any payment (whether by way of reimbursement or contribution) from D towards the cost of securing the provision of the service, or combination of services when it makes a direct payment to the D to enable that person to secure the provision of a “chargeable service”; however, in cases where a local authority does require D to make a payment towards the cost of

securing such a service, the local authority must comply with the relevant provisions of these Regulations and any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003.

Regulation 4 prescribes the circumstances in which a local authority may not require any payment from D towards the cost of securing the provision of a service.

Regulation 5 prescribes that a local authority's power to determine the "reasonable amount" that D may be required to pay towards the cost of securing a service is subject to a maximum reasonable amount of £50 per week. It also contains qualifications to this general proposition and it specifies the steps to be taken by a local authority to calculate the amount of the payment which D may be liable to pay.

Regulations 6 to 16 detail the steps in the process of assessing D's financial means; they also specify the matters which a local authority must take into account when assessing D's means and when making a determination as to D's ability to pay a reasonable amount towards the cost of securing the service that he or she has been assessed as needing.

Regulation 7 requires a local authority to issue an invitation to D to request a means assessment. Subsequent regulations make provision for the time in which information or documentation must be supplied to a local authority (regulation 8), requests for an extension of time in which to provide information or documentation (regulation 9), the consequences of failing to respond to an invitation to request a means assessment in full or at all (regulations 10 and 11) and the ability of D to withdraw a request (regulation 12).

Regulation 13 imposes a duty upon a local authority to carry out an assessment of D's financial means in prescribed circumstances and regulation 14 sets out those circumstances.

Regulation 15 sets the circumstances in which a local authority is under no duty to carry out a means assessment.

Regulation 16 contains provision to which a local authority must give effect when undertaking an assessment of D's means.

Regulation 17 makes provision for the matters that a local authority must take into account when determining the ability of D to pay a reasonable amount towards securing the services that D has been assessed as requiring.

Regulation 18 makes provision for the date from which payment of a reimbursement or contribution may be required.

Regulation 19 contains requirements about the information that a local authority must provide in any statement it issues to D.

Regulations 20 and 21 contain savings provision for assessments of means and determinations of ability to pay towards the cost of securing a service made before the coming into force of these Regulations.

Regulations 22 and 23 contain transitional and transitory provision.

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The Social Care Charges (Direct  
Payments) (Means Assessment and  
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2011

*Made* 24 March 2011

*Laid before the National Assembly for Wales*  
29 March 2011

*Coming into force* 11 April 2011

The Welsh Ministers, in exercise of the powers conferred by sections 12 and 17(2) of the Social Care Charges (Wales) Measure 2010<sup>(1)</sup>, make the following Regulations:

**Title, commencement and application**

**1.**—(1) The title of these Regulations is the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

**Interpretation**

**2.**—(1) In these Regulations—

“the 2001 Act” (*“Deddf 2001”*) means the Health and Social Care Act 2001<sup>(2)</sup>;

“the Measure” (*“y Mesur”*) means the Social Care Charges (Wales) Measure 2010;

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(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for the definition of “regulations”.

(2) 2001 c. 15.

“the 2011 Regulations” (*“Rheoliadau 2001”*) means the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011;

“assessable income” (*“incwm asesadwy”*) means that part of D’s income in respect of which a local authority may make a determination in accordance with regulation 17; it does not include the income which a local authority is required to disregard in accordance with regulation 16;

“assessment of needs” (*“asesiad anghenion”*) means an assessment by a local authority of D’s need for community care services undertaken in accordance with section 47 of the National Health Service and Community Care Act 1990<sup>(1)</sup> or section 1 of the Carers and Disabled Children Act 2000<sup>(2)</sup> and “assessed as needing” (*“aseswyd bod arno angen”*) is to be read accordingly;

“basic entitlement” (*“hawlogaeth sylfaenol”*) means, in relation to—

(a) income support—

the personal allowance and any premiums to which D is entitled, but need not include the severe disability premium (“SDP”) where it is paid, and where D is a carer, includes any carer premium that person receives,

(b) employment and support allowance—

the personal allowance and any premiums and components to which D is entitled, but need not include the SDP where it is paid, and where D is a carer includes any carer premium that person receives,

(c) guarantee credit—

the personal allowance and any additional amount to which D is entitled, but need not include the additional amount added for severe disability where it is paid, and where D is a carer, includes any additional amount applicable for carers that person receives;

“charge” (*“ffi”*) is the amount that a local authority may require a service user to pay for a service which the authority provides or secures in accordance with section 1(1) of the Measure (*general power to charge for care services*);

“D” (*“D”*) means an adult who is prescribed for the purposes of—

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(1) 1990 c. 19.  
(2) 2000 c.16.

- (a) section 57(1) of the 2001 Act, by regulation 3 of the 2011 Regulations (prescribed descriptions of persons under section 57(1) of the 2001 Act – community care services and services for carers); and
- (b) section 57(1A) of the 2001 Act, by regulation 4 of the 2011 Regulations (prescribed descriptions of persons under section 57(1A) of the 2001 Act – community care services), and

in either case, who has been offered, who is receiving or, in the case of a person described in paragraph (b), in respect of whom a suitable person is receiving, a direct payment for securing the provision of a service;

“day service” (*“gwasanaeth dydd”*) means a service, which meets a part of D’s assessed needs, which takes place away from that person’s home and which is intended to assist the person in meeting others, in taking up new or practising existing interests and includes work opportunities;

“direct payment” (*“taliad uniongyrchol”*) has the meaning given in regulations 8 and 9 of the 2011 Regulations and any reference to a direct payment includes, where the context requires any part or parts of that payment;

“dual provision” (*“darpariaeth ddeuol”*) means that D’s assessed needs are being met—

- (a) in part by a local authority providing or securing a service or services for that person, and
- (b) in part by D receiving a direct payment in order to secure the provision of another or other services;

“employment and support allowance” (*“lwfans cyflogaeth a chymorth”*) means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007(1);

“flat-rate charge” (*“ffi unffurf”*) means a fixed rate charge for a chargeable service received by a service user which is imposed by a local authority regardless of the means of the service user;

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(1) 2007 c. 5.

“guarantee credit” (*“credyd gwarant”*) is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002<sup>(1)</sup>;

“home visiting facility” (*“cyfleuster ymweliadau cartref”*) means a visit (or visits) which are undertaken by an appropriate officer of a local authority to D’s current place of residence, or at such other venue as D reasonably requests, for the purposes of gathering information to inform a means assessment for that person and for providing information and offering assistance in relation to that process;

“in writing” (*“mewn ysgriflen”*) means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“income support” (*“cymhorthdal incwm”*) means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992<sup>(2)</sup>;

“means assessment” (*“asesiad modd”*) means an assessment of D’s financial means undertaken in accordance with regulations 13 and 16 and “assessment of D’s means” (*“asesiad o fodd D”*) is to be read accordingly;

“net income” (*“incwm net”*) means, the income that D has, or would have left after the deduction from that person’s assessable income of the standard amount (or any other amount) required under these Regulations by way of a payment towards the cost of securing the service for which a direct payment is, or will be, received;

“relevant benefit” (*“budd-dal perthnasol”*) means—

- (a) income support; or
- (b) employment and support allowance; or
- (c) guarantee credit;

“savings credit” (*“credyd cynilion”*) has the meaning given in sections 1 and 3 of the State Pension Credit Act 2002;

“service” (*“gwasanaeth”*) means a chargeable service and, where the context requires, chargeable services or a combination of chargeable services and “services” (*“gwasanaethau”*) and “combination of services” (*“cyfuniad o wasanaethau”*) are to be interpreted accordingly;

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(1) 2002 c. 16.  
(2) 1992 c.4.

“service user” (*“defnyddiwr gwasanaeth”*) means an adult who has been offered, or who is receiving, a service provided or secured by a local authority;

“standard amount” (*“swm safonol”*) means the amount which D would be required to pay towards securing the provision of a service if no assessment of that person’s means or determination of the service user’s ability to pay under these Regulations has effect;

“suitable person” (*“person addas”*) means a person appointed in accordance with regulation 9 of the 2011 Regulations to consent to and to receive a direct payment on behalf of D in accordance with regulation 4 of those Regulations;

“working day” (*“diwrnod gwaith”*) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(1).

(2) In these Regulations, any reference to D “paying” (*“yn talu”*) or making a “payment” (*“taliad”*) of an amount (towards the cost of securing the provision of a service) is to be interpreted as including a reference to the paying or the making of a payment by way of reimbursement or contribution(2).

#### **Direct payments – local authority determination of the amount of a reimbursement or contribution**

3. Where a local authority makes a determination, in accordance with regulation 10(4) or 11(4) of the 2011 Regulations as to what amount or amounts (if any) it is reasonably practicable for D to pay towards the cost of securing the provision a service, it must give effect to—

- (a) the provisions of these Regulations; and
- (b) any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003(3) (*free provision of services in Wales*).

#### **Persons and services in respect of which reimbursement or contribution must not be required**

4.—(1) A local authority must not require or seek any payment towards the cost of securing the

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(1) 1971 c.80.  
(2) “Reimbursement” and “contribution” are defined in section 12(5) of the Measure.  
(3) 2003 c.5.

provision of a service in accordance with the 2011 Regulations from D who —

- (a) has been offered or is receiving a direct payment to secure the provision of a service, and who is suffering from any form of Creutzfeldt Jacob disease where that disease has been clinically diagnosed by a registered medical practitioner;
- (b) has been offered or is receiving a direct payment to secure the provision of a service, which forms part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (*after care*)(1);
- (c) has had a means assessment undertaken by a local authority and been assessed as having a net income of less than the total amount referred to in regulation 17(2).

(2) A local authority may not seek any reimbursement or contribution for that part of a direct payment which is intended to meet the reasonable cost of transport to attend a day service, where attendance at the day service and the provision of transport to enable such attendance is included in D's needs assessment.

(3) A local authority must not seek to recover any amount from D towards the costs of the provision of a statement of information provided in accordance with regulation 19.

(4) Nothing in this regulation affects the discretion of a local authority to specify additional categories of D or services from whom or in respect of which payment of an amount may not be required or sought.

(5) Regulations 5 to 19 do not apply to the persons referred to in sub-paragraphs (a) or (b) of paragraph (1).

#### **Maximum reasonable amount of a reimbursement or contribution payable**

5.—(1) Subject to paragraphs (3) and (4), the maximum amount that a local authority may determine to be a reasonable amount for D to pay towards the cost of securing the provision of a service ("maximum reasonable amount") (*"uchafswm rhesymol"*) is £50 per week.

(2) Subject to paragraphs (3) and (4), where D has assessed needs which are met by way of dual provision £50 per week is the maximum of the aggregate of the amounts that a local authority may require D to pay in respect of that provision by way of—

- (a) a charge, and
- (b) a payment.

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(1) 1983 c. 20.

(3) When calculating the maximum reasonable amount that D may be required to pay, a local authority—

- (a) must disregard the cost of securing any service for which it imposes a flat-rate charge, and
- (b) may impose the charges in respect of such a service in addition to the maximum reasonable amount.

(4) Where D receives a direct payment to enable the purchase of equipment, which would otherwise be provided by a local authority, the local authority—

- (a) must disregard the cost of the purchase of the equipment when calculating the maximum reasonable amount that D may be may required to pay, and
- (b) may require D to pay an amount in excess of and in addition to the maximum reasonable amount towards the cost of securing the equipment.

#### **Procedure for determining a payment**

6.—(1) When determining the amount of any payment that D pays, or may be required to pay, towards the cost of securing a service, a local authority must adopt the following procedure—

- (a) calculate the amount of its reasonable cost of securing the provision of the service for which D is or will receive a direct payment;
- (b) disregard from that total the amount of any charge or payment referred to in regulation 5(3) and (4);
- (c) disregard the reasonable costs of securing the provision of transport to attend a day service, where the requirement to attend such a service is included in D's needs assessment;
- (d) apply the maximum reasonable amount to this resulting amount where the resulting amount would otherwise exceed it and this, subject to sub-paragraph (e), is the amount that the local authority may require D to pay;
- (e) subject the amount calculated in accordance with sub-paragraph (d) to a determination of D's ability to make a payment in accordance with regulation 17.

(2) The step referred to in paragraph (1)(e) will only be applied where—

- (a) D has requested a means assessment; and
- (b) a means assessment has been undertaken by the local authority,

in accordance with these Regulations.

### **Invitation to request a means assessment**

7.—(1) A local authority must issue an invitation to D to request an assessment of his or her means in accordance with regulation 13—

- (a) if it is reasonably practicable to do so, when the authority offers to make a direct payment to D, or where relevant, to a suitable person;
- (b) if it has not been reasonably practicable to give an invitation as mentioned in subparagraph (a), as soon as reasonably practicable after the offer was made;
- (c) if an invitation has not been given under subparagraph (a) or (b) prior to the making of the first direct payment to D, or where relevant, to a suitable person, as soon as reasonably practicable after the first direct payment is made.

(2) If a local authority reasonably considers that one or more of the conditions set out in paragraph (3) applies, it must invite D to request a new assessment of his or her means in accordance with regulations 13 and 16 with a view to its making a further determination of D's ability to make a payment in accordance with regulation 17.

(3) The conditions referred to in paragraph (2) are—

- (a) there is an increase, or proposed increase, in the amount of the payment which D is required to make as a result in a change to the local authority's charging policy;
- (b) there is a change in D's financial circumstances;
- (c) there has been a change in the cost of providing a service for which D has been assessed as needing; or
- (d) a mistake was made when a determination was made in accordance with regulation 17.

(4) Where a local authority is required by paragraph (1), or determines in accordance with paragraph (2), to issue an invitation to D or, where relevant, to a suitable person, to request an assessment of D's means in accordance with regulations 13 and 16, it must ensure that the invitation contains full details of—

- (a) the services which D has been assessed as requiring and for which a direct payment is being considered;
- (b) its charging policy, which must include the following—
  - (i) its policy in relation to which, if any, of the services for which a direct payment may be provided D may be required to

make a payment of an amount towards the cost of securing those services,

- (ii) details of the standard amount which D may be required to pay towards the cost of securing any such service,
  - (iii) details of any service which the local authority secures or provides and for which it may require a service user to pay a charge in accordance with section 1(1) of the Measure (*general power to charge for care services*),
  - (iv) details of any service for which the local authority requires a service user to pay a flat-rate charge, and
  - (v) details of the maximum reasonable amount which may be required or sought in accordance with regulation 5, or the maximum reasonable amount that the local authority applies, where that amount is lower;
- (c) its means assessment process;
  - (d) the information and documentation that D or, where relevant, a suitable person, is required to provide in order that an assessment of D's means can be undertaken;
  - (e) the time, as specified in regulation 8, within which D or, where relevant, a suitable person, is required to supply the information and documentation referred to in sub-paragraph (d);
  - (f) the format in which it will accept the information and documentation referred to in sub-paragraph (d);
  - (g) any home visiting facility that it provides within its area;
  - (h) the consequences of failing to respond to the invitation in accordance with sub-paragraph (e);
  - (i) the named individuals within the authority whom D or, where relevant, a suitable person, should contact should that person require additional information or assistance in respect of any of the processes attendant upon the issue of the invitation;
  - (j) the right of D or, where relevant, a suitable person, right to appoint a third party to assist, or to act on his or her behalf, in respect of all or part of the means assessment process; and
  - (k) the contact details of any organisation in its area which provides support or assistance of the type referred to in sub-paragraph (j).
- (5) A local authority must provide D or, where appropriate, a suitable person with the information

referred to in paragraph (1) in writing, or in any other format that is appropriate to the communication needs of that person<sup>(1)</sup>.

**Response to an invitation to request a means assessment**

8.—(1) D, or subject to paragraph (3) or (4), D’s representative, must provide a response to the local authority within 15 working days (or such longer period as a local authority may reasonably allow in accordance with regulation 9) of the date the invitation was issued.

(2) D complies with the requirement set out in paragraph (1) if that person or that person’s representative—

- (a) requests that the local authority carries out a means assessment in accordance with regulations 13 and 16;
- (b) requests assistance from any home visiting facility that is provided by the local authority, where such assistance is required;
- (c) provides the information that has been requested by the local authority in the format that the local authority has agreed to accept it;
- (d) provides the documentation that has been requested by the local authority;
- (e) requests an extension of time, where one is required, in which to provide the information or documentation (or both) that has been requested in accordance with regulation 7(4)(d), giving the reason or reasons why an extension of time is required.

(3) Where D has appointed a representative to act on his or her behalf, D must provide the local authority with the following—

- (a) the name and address of the representative,
- (b) confirmation that the representative is willing to act on his or her behalf,
- (c) details of the nature and extent of the representative’s involvement in the means assessment process, and
- (d) details of the nature and extent of the information the local authority may share with his or her representative.

(4) Where a suitable person has been appointed in accordance with regulation 9 of the 2011 Regulations (direct payments under section 57(1A) of the 2001

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(1) For an explanation of the meaning of “*any format appropriate to the communication needs of that person*”, please refer to the guidance published by the Welsh Ministers, entitled *Introducing More Consistency in Local Authority Charging for Non-Residential Social Services*.

Act), that person must provide confirmation of his or her name and address to the local authority.

(5) Unless the context otherwise requires, where a representative has been appointed in accordance with paragraph (3) or (4), any reference in this regulation or in regulations 9 to 15 to D, includes that person's representative.

(6) Any request made in accordance with paragraph (2) or appointment made in accordance with paragraph (3) may be made or communicated orally or in writing by D but must be confirmed by a local authority in writing or in any other format that is appropriate to the communication needs of the service user.

### **Request for extension of time in which to provide information or documentation**

9.—(1) A local authority must agree to any reasonable request for an extension of time made in accordance with regulation 8(2)(e).

(2) If D requests an extension of time orally, a local authority may give its response to that request orally, but it must also confirm the response in writing, or in any other format that is appropriate to D's communication needs.

(3) When responding to a request for an extension of time a local authority must confirm whether or not the request is granted and if granted, must state the period of the extension.

(4) Where a local authority refuses a request for an extension of time, it must give reasons for its refusal of the request.

### **Failure to respond to an invitation to request a means assessment**

10.—(1) Where D fails to respond to an invitation in accordance with regulation 8, a local authority may determine that D is required to pay the standard amount towards the cost of securing the service which was the subject of the invitation.

(2) A local authority's power to require D to pay the standard amount in accordance with paragraph (1) is subject to the maximum reasonable amount prescribed in regulation 5.

(3) Where paragraph (1) applies, D will be required to pay the standard amount imposed by the local authority from the date that a statement is provided by the local authority in accordance with regulation 19.

(4) If D responds to an invitation to request a means assessment after a local authority has determined, in accordance with paragraph (1), to require D to pay the

standard amount or, where relevant, the maximum reasonable amount—

- (a) the local authority must proceed to undertake an assessment of D's means in accordance with regulations 13 and 16 and to make a determination of D's ability to pay in accordance with regulation 17;
- (b) the actions taken by the local authority under sub-paragraph (a) will not affect the liability of D to pay any amount or amounts which he or she has been required to pay towards the cost of securing a service from the date that the statement referred to in paragraph (3) was provided; and
- (c) the statement provided in accordance with regulation 19 as a result of the assessment and determination referred to in sub-paragraph (a) ("the second statement") (*"yr ail ddatganiad"*) will replace the statement provided in accordance with paragraph (3) and the second statement will take effect from the date that it is provided.

#### **Failure to supply all relevant information and documentation**

**11.**—(1) Where D has failed to—

- (a) supply, or
- (b) seek an extension of time in which to supply,

all the information and documentation reasonably requested by a local authority under regulation 7, the local authority may make an assessment of D's means on the basis of the partial information or partial documentation (or both) that has been supplied.

(2) Where paragraph (1) applies, the local authority may—

- (a) make a determination in accordance with regulation 17;
- (b) subject to the maximum reasonable amount prescribed in regulation 5, require D to pay an amount on the basis of its determination; and
- (c) proceed to provide a statement in accordance with regulation 19.

(3) Where a local authority determines that D is required to pay an amount towards the cost of securing the provision of a service in accordance with paragraph (2), D will be required to pay that amount from the date that the local authority provides the statement referred to in paragraph (2)(c).

### **Withdrawal of a request for a means assessment**

**12.**—(1) D may withdraw a request for a means assessment by notifying a local authority at any time before the means assessment has been completed.

(2) D may notify the local authority of the decision to withdraw a request for a means assessment orally, in writing, or in any other format that is appropriate to D's communication needs.

(3) Where a request is withdrawn in accordance with this regulation, a local authority may, subject to the maximum reasonable amount prescribed by regulation 5, require D to pay the standard amount towards the cost of securing the service that was the subject of the invitation to request a means assessment.

(4) In any case where D notifies a local authority of the withdrawal of a request for a means assessment, the local authority must—

- (a) acknowledge receipt of the notification in writing and in any other format that is appropriate to D's communication needs;
- (b) advise D that the withdrawal of this request does not preclude the submission of a further request for a means assessment in respect of the same or a different service; and
- (c) advise D whether it will require payment of the standard amount, or the maximum reasonable amount prescribed by regulation 5, towards the cost of securing the service for which the direct payment is, or may be made.

(5) Where D is required to pay an amount towards the cost of securing a service in accordance with paragraph (3), D will be required to pay the amount from the date that the local authority provides a statement in accordance with regulation 19.

### **Duty to carry out a means assessment**

**13.**—(1) Where each of the conditions in regulation 14 is met, a local authority must carry out an assessment of D's means if D requests such an assessment.

(2) But a local authority is under no duty to carry out a means assessment under these Regulations in the circumstances prescribed by regulation 15.

### **Conditions giving rise to the duty to carry out a means assessment**

**14.**—(1) The conditions referred to in regulation 13(1) are set out in the following paragraphs of this regulation.

(2) Condition 1 is that D is—

- (a) offered a direct payment; or

(b) receiving a direct payment,  
to secure the provision of a service.

(3) Condition 2 is that D requests that the local authority which made the offer to pay, or is making the direct payment, carries out a means assessment in accordance with these Regulations.

(4) Condition 3 is that D provides the authority with any information or documents in D's possession or under his or her control, which the authority reasonably requires in order to carry out a means assessment.

### **No duty to carry out a means assessment**

**15.** A local authority is under no duty to carry out an assessment of the means of D—

- (a) in respect of whom the following circumstances apply—
  - (i) a determination made by the authority in accordance with regulation 17 has effect,
  - (ii) D, who is the subject of the determination, requests that the authority carries out a means assessment in accordance with regulations 13 and 16,
  - (iii) the request relates to a service to which the determination relates, and
  - (iv) the authority reasonably considers that there has been no relevant change of circumstance since the determination was made; or
- (b) who has been assessed as needing, or who is receiving a service or combination of services for which the local authority applies a flat-rate charge; or
- (c) who fails to respond to an invitation to request a means assessment in accordance with regulation 8; or
- (d) who withdraws his or her request for a means assessment in accordance with regulation 12.

### **Means assessment process**

**16.—**(1) Where a local authority carries out an assessment of D's means in accordance with regulation 13, it must ensure that any process of assessment that it employs gives effect to the requirements of this regulation.

(2) When undertaking a means assessment, if a local authority takes into account D's savings or capital the local authority must—

- (a) subject to sub-paragraph (b) and to paragraph (3), calculate D's capital in accordance with

the provisions of Part 3 of the 1992 Regulations (treatment of capital);

- (b) disregard the value of D's main residence from its calculation of the capital of that person.

(3) Nothing in paragraph (2) affects the discretion of a local authority, when calculating D's capital, to apply any criteria that are more generous to D than those from time to time applied in the provisions referred to in paragraph (2)(a).

(4) When undertaking a means assessment, if a local authority takes into account D's income, the local authority must—

- (a) assess what part of the D's income properly constitutes "earnings" (*"enillion"*) in accordance with the definition "earnings" in regulations 35 and 37 of the of the Housing Benefit Regulations 2006(1), or as the case may be, in regulations 35 and 37 of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006(2);
- (b) disregard in full those earnings;
- (c) disregard in full any amount received by D in respect of savings credit; and
- (d) disregard in full any payment received by D which is referred to in paragraph 24 of Schedule 3 to the 1992 Regulations (sums to be disregarded in the calculation of income other than earnings)(3).

(5) Nothing in paragraph (4) affects the discretion of a local authority when calculating D's income to apply any criteria that are more generous to D than the provisions of paragraph (4).

(6) In this regulation—

"the 1992 Regulations" (*"Rheoliadau 1992"*) means the National Assistance (Assessment of Resources) Regulations 1992(4).

### **Determination as to D's ability to pay**

**17.—**(1) Where a local authority has carried out an assessment of D's means in accordance with

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- (1) S.I. 2006/213.
  - (2) S.I. 2006/214.
  - (3) Payments referred to in paragraph 24 of Schedule 3 to the National Assistance (Assessment of Resources) Regulation 1992 are described in paragraph 39 of Schedule 9 to the Income Support (General) Regulations 1987 (S.I. 1987/1967) (sums to be disregarded in the calculation of income other than earnings) as "any payment made under or by the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust...the Fund, the Eileen Trust, MFET Limited or the Independent Living Fund (2006).".
  - (4) S.I. 1992/2977.

regulations 13 and 16, the authority must, in the light of that assessment—

- (a) determine whether it is reasonably practicable for D to pay the standard amount towards the cost of securing the provision of the service; and
- (b) if the authority determines that it is not reasonably practicable for D to pay the standard amount, subject to the maximum reasonable amount prescribed by regulation 5, determine the amount (if any) which it is reasonably practicable for that person to pay towards the cost of securing the provision of the service.

(2) A local authority must ensure that any amount that it requires D to pay towards the cost of securing the provision of a service does not reduce D's net income—

- (a) where D is in receipt of a relevant benefit, to an amount below the total of—
  - (i) the amount of D's basic entitlement to the relevant benefit that is being received by that person,
  - (ii) an amount of not less than 35% of the entitlement referred to in paragraph (i) ("a buffer") (*clustog*), and
  - (iii) an amount to compensate for D's disability-related expenditure of not less than 10% of the entitlement referred to in paragraph (i); or
- (b) where D is not in receipt of a relevant benefit, an amount below the total of—
  - (i) the amount the local authority reasonably assesses, having regard to D's age, circumstances and level of disability, would be equal to that person's basic entitlement to a relevant benefit,
  - (ii) a buffer of not less than 35% of that amount estimated in paragraph (i), and
  - (iii) an amount to compensate for D's disability-related expenditure of not less than 10% of the amount estimated in paragraph (i).

(3) Nothing in this regulation affects the discretion of a local authority to increase the percentage of the buffer or the amount to compensate for any disability-related expenditure when making a determination in accordance with paragraph (1).

#### **Effect of a determination as to D's ability to pay**

**18.—(1)** Where a local authority makes a determination in accordance with regulation 17 in

the circumstances described in paragraph (2), it may not require any payment to be made until the date that a statement is provided in accordance with regulation 19.

(2) The circumstances referred to in paragraph (1) are where a service user—

- (a) has been assessed as requiring a service for the first time; or
- (b) is currently securing the provision of a service, but in respect of which service D is being required to pay towards the cost of its provision for the first time.

(3) Where a local authority makes a further determination as to D's ability to pay in accordance with regulation 7(2), it may not require any payment to be made or alter the amount of any payment that is being made until the date that a statement is provided in accordance with regulation 19.

(4) Where the statement referred to in paragraphs (1) or (3) replaces a statement that has previously been provided in accordance with regulation 19 (“the earlier statement”) (*“y datganiad cynharach”*), the earlier statement will continue to have effect until the date the subsequent statement is provided.

#### **Statement of information about charges**

**19.—**(1) Where a local authority has required D to make a payment of an amount (or altered the amount of the payment) towards the cost of securing the provision of a service, it must provide D with a statement in writing, and in any other accessible format that D reasonably requests.

(2) Any statement provided by a local authority in accordance with this regulation must contain—

- (a) a description of the service in respect of which D is being required to pay towards securing the provision;
- (b) details of the standard amount which a local authority requires D to pay towards the cost of securing the service;
- (c) if the amount of the payment that D is being required to pay is not the standard amount, details of the amount of the payment required;
- (d) an explanation of how the amount that D is being required to pay has been calculated (including details of any means assessment undertaken in accordance with these Regulations); and
- (e) details of D's right to challenge or complain about the amount of the payment, or the clarity with which the statement is expressed.

(3) A statement provided in accordance with this regulation must be provided to D—

- (a) free of charge; and
- (b) within twenty-one days of the date on which the decision to require (or alter) the amount of the payment was made.

(4) In these Regulations a statement is “provided” (*“ddarparu”*) on the date that it is issued by a local authority.

### **Saving**

**20.** Where immediately before the coming into force of these Regulations—

- (a) an assessment of D’s means, or
- (b) a determination of the amount it is reasonably practicable for D to pay towards the cost of securing a service,

has effect, such assessment or determination will continue to have effect notwithstanding that it was not made in accordance with these Regulations.

**21.** Any assessment or determination referred to in regulation 20 will continue to have effect until replaced by an assessment or determination made in accordance with these Regulations.

### **Transitional provision**

**22.** Where before the coming into force of these Regulations a local authority has obtained information and documentation from D to enable it to—

- (a) undertake an assessment of D’s means, or
- (b) make a determination of the amount it is reasonably practicable for D to pay towards the cost of securing the provision of a service,

but the assessment has not been undertaken or the determination has not been made upon the coming into force of these Regulations, the local authority must undertake such an assessment in accordance with the provisions of regulation 16 or make such a determination in accordance with the provisions of regulation 17.

### **Transitory provision**

**23.—(1)** Where an assessment has effect in accordance with regulation 21, a local authority—

- (a) must apply the provisions of regulations 4, 5, 6 and 16 to such an assessment, notwithstanding that it was not undertaken in

- accordance with these Regulations, save that regulation 6(2) does not have effect,
- (b) is not required to act in accordance with regulation 7 save that regulation 7(2) has effect,
  - (c) must carry out an assessment of D's means in accordance with regulations 13 and 16 where each of the conditions in regulation 14 are met and D has requested such an assessment, and
  - (d) must make a determination as to the amount that D is able to pay towards the cost of securing the provision of a service, in accordance with regulation 17, as though the assessment of D's means had been undertaken in accordance with regulations 13 and 16.

(2) Regulation 18(4) has effect in respect of any determination made in accordance with paragraph (1)(d) as though the earlier statement referred to in that regulation is a determination which has effect in accordance with regulation 21.

*Gwenda Thomas*

Deputy Minister for Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

24 March 2011