

Explanatory Memorandum to the Care and Support (Charging) (Wales) (Amendment) Regulations 2018

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 in relation to charging 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.

Huw Irranca-Davies AM
Minister for Children and Social Care
2 February 2018

Part 1 – OVERVIEW

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 their 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.

The Care and Support (Charging) (Wales) Regulations 2015 (“the principal Regulations”) govern local authorities in discharging their discretion to set a charge, contribution or reimbursement under Part 4 (meeting needs) and Part 5 (charging and financial assessment) of the Act. These came into force on 6 April 2016.

Since then a number of policy changes have been agreed which required amendments to the principal Regulations. A set of amending regulations to effect these, the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 came into force on 10 April 2017.

The regulations subject to this Explanatory Memorandum are required to introduce further updates to the principal Regulations to reflect uplifted sums of money that apply to specific areas of charging for social care and support.

2. Matters of special interest to the Constitutional and Legislative Affairs Committee

There are no specific matters of special interest

3. Legislative background

The powers enabling the making of regulations in relation to setting a contribution or reimbursement for direct payments, and the financial assessment to determine these, are contained in Part 4 (sections 50, 52 and 53(3)) of the Act. Powers enabling charging for care and support, and support to a carer, are contained in Part 5 (sections 61, 62, 66, 67 and 69) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 9 April 2018.

4. Purpose & intended effect of the legislation

The overall purpose of the amending regulations is to effect a number of changes to the principal Regulations as result of certain policy decisions. These Regulations govern local authorities' determination of a charge for providing or arranging care and support, or support to a carer, where they use their discretion to charge. They also govern authorities' determination of a contribution or reimbursement for a person receiving direct payments to secure their own care and support, or a carer securing their own support, where authorities use their discretion to set these.

Regulation 2(a) to (e) of the amending regulations amend the principal Regulations as follows:

- uplift from £70 to £80 the maximum weekly charge applicable to non-residential care and support, and the maximum weekly contribution or reimbursement for receiving direct payments to secure this, by amending regulations 7(1) and 22(1) of the principal Regulations. This provision ensures that, where a local authority applies its discretion to charge a person for the non-residential care and support they receive, or the non-residential support a carer receives, there is a consistent maximum amount the local authority can charge. Equally, where a local authority applies its discretion to set a contribution or reimbursement for the receipt of direct payments to secure non-residential care and support, there is a consistent maximum amount the local authority can make for these;
- uplift from £30,000 to £40,000 the capital limit as it applies to charging for residential care by amending regulation 11 of the principal Regulations. This is to implement the second stage in delivering a key commitment in the Welsh Government's 'Taking Wales Forward' programme to put in place a £50,000 capital limit in charging for residential care by the end of its current term;
- uplift from £27.50 a week to £28.50 a week the level of the minimum income amount applied in charging for residential care, or in setting a contribution or reimbursement for direct payments to secure residential care, by amending regulations 13 and 28 of the principal Regulations. The minimum income amount is the sum of money a person in residential care, and who is supported financially by their local authority, is able to retain from their weekly income to spend on personal items as they choose. The sum is reviewed annually in the light of the weekly uplifts applied to UK state pension and welfare benefits.

5. Consultation

A five week consultation on the principle of the changes being made by the amending regulations ran between 21 December 2016 and 25 January 2017. In total 24 responses were received from a range of stakeholders covering individuals, representative groups, local authorities and professional organisations. Overall respondents were supportive of the policy behind these changes, seeing them as rebalancing the impact of charging upon those who are required to pay for their care and support. They did, however, raise a number of questions, such as the short period of the consultation held then, the level of the eventual increase planned for the maximum weekly charge and how the changes would be communicated to care recipients. These are being addressed in the implementation of the amendments.

A summary report of the consultation responses is available on the Welsh Government website at <https://consultations.gov.wales/consultations/charging-social-care>.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The three changes being introduced by the amending regulations are considered in this Regulatory Impact Assessment. Introducing these changes will ensure the principal Regulations operate in accordance with the policy intention.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to the three changes identified above:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce a number of changes to the principal Regulations relating to charging for care and support under the Act.

Maximum Weekly Charge

Under the Care and Support (Charging) (Wales) Regulations 2015 a person assessed as in need of care and support in their own home, or within the community, can be charged by their local authority where the authority provides or arranges this. Those receiving direct payments to secure such care and support for themselves can also have a contribution or reimbursement set by their local authority for receipt of these. Where authorities apply a charge, a contribution or a reimbursement in these circumstances, the principal Regulations limit these to a maximum amount. This is currently set at £70 per week. This provision was introduced in 2011 to address the wide variation which existed then in the charges, contributions and reimbursements authorities applied for non-residential care and support of a similar nature.

Ministers have committed to increase the maximum charge to £100 per week by the end of this Assembly. In order to achieve this at a steady pace, and in view of the increases to be received by care and support recipients through uplifted UK state pensions and welfare benefits, Ministers propose to uplift the level of the maximum by £10 a week to £80 a week from 9 April 2018. The additional income this will secure for local authorities will help meet increasing costs pressures associated with maintaining the level and quality of the care and support they provide or arrangement.

Option 1 – do nothing

This option retains the maximum charge at its current level and halts progression towards Ministers’ intentions to apply a £100 a week maximum charge by the end of the term of this Assembly. In addition, local authorities would have no ability to apply a higher charge, contribution or reimbursement for non-residential care and support or for direct payments, where a person had the financial means to pay a higher amount.

- Costs

There would be no new cost implication for local government from this option. It would, however, limit local authorities’ ability to collect increased income from charging for care and support to meet the increased costs of maintaining the level and quality of this. This

is at a time when recipients' income would have increased due to uplifts in state pension and welfare benefits.

- **Benefits**

This option benefits care and support recipients who, despite their higher level of personal income, would continue to pay no more than £70 a week for the non-residential care and support they receive. It does, however, increase the financial pressures for local authorities in terms of being able to afford to maintain the level and quality of care provided.

Option 2 – make the amending regulations

This option would increase the level of the maximum charge by £10, from £70 per week to £80 per week. This would take account of increases applied from April 2018 to state pensions and welfare benefits and help fund increasing costs local authorities face in maintaining the level and quality of care provided.

- **Costs**

Under this option there would be an additional cost to some care recipients who currently pay the maximum. This option could generate up to an estimated £4.3 million per annum for local authorities in increased income from charging for care and support through the higher maximum. This increased income would only come from care recipients whose care and support costs over the current maximum of £70 per week and who have been financially assessed as being able to afford a charge above this up to the higher maximum. Those not in this position would see no change in their charge, contribution or reimbursement as a direct result of this change.

- **Benefits**

Based on data from local authorities on the number who currently pay the maximum, this option could raise up to £4.3 million per annum in increased income to help address the financial pressure in maintaining the level and quality of care provided. The financial protections in place under the principal Regulations ensure a person is not required to pay an amount that is unaffordable to them in meeting their daily living costs. The increase in the maximum under this option would not impact on these financial protections so that only those financially assessed as being able to afford the higher maximum would pay this.

Minimum Income Amount (MIA)

Where a person is in residential care, and is 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 Care and Support (Charging) (Wales) Regulations 2015 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 proposed to increase the MIA from 9 April 2018 from its current level of £27.50 per week to £28.50 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 £27.50 per week. As a result all of the increase in a resident's weekly income from April 2018 as a result of uplifted state pension and welfare benefit payments would go to their local authority to pay for their care.

- Costs

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £3 million per annum in increased resident contributions. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents in this position would not retain any of the uplifts made.

- Benefits

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pensions and benefits. Instead these funds would increase their contributions to local authorities for the cost of their care, so as to increase 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 £27.50 per week to £28.50. This would allow local authority supported residents to retain a proportion of the uplifts to their state pensions and welfare benefits which would occur to spend on personal items as they wish.

- Costs

This option results in local authorities receiving a smaller increase in charge income through resident contributions. Instead authorities would receive up to an estimated £2.2 million per annum in increased resident contributions. This would be due to the increased income residents would have resulting from the uplifts in state pensions and welfare benefits. Residents would retain a proportion of these uplifts to spend on personal items as they wish.

- Benefits

This option splits the increased income which local authority supported residents would have from April 2018 as a result of uplifts to their state pension and welfare benefit payments. Residents in this position would be able to retain a £1 a week of these uplifts to spend on personal items as they wish, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Capital Limit

The capital limit used in relation to charging for residential care, determines whether a resident pays the full cost of their care and accommodation or whether their local authority is required to provide financial support towards this cost. Under the Care and Support (Charging) (Wales) Regulations 2015 the capital limit is set at £30,000. This current level applied the first stage of implementation of a key 'Taking Wales Forward' commitment to uplift the capital limit applicable in charging for residential care to £50,000 within the term of this Assembly. This is to enable residents to retain more of

their savings and other capital without this having to be used to pay for their care and accommodation.

Ministers plan to increase the capital limit in relation to charging for residential care from its currently level of £30,000 to £40,000 as the second stage of implementation of the commitment to have a capital limit of £50,000 in future years.

Option 1 – do nothing

This option involves the amending regulations not being made so that the capital limit applicable in charging for residential care remains at its current level of £30,000. This would also halt progress in delivering on a key Government commitment.

- Costs

There would be no new cost implications for local government from this option, neither would there be any change in the charging arrangements by which residents pay for their residential care and accommodation.

- Benefits

This option provides no new benefits to people in care homes. Individuals would be unable to retain any additional amount of their capital than at present.

Option 2 – make the amending regulations

This option would make the amending regulations so that the capital limit applicable in charging for residential care increase from £30,000 to £40,000 from 9 April 2018. People in residential care would from this date be eligible for local authority support towards the cost of their residential care earlier than at present.

- Cost

Based on independent research commissioned by the Welsh Government, it is estimated that this increase would cost local authorities an additional £7 million per annum from 2018-19. This would be to fund at an earlier point the residential placement of those affected by it. Consequently, an additional £7 million has been included in the Revenue Support Grant for local authorities for 2018-19 to support implementation.

- Benefits

This option enables people requiring residential care to retain a higher level of their capital to spend as they wish and is the second step in delivering the Welsh Government's commitment to increase the capital limit in charging for residential care to £50,000. Residents affected by this change would be able to retain up to an additional £10,000 of their capital without this having to be used to pay for their care.

Conclusion

Due to the financial benefit for local authorities in increasing the maximum weekly charge, the financial benefit for care home residents in increasing the minimum income amount and the capital limit, "Option 2 – make the amending regulations" is recommended in each case. A summary table showing the annual financial impact of the amending regulations is below:

	Welsh Government £m	Local Authorities £m	Care Recipients £m
Maximum Weekly Charge	0	4.3	(-4.3)
Minimum Income Amount	0	2.2	0.8
Capital Limit	(-7.0)	0	7.0
Total	(-7.0)	6.5	3.5

Consultation

A five week public consultation on the principle of the changes planned was held between 21 December 2016 and 25 January 2017. The documents can be found at: <https://consultations.gov.wales/consultations/charging-social-care>

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 will 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.