

Explanatory Memorandum to the revised Code of Practice on the exercise of social services functions in relation to Part 4 (direct payments and choice of accommodation) 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, Social Care & Early Years 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 Parts 4 and 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits justify the likely costs.

Dawn Bowden MS
Minister for Children and Social Care
03 June 2025

Part 1

1. Description

- 1.1. 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, along with regulations and codes of practice made under it, provides the statutory framework for the delivery of social care in Wales to support people of all ages as part of families and communities.
- 1.2. 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.
- 1.3. 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.
- 1.4. To introduce a number of policy changes since regulations originally made under the Act 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, 12 April 2021, 11 April 2022, 10 April 2023, 8 April 2024 and 10 April 2025. 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. Revisions to the Code came into force on 10 April 2017, 9 April 2018, 8 April 2019, 6 April 2020, 11 April 2022 and 10 April 2023 respectively.
- 1.5. Producing this latest revised Code presents an opportunity to consolidate and reference amending charging and financial assessment regulations that have come into force since the previous publication, and to add an additional financial recognition scheme to the list of schemes under which capital payments are disregarded pursuant to existing regulations. The revised Code also incorporates editorial and stylistic revisions made to ensure consistency and clarity throughout the Code. These revisions will ensure the Code remains up to date and effective. Revisions to the Code are the subject of this Explanatory Memorandum.
- 1.6. The revised Code will revoke the Code issued on 29 March 2023 (digital ISBN 978-1-80535-714-8) (Version 7 WG23-03-April 2023).

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

- 2.1. Section 146 of the Act lays down the procedure to be followed before issuing and approving this revised Code. The draft of this revised Code will be laid before the Senedd for 40 days after which time, if no resolution is made, Welsh Ministers must issue it.

3. Legislative background

- 3.1. The power enabling the Welsh Ministers to revise this Code is contained in section 145 of the Act, which permits Welsh Ministers to issue, and from time to time revise, one or more codes on the exercise of social services functions. It is proposed that this revised Code will come into force on 21 July 2025 subject to the procedure set out at section 146 of the Act being followed.

4. Purpose & intended effect of the legislation

- 4.1. The Code has been revised to add a recently introduced financial recognition scheme to the list of forms of capital that should be fully disregarded in the financial assessment for charging for all forms of care and support.
- 4.2. The scheme was introduced in the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2025 which came into force on 10 April 2025.
- 4.3. The financial recognition scheme to be added to the Code is the Lesbian, Gay, Bisexual and Transgender Financial Recognition Scheme.
- 4.4. Producing a revised Code also presents an opportunity to add 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 2024 and the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2025 have been referenced in the revised Code as appropriate. These revisions have been made to ensure clarity and completeness as the regulations amend principal regulations already referred to in the Code.

5. Consultation

- 5.1. As the revised Code includes a single additional disregard which is already implemented by regulation, the revision to the Code does not reflect a change in Welsh Government policy and a formal public consultation has not been undertaken in this instance.
- 5.2. Revisions to the Code are merely technical adjustments to ensure the Code accurately reflects the appropriate amending regulations and identifies the additional financial recognition scheme identified above.

6. PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

6.1. Revisions to the Code are considered in this Regulatory Impact Assessment.

6.2. Producing this latest revised Code presents an opportunity to consolidate and reference amending charging and financial assessment regulations that have come into force since the previous publication, and to add an additional financial recognition scheme to the list of schemes under which capital payments are to be disregarded pursuant to existing regulations. The revised Code also incorporates editorial and stylistic revisions made to ensure consistency and clarity throughout the Code. These revisions will ensure the Code remains up to date and effective.

7. Options and Benefits

7.1. This Regulatory Impact Assessment considers two options in relation to making these revisions:

- Option 1 – “do nothing and retain the existing Code”;
- Option 2 – “lay a revised Code” to introduce updates which accurately reflect the current regulatory position. This is the preferred option.

Background

7.2. Local authorities, when exercising their social services functions, must act in accordance with the requirements contained in the Code. The intended revision to the Code is proposed to ensure it accurately reflects the existing regulatory regime.

Option 1 – do nothing and retain the existing Code

7.3. This option would mean that we do not go ahead with the laying and publication of a revised Code and retain the existing Code.

Costs

7.4. There are no additional cost implications associated with this option for local government.

Benefits

7.5. There are no known benefits that derive from not publishing a revised Code at this time, rather there is a risk that local authorities do not correctly apply or act in accordance with the latest regulations as these are not currently identified in the Code.

Option 2 – lay a revised Code

7.6. This option would mean proceeding to lay and publish a revised Code to reflect current regulations.

Costs

7.7. There are no new cost implications for local government that derive from this option. The revised Code does not introduce any new policy requirements; it has been updated to ensure it reflects existing regulations.

Benefits

7.8. Publishing a revision of the Code will ensure that up to date regulations are identified in the Code providing clarity to local authorities and consistency across the legislative framework.

Conclusion

7.9. In view of the benefits in ensuring the relevant Code provides clear and accurate references to the latest regulations to local authorities, “Option 2 – lay a revised Code” is recommended.

8. Post Implementation Review

8.1. 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 this revised Code.