

REGULATORY APPRAISAL

SOCIAL CARE, WALES

CHILDREN AND YOUNG PERSONS, WALES

PUBLIC HEALTH, WALES

THE CARE STANDARDS ACT 2000 AND THE CHILDREN ACT 1989 (ABOLITION OF FEES) (WALES) REGULATIONS 2006

Background

1. The Care Standards Act 2000 reformed the regulatory system for a wide range of social care and independent healthcare settings in Wales. The Act made the Assembly itself the regulator, responsible for registration, inspection, complaints investigation and enforcement – functions that have been delegated to the Care Standards Inspectorate for Wales (CSIW). The services covered are:
 - care homes for adults;
 - adult placement schemes;
 - children's homes;
 - residential family centres;
 - fostering agencies;
 - adoption agencies;
 - nursing agencies;
 - domiciliary care agencies;
 - private and voluntary healthcare services, including independent hospitals and clinics;
 - childminders;
 - other day care for children under 8 years old, such as playgroups and nurseries; and
 - the welfare aspects of residential special schools, boarding schools and colleges that accommodate children.

2. The Assembly has powers to set fees, which can be found in the Care Standards Act 2000, the Children Act 1989 and the Health and Social Care (Community Health and Standards) Act 2003. These fees include
 - one-off fees to accompany applications for initial registration;
 - one-off fees to accompany applications to change registration conditions; and
 - annual fees for regulated settings.

3. After a public consultation in 2001, the National Assembly laid down fees for the first time with effect from 1 April 2002 in The Registration of Social Care and Independent Healthcare (Fees) (Wales) Regulations 2002.

Those Regulations have been amended several times as new areas of service have come under regulation.

4. Almost two-thirds of registered settings are not required to pay fees. The remaining services pay a total of approximately £2m. Care homes for adults - which make up one-fifth of the regulated services - at present pay three-quarters of the fees. By comparison, the running costs of the Care Standards Inspectorate for Wales were a little over £12m in 2004-05.

Purpose and intended effect of the measure

5. The purpose of the draft regulations is to abolish the remaining regulatory fees still paid by roughly one third of social care and independent healthcare providers for registration with the Assembly, with effect from 1 April 2006. In most cases, the new regulations repeal the earlier provision that set the fees. In a few cases, where there is an assumption in the primary legislation that there will be a fee accompanying the initial application for registration, the fee will be set at nil.

Risk assessment

6. If the remaining regulatory fees are not abolished:
 - The funding of the CSIW (and that part of Healthcare Inspectorate for Wales (HIW) dealing with private and voluntary healthcare) will stay out of line with the Assembly's approach towards funding broadly similar activities - designed to monitor performance and raise standards - undertaken by Social Services Inspectorate for Wales, Estyn and the rest of HIW.
 - The "financial merry-go-round" of circulating Assembly resources will continue.
 - The suggestion will continue that care homes - which make up one-fifth of the regulated services, but at present pay three-quarters of the fees - are in some way subsidising the regulation of other providers.

Options

7. The Welsh Assembly Government developed, and consulted on, four options:
 - Option 1: do nothing or no change – leaving all of the fees exactly where they are;
 - Option 2: increasing fees in line with inflation;
 - Option 3: moving over a five-year period towards a scale of fees that would fully recover the running costs of the CSIW; and
 - Option 4: make the legislation, abolishing the remaining fees and funding the CSIW directly.

Option 1: Do Nothing

8. This option would have the merit of stability for the care sector. It would set in aspic the present cash sums paid by providers. If over the next five years the running costs of the CSIW were to increase, then the Assembly

would be required to make a proportionately higher contribution. And if the running costs of the CSIW were to fall over that period, then the registered providers would be paying a higher proportion. There would be no particular rationale to support this approach. And there would be little reference to the ten general principles the Assembly Government suggested in the consultation document.

Option 2: Increasing fees in line with inflation

9. An initial increase of 7.8% would be needed on 1 April 2005 to restore the spending power of the money raised through the fee structure at 1 April 2002. Annual increases in the region of 2.7% would need to follow in each of the next four years. Such an approach would maintain the real value of the contribution made by providers in 2002 – but again without much regard to the principles in the consultation document.

Option 3: Moving over a five-year period towards a scale of fees that would fully recover the running costs of the CSIW

10. This option would involve increasing all of the regulatory fees by roughly 600% - and the consultation paper illustrated moving to full cost recovery over a period of five years. This would mean raising fee income from £2m to £14m by 2009-10. For the first time, it would be clear that the one third of regulated settings that pay fees would be subsidising the regulation of the rest. However, the net savings for the Assembly would nowhere near as large as £12m. The Assembly would, at minimum, have to increase funding to local authorities by the amount that it would later want to collect from them in fees.

Option 4: Make the Legislation

11. This option meant scrapping the remaining registration and annual fees altogether and directly funding regulation from Assembly funds instead. For the majority of providers registered with the CSIW, this is already the position. This is also the broad approach already adopted by the Welsh Assembly Government for other activities designed to monitor performance and raise standards in, for example, Estyn, SSIW and HIW. The central rationale for this approach is that it would minimise the circulation of public money. For the services that contribute most to the annual fee income, the Assembly collects through regulatory fees money, which has been handed out by the Assembly in the first place. In addition, scrapping all of the fees would mean that the £35,000 a year spent by the Assembly collecting fees would no longer be incurred. And there would also be small but unknown administrative savings for local authorities and other providers if they no longer had to raise payments.

Benefits

12. Abolishing all of the remaining regulatory fees through the proposed Regulations would have a number of benefits:

- It would bring the approach on these fees into line with the Assembly's approach towards funding broadly similar activities - designed to monitor performance and raise standards - undertaken by SSIW, HIW and Estyn;
- It would eliminate the recycling of Assembly resources;
- It would simplify administration for both the Assembly and regulated services;
- It would end any suggestion that care homes - which make up one-fifth of the regulated services, but at present pay three-quarters of the fees - are in some way subsidising the regulation of other providers; and
- It would provide some recognition of the financial state of the care home sector.

Costs

13. £1.2m will be found from a transfer out of the local government finance settlement to reflect the savings to councils of no longer paying regulatory fees. These negotiations have been concluded. After allowing for this, abolishing the remaining fees will result in an increase in net running costs of around £0.9m and this sum has been included in the Assembly Budget for 2006-07. The £2.1m total is to be transferred to the Inspectorates Main Expenditure Group for 2006-07 onwards.

Consultation

With Stakeholders

14. The Welsh Assembly Government sought the views of interested parties between 5 May 2004 and 20 August 2004 on a consultation paper entitled "Paying for Regulation". This invited views on ten general principles, which might inform decisions about future funding arrangements. It also set out the four concrete options for funding in the future, described in the Options paragraphs above. A list of consultees is attached at Annex 1.

15. Twenty-three organisations and one individual responded to the consultation paper.

16. The two principles felt by respondents to be most important were that (1) the overall approach should minimise the circulation of Assembly funding and (2) the approach should bear comparison with the approaches in areas such as education and the NHS. There were only two other principles with any significant support. These were that (3) the approach should be compatible with the Welsh Assembly Government's assessment of the financial state of the care sector and (4) it should be simple, transparent, easy to administer and not add unnecessarily to bureaucratic burdens.

17. There was overwhelming support – from 20 of the 24 respondents - for adopting Option Four, direct funding by the Assembly.
18. A consultation was also carried out on the draft Statutory Instrument and draft Regulatory Appraisal and ran from 20 October to the end of December 2005. The 16 organisations that responded unanimously supported the Welsh Assembly Government's proposals. A list of consultees is attached at Annex 2.

With Subject Committee

19. These Regulations were notified the Health and Social Services (H&SS) Committee, via the list of forthcoming legislation, on 2 March 2005 (HSS(2)-04-05(p.2), item no: HSS76(04)), but were not identified for detailed scrutiny.
20. Copies of the documents for both rounds of consultation were also sent to all Assembly Members, including Members of the H&SS Committee. No responses were received.

Review

21. There are no plans to review the impact of these Regulations. The 2004 consultation exercise covered the five-year period up to 2009-2010. It would be open to the Welsh Assembly Government to review the position again then and to consult about the approach that would be appropriate for say the following five years.

Summary

22. These Regulations abolish, with effect from 1 April 2006, the remaining regulatory fees that the Assembly charges for the registration and inspection of social care and independent healthcare services.

ANNEX ONE

CONSULTATION ON POLICY OPTIONS FOR REGULATORY FEES, MAY – AUGUST 2004 LIST OF CONSULTEES

Chief Executives of Local Authorities (x22)
Directors of Social Services (x22)
Chief Executives of Local Health Boards (x22)
Chief Executives of NHS Trusts (X16)
Chairs of Community Health Councils

Age Alliance Wales
Age Concern Cymru
All Wales People First
Association of Crossroads
BAAF (Wales)
Barnardos
Care Council for Wales
Care Forum Wales
Carers Wales
Carers Wales Association
Cartrefi Cymru
Children in Wales
Chwarae Teg
Clybiau Plant Cymru Kids' Clubs Limited
Disability Rights Commission
Disability Wales
Mencap in Wales
Mind Cymru
Mudiad Ysgolion Meithrin
Myrtle Cottage
NAIRO
National Association of Independent Resources for Children
National Care Homes Association Ltd
National Child Minding Association
National Day Nurseries Association
National Old Age Pensioners Association Wales
NCH Action for Children
North Wales Nursing and Residential Homes Association
People First Wales
Play Wales
Registered Nursing Homes Association (Wales)
SCOVO
Torfaen County Borough Council
UKHCA (Wales)
Voices from Care Cymru
Wales Council for the Blind
Wales Council for the Deaf
Wales Forum of Parents and Carers

Wales Pre-School Playgroups Association
WCVA
Welsh Federation of Housing Associations
Welsh Local Government Association
Welsh Residential Substance Misuse Services Forum
WLGA

ANNEX TWO

CONSULTATION ON STATUTORY INSTRUMENT TO ABOLISH REGULATORY FEES, OCTOBER – DECEMBER 2005 LIST OF CONSULTEES

Chief Executives of Local Authorities (x22)
Directors of Social Services (x22)
Chief Executives of Local Health Boards (x22)

Age Alliance Wales
Age Concern Cymru
All Wales People First
Association of Crossroads
Association of Directors of Social Services
Association of Welsh Community Health Councils
BAAF (Wales)
Barnardos
Care Council for Wales
Care Forum Wales
Carers Wales
Carers Wales Association
Cartrefi Cymru
Children in Wales
Chwarae Teg
Disability Rights Commission
Disability Wales
Independent Healthcare Forum
Mencap in Wales
Mind Cymru
Mudiad Ysgolion Meithrin
National Association Adult Placement Schemes
NAIRO
National Association of Independent Resources for Children
National Day Nurseries Association
National Homecare Council
NCH Action for Children
North Wales Nursing and Residential Homes Association
Play Wales
Registered Nursing Homes Association (Wales)
SCOVO
UK Home Care Association (Wales)
Voices from Care Cymru
Wales Council for the Blind
Wales Council for the Deaf
Wales Council for Voluntary Action
Welsh Federation of Housing Associations
Welsh Local Government Association
Welsh Residential Substance Misuse Services Forum