

## **REGULATORY APPRAISAL**

### **NATIONAL ASSISTANCE SERVICES, WALES**

#### **THE NATIONAL ASSISTANCE (ASSESSMENT OF RESOURCES AND SUMS FOR PERSONAL REQUIREMENTS) (AMENDMENT) (WALES) REGULATIONS 2006**

##### **Background**

1. Local authorities are required to charge residents for residential accommodation, whether directly provided or arranged with an independent home, with the aim of recovering as much as possible of the costs. The assessment of a person's ability to pay for accommodation is laid down in the National Assistance (Assessment of Resources) Regulations 1992. The Assembly has made a commitment previously to keep under review the capital limits local authorities use in the assessment of a person's ability to pay for accommodation. Limits are now reviewed annually. In addition, the Assembly keeps under review the disregards used in such assessments, which take account of income related benefits and payments.
2. Local authorities are also to assume that residents in residential care need a weekly sum for their personal requirements. Such weekly sums are laid down in the National Assistance (Sums for Personal Requirements) Regulations.

##### **Purpose and Intended Effect of the Measure**

3. The intended effect of these amendments to the Regulations is threefold. Firstly, to increase from April 2006 the capital limits used in resident charging assessments by at least inflation from £14,750 to £16,000 for the lower limit and from £21,000 to £21,500 for the upper limit. Secondly, to reflect in the disregards for residential charging assessments certain changes to income-related benefits, which are occurring from April 2006 and to introduce civil partners in to the list of "liable relatives" set out in the Regulations.
4. Lastly, these amendments seek to increase the weekly sum, which local authorities are to assume that residents in residential care need for their personal requirements, such as clothing, hairdressing, stationery, etc. Such weekly sums are laid down in the National Assistance (Sums for Personal Requirements) Regulations. It has become practice to uprate annually the level of the personal expenses allowance (PEA) by at least the rate of inflation. The effect of these amendments to the Regulations is to increase the weekly PEA from £19.10 to £20.00 from April 2006.

##### **Risk Assessment**

5. These Regulations do not address any risk or hazard. They have been prepared to increase the capital limits used in residential charging assessments and to increase the savings disregard, and update the income-related benefits disregards, used in those assessments. They have also been prepared to incorporate civil partners on a par with the responsibilities' of spouses in such assessments and to increase the weekly personal allowance for individuals living

in residential care. All these changes are planned to come into force on 10 April 2006. There is a risk that if this implementation date is not achieved then those in residential care in Wales will be disadvantaged as opposed to those in the other three countries of the UK who plan their corresponding Regulation changes for that date.

## **Options**

### Impact of the Proposed Capital Limits Changes

6. Under the National Assistance (Assessment of Resources) Regulations 1992, local authorities may not financially contribute to the care costs of residents who have assets, including the value of their home, above the upper capital limit. Such residents are, therefore, expected to meet the full costs of their residential accommodation from their own resources. If individuals have assets at or below the lower limit then they receive maximum state financial support, and simply contribute whatever income is deemed appropriate by the residential accommodation charging assessment. The key options in respect of the capital limits are: (1) do nothing, (2) provide for an increase, or (3) uplift the limits by a lesser or greater sum.
7. Reducing the limits is not considered to be either feasible or desirable. In addition, this section does not examine the options for the other minor changes covered by the draft amendments to the Assessment of Resources Regulations given these changes, and their level, are being introduced as a consequence of changes by the Department of Work and Pensions (DWP). As such there is little choice in their introduction except to severely disadvantage those in residential accommodation in Wales. However, their impact and costs following the changes are considered later on.

### Option 1: Do Nothing

8. This would mean the lower and upper capital limits applied through the charging assessment would be maintained at £14,750 and £21,000. These limits were set by amending Regulations, the National Assistance (Assessment of Resources) (Amendment) (Wales) 2005, and came into effect on 11 April 2005. The Welsh Assembly Government has made a previous commitment to keep the capital limits under review. Alongside the commitment there is, therefore, an expectation that they will be considered and increased annually, at least broadly in line with current inflation. The other consideration is that local authority supported residents in care homes in England, Scotland and Northern Ireland are going to benefit from planned increases by the administrations of these countries.

### Option 2: Make the Legislation

9. The proposed amendments to the Regulations provide for an increase of some 8.5% in the lower capital limit and 2.4% in the upper limit (currently £14,750 & £21,000 respectively). Depending upon individual resident's circumstances, such changes would result in more residents receiving financial support from their local authority, or a higher level of support, although the exact number benefiting in these categories is not known. These changes to the limits will not result in any

resident currently receiving local authority support towards their residential charges losing that support. Local authorities are currently being given by officials written advance notice of the proposed changes, subject to Assembly approval of the necessary Regulations, and so will be able to plan for the increases. We also understand that a lower increase is being planned in England, Scotland and Northern Ireland than in Wales, which will leave residents in care homes in Wales slightly better off than their counterparts in the other 3 administrations. This is the preferred option.

### Option 3: Uplift the Limits by a Lesser or Greater Sum

10. The proposed increase in the lower limit is already substantially higher than the current inflation of around 2.7% or the current uplift for pay and prices of 3.3% in Local Government in Wales. The proposed increase in the higher limit is in line with inflation. Implementation of these proposed changes is considered to be affordable within the overall uplift in this year's revenue settlement for local government. Funding is not available to increase the limits any further. A smaller increase is feasible but the potential numbers that would benefit would obviously be reduced. An increase less than inflation would not fulfil the Assembly Government's commitment to ensure the limits remain at least in line with inflation.

### Impact of the Proposed Disregard Changes

#### Savings Disregard Increase

11. From October 2003, as part of Pension Credit, the Department for Work and Pensions (DWP) introduced a weekly savings credit to reward people aged 65 and over with modest savings. In response, the Assembly introduced a weekly savings disregard for the purposes of assessing an individual's ability to pay for residential care of up to £4.85 for individuals and up to £7.20 for couples. From April 2006, DWP plan to increase the weekly savings credit so that it peaks at £17.88 for individuals and £23.58 for couples to reflect the rise in average earnings for the last 12 months. It is, therefore, proposed that the savings disregard for those in residential care be increased to £5.05 for individuals and £7.50 for couples from April 2006. The other 3 administrations in the UK are proposing the same change.

#### Civil Partnerships Act 2004

12. The Civil Partnerships Act 2004, which came into force on 5 December 2005, enables same-sex couples to obtain legal recognition of their relationship by forming a civil partnership. Civil partners will be subject to many of the same legal rights and responsibilities as spouses. An amendment to the National Assistance (Assessment of Resources) Regulations 1992 is required to ensure that civil partners are treated in the same way as spouses for the purposes of charging for residential accommodation.

#### Adoption Support Payments

13. In order to reflect the full implementation of the Adoption and Children Act 2002, an update to the disregard in residential charging for adoption support payments is required. The 2002 Act was fully commenced on 30 December 2005. Financial support for adopters is currently disregarded for the purposes of residential

charging in the Assessment of Resources Regulations. Those disregard provisions currently refer to transitional powers to make regulations under paragraph 3 of Schedule 4 to the 2002 Act, which was an interim measure pending full commencement of the Adoption and Children Act.

#### Impact of the Proposed Changes to the Personal Expenses Allowance

14. In calculating a resident's charges local authorities are required to allow residents to keep an amount of their weekly income for their personal expenses, known as their personal expenses allowance (PEA). This amount is laid down in the National Assistance (Sums for Personal Expenses) Regulations. It is practice to uprate the PEA each year and in recent years the uplift has reflected average earnings and been roughly in line with those increases made by the other 3 devolved administrations. The key options are: (1) do nothing, (2) provide an uplift to the allowance, or (3) uplift the allowance by a lesser or greater sum.

#### Option 1: Do Nothing

15. This would mean that the allowance is maintained at the level of £19.10 per week. This level was set by the National Assistance (Sums for Personal Requirements) (Wales) Regulations 2005, which came into force on 11 April 2005. It has become practice to uprate annually the PEA and therefore there is an expectation by local authorities and care home residents that the sum will be increased. In addition, the other 3 administrations in the UK plan to increase PEA for residents in care homes in their countries to an amount greater than the current level of £19.10 per week, ie to £19.60 per week. This would mean that care home residents in Wales would be disadvantaged by being treated less favourably than those elsewhere in the UK.

#### Option 2: Make the Legislation

16. Implementing the Legislation will mean that individuals in residential care homes get to keep an increased amount each week for their personal expenses. These amendments to the Regulations provide for a weekly personal expense allowance of £20.00, which is an increase of 90 pence per week on the current level. This represents an increase of 4.7%, which is higher than the pay and prices uplift in the local government revenue settlement (3.3%), average earnings in Wales (3.6%) and current inflation (2.7%). It can be met within the baseline increase in the revenue settlement for local government. Local authorities are being given advance notice of the proposed change, subject to Assembly approval of the necessary Regulations, and so will be able to plan for the increase. This is the preferred option.

#### Option 3: Uplift the Allowance by a Lesser or Greater Sum

17. The increase proposed in the PEA is considered to be affordable within the revenue settlement; it is also more generous than increases being proposed in this allowance by all 3 other administrations in the UK, who after their increases will have weekly allowances for residents in care homes of £19.60. The proposal in the amendment to the Regulations to increase the allowance to £20.00 per week in Wales means that the amount, which individuals receive for personal use will increase by significantly more than current inflation and average earnings over the last 12 months. It will leave people in local authority supported

residential care in Wales slightly better off than those elsewhere in the UK. Accordingly, an uplift of a lesser or higher amount is not considered appropriate.

### **Benefits**

18. Subject to the Assembly's approval of the amending Regulations, the beneficiaries of these changes are care home residents in Wales. Depending on their financial circumstances, they may benefit from increased financial support from their local authority through the increases to the capital limits, or if they have low levels of savings and assets be effectively taken out of residential charging all together. The increased disregards in relation to Savings Disregard and the Adoptions Support Payments will ensure that residents will receive full allowance for these in their charging assessments. In addition, all care home residents receiving financial support from local authorities will also receive an additional 90 pence per week for their personal expenses. Lastly, the amendment to the National Assistance (Assessment of Resources) Regulations to take account of the Civil Partnership Act will ensure that civil partners are treated in the same way as spouses for the purposes of charging for residential accommodation.

### **Costs**

19. The proposed increase in the capital limits will impose costs on local authorities in the region of £500,000 based on approximately 16,500 current residents and local authorities' knowledge of the value of their assets. However, the resources for the increase are within the cost limits allowed for in the local government settlement for 2006-07. There are no additional financial implications for the Assembly.

20. It is not considered that there will be additional financial consequences for local authorities arising from the changes to the Regulations regarding the proposed increase to the savings credit disregard, and the Adoption Support Payments. It is not clear what financial impact the introduction of the Civil Partnerships Act could have on authorities as there are potential gains and losses for them. However, in view of the likely numbers involved we consider that any impact would be negligible. Again, there are no additional financial implications for the Assembly.

21. The cost of the proposed uplift to increase the personal expenses allowance for local authority supported care home residents in Wales is approximately £800,000 per annum calculated on a 90 pence per week increase for approximately 16,500 residents. This cost can be met within the baseline increases in the revenue settlement for local government for 2006-07. There is no cost to individuals or the care home sector more generally and no additional financial implications for the Assembly.

### **Consultation**

#### With Stakeholders

22. The proposed amendment to the capital limits and personal expenses allowance for residential charging assessments is part of a regular annual exercise, which stakeholders (i.e. local authorities) are aware of, to simply increase existing levels. The proposed amendments to the disregards in calculating residential

charges are part of a bi-annual exercise, which stakeholders are again aware of, to simply reflect changes to the income-related benefit Regulations and the introduction of ad hoc payments. As such, it is not considered necessary to consult on these changes, but local authorities are currently being given by officials written advance notice of the possible changes to enable them to plan ahead.

#### With Subject Committee

23. These Regulations, which were originally intended to be two sets of Regulations (i.e. The National Assistance (Sums for Personal Requirements) (Wales) Regulations 2006 and The National Assistance (Assessment of Resources) (Amendment) (Wales) Regulations 2006) were notified to the Health & Social Services Committee via the list of forthcoming legislation on 19 January 2006 (paper No. HSS(2)-01-06(p3a), item No 6 of HSS(2)-01-06). The Committee identified these Regulations for scrutiny, which took place at its meeting on 8 March 2006 (HSS(2)-04-06(p.6)). While clarification was sought on the Regulations, no amendments were proposed, and the Regulations were approved as drafted. A copy of the draft transcript is attached at Annex 1.

#### **Review**

24. The effect of the changes will be monitored by officials via their regular written contact with local authority financial assessment officers.

#### **Summary**

25. The range of proposals in these amendments will substantially benefit those in residential care in Wales. They will allow for more residents than presently to be financially supported by their local authority, or for that level of support to rise. They will also allow residents in Wales to benefit fully in disregard in their charging assessments from increases in certain benefits, which are occurring from April. In addition, those residents who are supported by their local authority will benefit from a greater increase in their personal allowance than is being proposed for the rest of the UK. Lastly, they will put civil partners on an even footing as spouses for the purposes of residential charging.

## Annex 1

### Transcript of the Health & Social Services Committee scrutiny of the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2006

Rheoliadau Cymorth Gwladol (Aseiad o Adnoddau a Symiau ar gyfer Anghenion Personol) (Gwelliant) (Cymru) 2006

The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2006

[234] **Rhodri Glyn Thomas:** Cyflwynwyd un pwynt o eglurhad ar y rheoliadau gan Jenny Randerson. Hwyrach y gallwch ymateb i'r pwynt, Weinidog, ac yna caiff Jenny ymateb.

**Rhodri Glyn Thomas:** One point of clarification on the regulations has been presented by Jenny Randerson. Perhaps you can respond to the point, Minister, and then Jenny can respond.

[235] **Brian Gibbons:** As you can see, increasing the capital limits will, effectively, increase the bill to local authorities by £0.5 million, and increase personal expenses by £800,000. We estimate that increasing the lower capital limit, say, by £1,000 would cost local authorities an additional £200,000, and a £1,000 increase to the upper capital limit would also effectively increase the cost to local authorities. I am just looking to see whether I can give you a figure for that. I have the figure: the £1,000 increase to the upper capital limit would cost £500,000. Equally, we can work out a calculation for personal allowances. We have a minimum commitment that things should increase with inflation; where possible, we would like it to increase with earnings. Where affordability can come into it, we would also like to have a further small increase, such as we did in the personal expenses allowances in this instance. I am sure that every member of the committee will be pleased to see that we have increased even the lower limit for the capital allowances.

[236] **Jenny Randerson:** The Minister's paper refers to the fact that the limits are higher in Wales than in England, and I am sure that we are grateful for that, but we would like them to be even higher. I was seeking to tease out exactly how much more it would cost to raise the limits to a more satisfactory level. This is of grave concern to many people, especially given the issue of free home care and so on. This is all part of an interactive whole. There is a great deal of concern that these limits are inadequate. I have one specific question, Minister. Is it your intention to reimburse local authorities for that additional cost?

[237] **Brian Gibbons:** No, it will be taken from the general uplift. Local authorities, by and large, have a rough feel for the direction of travel. We anticipate that local authorities will cover it using the unhypothecated general uplift.

[238] **Helen Mary Jones:** I should clarify, Chair, and perhaps apologise to the Minister, for not having raised these points as written matters for qualification; that occurred because we sought to propose a motion to the committee that would have substantially widened the discussion. The Chair explained earlier why he did not feel able to accept that motion. That is why I have not been able to ask you these questions in writing in advance. If you are unable to answer them today, I would be content to receive a written response.

[239] I am interested to know how the figure of £21,500 was arrived at; it was not clear whether it is an inflationary uplift. I would also like to know whether we know—and if we do not, whether we could find out—how many homes are sold in Wales each year to meet these costs. Presumably, local authorities would have that information; would it be possible for us to have that centrally? I ask that in the context of a statement made by the British Prime Minister, with whom I do not often agree, in 1997, where he said that he would not want his children to grow up in a country where the only way that pensioners can get long-term care is to sell their homes. I would be interested to know how far away we are from meeting that aspiration. From my own postbag across my region, I would suggest that there are still a number of families being put in that situation. I think that it would be interesting to know how many there are.

[240] **Rhodri Glyn Thomas:** I do not know whether you are in a position to answer those

questions, Minister.

[241] **Brian Gibbons:** Kirsty Williams raised a similar point a few months ago, and I know that we could only go by anecdotal evidence, having canvassed the views of local government around that time. On the basis of canvassing opinions, we did not get the impression that there were a large number of instances in which that was taking place. There may be individual cases, but we did not get the feedback from that canvass of opinion that this was a substantial problem.

[242] Also, the bottom line will mean that people will be able to retain £16,000 worth of assets because of this uplift, which is certainly not an insubstantial amount of money in anyone's books. Sometimes, in this debate, people forget that a fairly substantial amount of assets can be protected. Equally, house-selling is not the only option; taking a charge against the property is another option, which means that the property is retained until the person's estate is dispersed. Even then, the charge has to be discharged, and how precisely that is to be discharged does not automatically mean that the house has to be sold; there are other ways of meeting that charge when that particular event has to be addressed when the person would have died and their estate is being dispersed.

[243] **Rhodri Glyn Thomas:** Diolch yn fawr; daw hynny â'r eitem honno i ben.

**Rhodri Glyn Thomas:** Thank you; that brings that item to a conclusion.