

## Regulatory Appraisal

### **THE NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (ADDITIONAL PAYMENTS, RELEVANT CONTRIBUTIONS AND ASSESSMENT OF RESOURCES) (WALES) REGULATIONS 2003**

and

### **THE NATIONAL ASSISTANCE (RESIDENTIAL ACCOMMODATION) (DISREGARDING OF RESOURCES) (WALES) REGULATIONS 2003**

#### **1. Purpose and intended effect of the measure**

1.1 These Regulations can be seen as part of a wider package of measures to ease the pressures on the sale of homes to pay for care. The specific changes brought about by the Regulations are to allow:

- local authorities to agree and operate a deferred payments scheme by taking a legal charge on land instead of contributions towards the cost of a person's residential accommodation.
- certain groups of people, as specified in the Regulations, to top-up fees from their own resources in order to allow them to enter residential care which is more expensive than the local authority would normally pay for.
- a determination regarding what part of a person's resources are disregarded in deciding whether or not they have need for accommodation.

1.2 The changes will impact on:

- local authorities; and
- those using residential care services.

#### **Intended effect**

1.3 To allow people with property, but without sufficient income and other assets, to have a legal charge placed on their property to meet any shortfall in the amount they are able to pay for their care. The cost of the contribution to care would be met by means of a loan from the local authority repayable when the home was sold. As a result people will be able to keep their home on admission to residential care and for the duration of the deferred payment agreement.

1.4 Currently, local authority supported residents may not make their own top-up payments as it is argued that the means-test is full and fair and takes account of the contributions that both residents and local authorities should make in order to provide a satisfactory level of care. However, not allowing residents with property, who have

either accessed the existing 12 weeks-property disregard scheme or who have entered into a deferred payment agreement, to top-up from their own resources is seen as unfair. When the value of their home is realised they will be able to support themselves in a way that suits them best or, in the case of the deferred payment agreement will repay the local authority their contribution to the care fees.

## **2. Risk Assessment**

2.1 If the Regulations are not amended the undertaking to implement this element of the Royal Commission's recommendations would not be fulfilled. It would also mean that residents of care homes in Wales would not receive the intended benefit of the Regulations. The Department of Health and Scottish Executive have both introduced similar regulations. This might lead to criticism that people in Wales were not receiving the benefit of the changes and in effect would not have the options available to fund their care as those on offer in the rest of GB.

## **3. Options**

3.1 The options are:

- i) Do nothing. This would not deliver the options on seeking to introduce deferred payment agreements and would not give the opportunity for appropriate individuals to make their own contributions to care fees. In addition, the Assembly would not meet the commitment it has made to bring about these changes.
- ii) Amend the existing regulations along the proposed lines. This would deliver the changes and the Assembly's commitment.

## **4. Costs**

### Business sectors affected

4.1 Local authorities are the only sector financially affected by these changes.

### Deferred payments

4.2 Option (i) - would have no impact on local authorities.

4.3 Option (ii) The average cost to local authorities of residential care is approximately £265 per week for fees plus £16.80 for the personal allowance. A total of £281.80. The proposed deferred payment scheme would benefit residents who could receive local authority assistance toward the cost of their care. In calculating the means-test local authorities take into account the resources (income) available. This can be from occupational pension; state pension; social security benefits; and income tariff on savings. For this calculation it is assumed that each individual will be entitled to the basic levels of retirement pension of £75.50 per week, although in

practice income levels are likely to be higher with the payment of income support, occupational pensions etc. The average weekly income offset by local authorities toward the cost of the charge is therefore £75.50 leaving a total cost of £189.50 per week falling to councils.

4.4 The calculation of net cost to local authorities is therefore £189.50 per week, or £9854.00 per annum. Attrition rates in care homes suggests that an average length of occupancy is approximately 2.5 years. Assuming that a deferred payment agreement will last for the length of an individual's stay in a care home this results in a total cost of £24,635 for each deferred payment case. It is estimated that there will be between 150 (low) and 200 (high) individuals who will take up the deferred payment scheme per year. Based on evidence received from England where a similar scheme has been in operation since October 2001 this is a realistic estimate although in practice the actual number is likely to be at the lower end. Councils in England have found that the take up of the deferred payment scheme has been slow and that the resources based on the estimated number of cases have not been fully utilised. (In England the Department of Health have operated a limited grant scheme to reimburse councils but this is to cease from 2004 as they argue that when residents or their estates eventually sell their homes, councils are reimbursed the monies which can then be used ('recycled') by councils to fund further deferred payments. In this way, the deferred payments grant in England is seen as pump-priming)

4.5 The annual cost of deferred payment agreements to Welsh local authorities is therefore between £1.478m and £1.970m for a full year effect. (Approximately half this in year one due to the gradual take up during the year).

#### Additional payments

4.6 Option (i) - there is no impact on local authorities.

4.7 Option (ii) - there is no direct impact to local authorities from the proposed change in that the resident makes the additional top-up payment from their own resources. The contribution from councils is at the same level as for the care they would normally fund.

#### Administrative costs

4.8 Councils will need to administer the new arrangements which will be for those people the council would not normally arrange accommodation. Costs have been calculated to allow £200 for both the initial care and financial assessment and a further £500 per annum for on-going management, giving a total cost of £900 in year one and a total cost of £1,650 per deferred payment case (£900 + (£500 x 1.5)). This is in line with calculations carried out by Department of Health and work associated with the introduction of other Regulations impacting on councils.

4.9 Total administrative costs for local authorities is therefore between £0.135m (low) and £0.180m (high) per year. (Again approximately half this in year one due to the gradual take up during the year).

#### Cost by local authority

4.10 Costs incurred will vary between individual authorities, depending on the services and facilities they already provide and the number of cases they support. The Welsh Assembly Government has already made provision of £2.7m from 2002-03 within the local government revenue settlement to accommodate this new burden on local authorities. This adequately covers the combined costs falling to councils which are £1.613m (low) and £2.150m (high) in a full year. Distribution to local authorities has been made via the distribution formula agreed with the authorities. Unlike the position in England this is not in the form of a time-limited grant but is on-going funding. Councils will therefore gain financially as they start to recoup the finances at the end of the deferred payment agreements and also from the fact that they have been put in funds for a full year effect from 2002-03.

### **5. Benefits**

5.1 Option (i) - there would be no benefit to an individual.

5.2 Option (ii) - the proposed Regulations will benefit users of social services, ensuring greater choice of accommodation and financial freedom for vulnerable adults. In particular:

- on admission to residential care those people with savings and other assets below the capital limit, but with a home whose value when added to their other assets put them above the limit, will have the choice of keeping their home for the duration of the deferred payment agreement;
- the period of the deferred payment agreement allows people time between admission to care and any decision they may wish to make about selling their property so giving people time to think about their future; and
- people who have decided to enter into a deferred payment scheme or who are subject to the 12 week disregard scheme, can decide to make additional payments to allow them to move into more expensive accommodation than the council would normally pay for.

### **6. Consultation**

6.1 In preparation for the UK Government's response to the Royal Commission the Assembly consulted a wide range of organisations including local authorities, relevant voluntary organisations and representative bodies on the Commission's

recommendations. A separate consultation exercise has also been undertaken for the proposed deferred payments and additional top-up payment schemes.

6.2 The consultation period was from the beginning of January 2002 to 18 March 2002. There were 12 responses, 9 of which were from local authorities. Although generally supportive of the proposals concerns were raised about increased workload, new responsibilities, the additional costs involved, and insurance of properties.

6.3 Local authorities have also had the opportunity to discuss the proposed changes as part of the annual revenue support grant settlement.

## **7. Review**

7.1 The Welsh Assembly Government will monitor the operation of the new arrangements following legislation and implementation.

## **8. Summary**

8.1 Option (i). Taking no action would involve no cost to the Assembly or local authorities. However, there would also be no benefit to individuals.

8.2 Option (ii). The introduction of deferred payments and additional payments would achieve the desired outputs. These measures are achievable in the short term in that the Regulations can be amended from April 2003. The costs are affordable and can be met from within the sums which have been included in local authority revenue settlement since 2002/03.

## **9. Contact Point**

Andrew Powell-Chandler **or** Penny Hall  
Social Care Policy Division 3  
Welsh Assembly Government  
Crown Buildings,  
Cathays Park,  
Cardiff  
CF10 3NQ

Tel : 029 2082 3454 **or** 029 2082 6429

Email: [andrew.powell-chandler@wales.gsi.gov.uk](mailto:andrew.powell-chandler@wales.gsi.gov.uk) **or** [penny.hall@wales.gsi](mailto:penny.hall@wales.gsi)