

LEGISLATIVE CONSENT MEMORANDUM

PERSONAL CARE AT HOME BILL

Legislative Consent Motion

1. "To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions of the Personal Care at Home Bill, in so far as these provisions fall within the legislative competence of the National Assembly for Wales, should be considered and introduced by the UK Parliament."

Background

2. The Legislative Consent Motion at paragraph 1 above has been tabled by Gwenda Thomas AM, Deputy Minister for Social Services, under authority of the Minister for Health and Social Services, one of the Welsh Ministers. It is tabled under Standing Order 26.4 of the National Assembly for Wales' Standing Orders (SO) of the National Assembly for Wales ("the National Assembly"). This Legislative Consent Memorandum is laid under SO26.2. SO26 prescribes that a Legislative Consent Motion must be tabled, and a Legislative Consent Memorandum laid, before the National Assembly if a UK Parliamentary Bill makes provision in relation to Wales that falls within the legislative competence of the National Assembly.

3. The Personal Care at Home Bill was introduced on 25th November 2009. The Bill can be found at:

<http://services.parliament.uk/bills/2009-10/personalcareathome.html>

Summary of the Bill and its Policy Objectives

4. The Bill is sponsored by the Department of Health. The main purpose of the Bill is to amend sections 15 and 16 of the Community Care (Delayed Discharges etc.) Act 2003 so as to remove the 6 week restriction on the length of time for which regulations may prescribe that personal care shall be provided free of charge. The Bill also makes a number of consequential amendments.

5. The powers of the Welsh Ministers are set out in section 16 of the Community Care (Delayed Discharges etc.) Act 2003. This provides that the Welsh Ministers, by regulations, may make in relation to Wales any provision which may be made by the Secretary of State under section 15 of the Act. The proposed Bill amends the regulation making powers in section 15 and thereby also changes the powers of the Welsh Ministers under section 16.

Provisions of the Bill for which Consent is Sought

Clause 1: Free provision of personal care at home

6. Clause 1 makes amendments to section 15 of the 2003 Act together with consequential amendments to other primary legislation.
7. Subsection (2) amends section 15(4)(b) of the 2003 Act to remove the six-week restriction on the free provision of personal care, except in so far as this relates to the provision of personal care to someone living in accommodation that an establishment provides together with personal care. This would cover, for example, care homes but not sheltered accommodation or extra care housing. Extra care housing is an arrangement whereby a person is provided with community care services in specialist accommodation designed for the needs of older people, which may often be found or arranged for them by the care provider. The accommodation and care provided in such accommodation are not provided together but under separate arrangements made by the individual.
8. Subsection (3) provides that the six-week limitation in section 15(4)(b) does not apply to the provision of personal care under an adult placement scheme. An adult placement scheme involves placing an adult in need (such as a disabled person) with a carer who might share their home with the person. It is similar to fostering and the purpose is to enable the person in need to live as independently as possible.
9. Subsection (4) provides that the regulations under section 15 can, in particular, impose on a local authority functions relating to eligibility for the free provision of personal care, and can refer to guidance under section 7 of the Local Authority Social Services Act 1970. The functions which could be imposed might, for example, include the setting of criteria for the free provision and the determination of eligibility by reference to those criteria and any criteria that the Secretary of State sets.
10. Subsection (4) also inserts new subsection (4C) into section 15 of the 2003 Act. The new provision will ensure that a local authority has the power to make a person's eligibility for free personal care conditional on the person undergoing a process designed to maximise the person's ability to live independently. This could include a short period of intensive and focussed support to maximise the person's independent living skills.
11. Subsection (4) also inserts a new subsection (4D). The effect of it is that a person is to be regarded for the purposes of section 15 as living at home if the place where the person lives is not accommodation provided under Part 3 of the 1948 Act or accommodation of the kind described in the amended subsection (4)(b) (a care home, for example).
12. Subsection (5) inserts new subsection (4E) into section 15 of the 2003 Act. This provides that section 21(5) of the National Assistance Act 1948 ("the 1948 Act") applies for the purposes of section 15 of the 2003 Act. Section 21(5) of the 1948 Act provides that references to accommodation provided under Part 3 of that Act include references to accommodation as well as board and other services, amenities and requisites provided in connection with the accommodation (except where in the opinion of the authority managing the premises their provision is unnecessary). As a result, references in section 15 to the provision of accommodation under Part 3 of the 1948 Act will include the provision of personal care.

13. Subsection (6) makes a consequential amendment to the Local Authority Social Services Act 1970 to include functions conferred on local authorities under sections 15 and 16 of the 2003 Act in the list of social services functions in Schedule 1 to that Act. Section 7 of that Act requires local authorities to act under the general guidance of the Secretary of State in the exercise of their social services functions.

14. Subsections (7) and (8) make consequential amendments to the 1948 Act and the Health and Social Services and Social Security Adjudications Act 1983.

Clause 2: Extent and short title

15. Clause 2 makes provision as to the extent of the provisions of the Bill.

16. These provisions are within the competence of the National Assembly for Wales under Matter 15.1 of Schedule 5 to the Government of Wales Act 2006.

Advantage of Utilising this Bill

17. The proposed Personal Care at Home Bill amends sections 15 and 16 of the Community Care (Delayed Discharges etc) Act 2003. If enacted it would enable regulations to be made under the 2003 Act that could provide for personal care to be provided free for periods exceeding 6 weeks.

18. The 2003 Act covers a wide range of services, including personal care, provided in a range of settings. While there is some overlap between the Bill and the Assembly's competence (and the scope of the proposed Social Care Charges (Wales) Measure) the 2003 Act, which the Bill amends, is wider than the Assembly's competence. In order to ensure that the Welsh Assembly Government has the fullest powers available concerning charging for social care services it is appropriate that the Bill should extend to Wales.

19. This Legislative Consent Memorandum has therefore been laid, and the Legislative Consent Motion tabled, before the National Assembly for consideration.

Financial Implications

20. The financial implications of any subsequent consultation, legislation or guidance arising from a future decision to exercise the power to place a duty on local authorities to provide free personal care will be subject to full consideration of affordability within the HSSDG MEG and DRC budget, and to a Regulatory Impact Appraisal which would include a cost benefit analysis.

Gwenda Thomas AM
Deputy Minister for Social Services
December 2009

LEGISLATIVE CONSENT MOTION

PERSONAL CARE AT HOME BILL

“To propose that the National Assembly for Wales, in accordance with Standing Order 26.4, agrees that the provisions of the Personal Care at Home Bill, in so far as these provisions fall within the legislative competence of the National Assembly for Wales, should be considered and introduced by the UK Parliament.”

This Legislative Consent Motion is tabled by Gwenda Thomas, Deputy Minister for Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers, under Standing Order 26.4 of the National Assembly for Wales’ Standing Orders.

Dated