

Explanatory Memorandum to the Care and Support (Charging) (Wales) (Amendment) Regulations 2021

This Explanatory Memorandum has been prepared by the Health and Social Services Group and is laid before the Senedd 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 2021 in relation to charging for social care and support 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.

Julie Morgan MS
Deputy Minister for Health and Social Services
8 March 2021

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 wellbeing of people who need social 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 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 Charging 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 Charging Regulations. Amending regulations to effect those changes are: the Care and Support (Choice of Accommodation, Charging and Financial Assessment) (Amendment) (Wales) Regulations 2017 that came into force on 10 April 2017; the Care and Support (Charging) (Wales) (Amendment) Regulations 2018 that came into force on 9 April 2018; the Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2019 that came into force on 8 April 2019 and; the Care and Support (Charging) (Wales) and Land Registration Rules (Miscellaneous Amendments) Regulations 2020 that came into force on 6 April 2020.

The regulations subject to this Explanatory Memorandum are required to introduce an update to the Charging Regulations to reflect an uplifted sum of money that applies to people in receipt of residential social care and support.

2. Matters of special interest to the Legislation, Justice and Constitution 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 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 (section 61) of the Act.

These amending regulations are subject to the negative procedure. They will come into force on 12 April 2021.

4. Purpose and intended effect of the legislation

The overall purpose of the amending regulations is to effect a change to the existing regulations as a result of a certain policy decision. These existing 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.

The change the amending regulations make is to:

The Care and Support (Charging) (Wales) Regulations 2015

Regulation 2(a) to 2(d) of the amending regulations amend the Charging Regulations as follows:

- uplift from £32.00 a week to £33.00 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 Charging 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 pensions and welfare benefits.

5. Consultation

Consultation on amendments to the Care and Support (Charging) (Wales) Regulations 2015 is not required. A five week consultation on the principle of the changes being made by the amending regulations to the Charging Regulations was originally held between 21 December 2016 and 25 January 2017. This being the case, consultation on an annual basis is not needed. 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 level of the eventual increase planned for the maximum weekly charge, which is not subject to change in this instance, and how the changes would be communicated to care recipients. These have been addressed in the implementation of the amendments made since that time.

PART 2 – REGULATORY IMPACT ASSESSMENT

Introduction

The change being introduced by the amending regulations is considered in this Regulatory Impact Assessment. Introducing this change will ensure the Charging Regulations operate in accordance with the policy intention.

Options and Benefits

This Regulatory Impact Assessment considers two options in relation to making these change:

- Option 1 – “do nothing” and not make the amending regulations;
- Option 2 – “make the amending regulations” to introduce changes to the Charging Regulations in relation to charging for care and support. This is the preferred option.

Minimum Income Amount (MIA)

Where a person is in residential care, and 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 Charging Regulations 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 propose to increase the MIA from 12 April 2021 from its current level of £32.00 per week to £33.00 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 £32.00 per week. As a result all of the increase in a resident’s weekly income from April 2021 as a result of uplifted state pension and welfare benefit payments would go to their local authority in charge income to pay towards their care.

- **Costs**

There are no new cost implications for local government from this option. Instead authorities would receive up to an estimated £2.8 million per annum in increased contributions from the 16,144 care home residents over state pension age as recorded in data published by Welsh Government in October 2019 (no data collected in 2020). This would be due to the increased income residents would have resulting from the uplifts in the amount (£3.35pw) of the basic state pensions alone. Residents in this position would not retain any of the uplift applied.

- **Benefits**

Care home residents supported by their local authority would be unable to retain any of the increase applied to their state pension nor would those seeing uplifts applied to any welfare benefit they receive, see a benefit. Instead these funds would increase residents’ weekly contributions to local authorities for the cost of their care, so as to benefit 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 £32.00 to £33.00 per week. This would allow local authority supported residents to retain a proportion of the uplift to their state pensions and welfare benefits to spend on personal items as they wish.

- **Costs**

This option results in local authorities receiving a smaller increase in charge income, than if the regulations were not made, of around an estimated £2.0 million per annum through contributions from the 16,144 residents over state pension age alone. 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 (around £800,000 collectively) of these uplifts to spend on personal items as they wish.

- **Benefits**

This option shares the increased income which local authority supported residents would have from April 2021 as a result of uplifts to their state pensions and welfare benefits. Residents in this position would be able to retain a £1.00pw of these uplifts to spend on personal items, while authorities would receive the balance in increased contributions from residents towards the cost of their resident care.

Conclusion

In view of the financial benefit seen by care home residents, while enabling local authorities to receive an increase in revenue to use towards the provision and quality of the care and support they provide or commission, “Option 2 - make the amending regulations” is recommended. As a result local authorities are set to gain an increase in residential care charge income of some £2.0 million pa from care home residents in receipt of the basic rate state pension alone. It also ensures care home residents in receipt of such pensions are able to retain, collectively, in excess of £800,000 pa to spend as they wish.

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 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.