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Y Gweinidog dros Fusnes a'r Gyllideb
Minister for Business and Budget



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Lord Dafydd Elis-Thomas AM
Presiding Officer
National Assembly for Wales

29 March 2011

Dear Dafydd,

THE SOCIAL CARE CHARGES (MEANS ASSESSMENT AND DETERMINATION OF CHARGES) (WALES) REGULATIONS 2011

THE SOCIAL CARE CHARGES (DIRECT PAYMENTS) (MEANS ASSESSMENT AND DETERMINATION OF CHARGES) (WALES) REGULATIONS 2011

THE SOCIAL CARE CHARGES (REVIEW OF CHARGING DECISIONS) (WALES) REGULATIONS 2011

I am writing to inform you that in order to bring into force in Wales the above Regulations, all being made under provisions in the Social Care Charges (Wales) Measure 2010, it has become necessary to breach the 21 day rule. These Regulations were all made on 24 March and laid in Table Office on 29 March. They will come into force on 11 April 2011 to coincide with the changes to welfare benefits that the Department for Work and Pensions will make on that day, given the link between these and charging for social care.

These Regulations, when taken with the provisions on the face of the Measure, introduce a new regime in Wales in relation to the charging that local authorities undertake for providing non-residential social services. They introduce more consistency in this charging so as to fulfil the Assembly Government's "One Wales" commitment to make charging for these services "a more level playing field".

The Regulations and Measure make considerable changes to how local authorities may charge those who receive non-residential social services. Currently authorities have wide discretion regarding the services for which a charge may be made, the allowances and disregards of capital and income they operate in means assessments of service users to determine charges, and in the level of charges they set. This has led to differing charging policies operated by authorities in Wales, with wide variations between the services for which a charge is made, in the means assessments they undertake and in the charges they make. The Measure, while maintaining authorities' discretion to charge, allows Welsh Ministers by Regulation to set out a new framework where charging occurs to introduce more consistency. Therefore, the Regulations cover:

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The Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011

- The classes of persons who may not be charged and the services for which a charge may not be made;
- That an authority's power to set a reasonable charge is subject to a maximum charge of £50 per week;
- The content and format of an invitation, and the responses to these, to request a means assessment to be issued to a service user where a charge is planned;
- Where a means assessment is requested, the process to be used including the financial safeguards to be afforded service users;
- The procedure an authority should use in determining a charge;

The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011

- For those in receipt of direct payments to obtain the non-residential social services they require, corresponding provision to that outlined above;

The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011

- Introduces a right to request a review of any decision to impose a charge and in the case of those receiving direct payments, to impose a contribution or reimbursement for the direct payments they receive;
- The situations in which a request for a review may be made, the content and format of that request and the acknowledgement an authority must issue;
- The process an authority must use in considering such requests, the timescales for this and the factors an authority must take into account in determining them;
- The actions an authority must take once a decision has been made and the arrangements for the payment of any charge, contribution or reimbursement in dispute during the period of the review and subsequently.

Given the level of detail that these Regulations have of necessity needed to cover to achieve our aim of more consistency, their development has required extensive and prolonged engagement with stakeholders; both those representing local authorities and those representing service users. This was to ensure that they afforded service users the consistency of approach and financial safeguards required in such a new regime, while at the same time introducing arrangements which were practical for authorities to administer. This process has, therefore, been highly technical involving charging, financial and complaint officers from local government, as well as a range of individuals from the organisations representing older and disabled people.

Draft Regulations were subject to a public consultation which concluded on 4 February this year. Since then officials have been considering the responses in liaison with the stakeholder representatives mentioned above. This has included ensuring that, in relation to direct payments, the changes account for all of the categories of individuals who are eligible to receive direct payments. That category is being extended and has recently been the subject of separate Regulations laid in relation to direct payments which will also come into force on 11 April. As a result it has not been possible to lay these Regulations relating to local authority charging for non-residential social services before now.

A copy of this letter goes to Janet Ryder, Chair of the Constitutional Affairs Committee and to Stephen George, Clerk to the Constitutional Affairs Committee.

Jane Hutt

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Minister for Business and Budget



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Yr Arglwydd Dafydd Elis-Thomas AC
Llywydd
Cynulliad Cenedlaethol Cymru

29 Mawrth 2011

Annwyl Dafydd

RHEOLIADAU FFFIOEDD GOFAL CYMDEITHASOL (ASESU MODD A PHENDERFYNU FFFIOEDD) (CYMRU) 2011

RHEOLIADAU FFFIOEDD GOFAL CYMDEITHASOL (TALIADAU UNIONGYRCHOL) (ASESU MODD A PHENDERFYNU AR AD-DALIAD NEU GYFRANIAD) (CYMRU) 2011

RHEOLIADAU CODI FFFIOEDD AM WASANAETHAU GOFAL CYMDEITHASOL (ADOLYGU PENDERFYNIADAU AR GODI FFFIOEDD) (CYMRU) 2011

Rwy'n ysgrifennu i'ch hysbysu, er mwyn dod â'r Rheoliadau uchod i rym yng Nghymru, sy'n cael eu gwneud o dan ddarpariaethau Mesur Ffioedd Gofal Cymdeithasol (Cymru) 2010, bu'n rhaid torri'r rheol 21 diwrnod. Gwnaed y Rheoliadau hyn ar 24 Mawrth a'u gosod yn y Swyddfa Gyflwyno ar 29 Mawrth. Byddant yn dod i rym ar 11 Ebrill 2011 i gyd-fynd â'r newidiadau y bydd yr Adran Gwaith a Phensiynau yn eu gwneud i fudd-daliadau lles ar y diwrnod hwnnw, o ystyried y cysylltiad rhwng y rhain a ffioedd gofal cymdeithasol.

Mae'r Rheoliadau hyn, ynghyd â darpariaethau'r Mesur, yn cyflwyno cyfundrefn newydd yng Nghymru mewn perthynas â'r ffioedd y mae awdurdodau lleol yn eu codi am ddarparu gwasanaethau cymdeithasol amhreswyl. Maent yn gwneud y ffioedd hyn yn fwy cyson er mwyn cyflawni ymrwymiad *Cymru'n Un* i "sicrhau mwy o chwarae teg" o ran codi ffioedd am y gwasanaethau hyn.

Mae'r Rheoliadau a'r Mesur yn gwneud newidiadau sylweddol i'r ffordd y caiff awdurdodau lleol godi ffioedd ar y rheini sy'n derbyn gwasanaethau cymdeithasol amhreswyl. Ar hyn o bryd mae gan awdurdodau ddisgresiwn helaeth ynghylch y gwasanaethau y ceir codi ffioedd ar eu cyfer, y lwfansau a'r diystyru cyfalaf ac incwm wrth asesu modd defnyddwyr gwasanaethau, a lefel y ffioedd y maent yn eu gosod. Mae hyn wedi arwain at bolisiau ffioedd amrywiol gan awdurdodau yng Nghymru, gydag amrywiadau helaeth rhwng y gwasanaethau y codir ffioedd ar eu cyfer, yn yr asesu modd a gyflawnir a'r ffioedd a godir. Mae'r Mesur, tra'n cadw disgresiwn awdurdodau i godi ffioedd, yn caniatáu i Weinidogion Cymru drwy Reoliad osod fframwaith newydd ar gyfer ffioedd sy'n fwy cyson. Mae'r Rheoliadau felly'n cwmpasu'r canlynol:

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Rheoliadau Ffioedd Gofal Cymdeithasol (Asesu Modd A Phenderfynu Ffioedd) (Cymru) 2011

- Y dosbarthiadau o bobl na cheir codi ffioedd arnynt a'r gwasanaethau na cheir codi ffioedd amdanynt;
- Y ffi uchaf y gellir ei godi o fewn rheswm drwy bŵer awdurdod, sef £50 yr wythnos;
- Cynnwys a fformat gwahoddiad, a'r ymateb iddo, i ofyn am asesu modd defnyddiwr lle bwriedir codi ffioedd;
- Lle gofynnir am asesu modd, y broses i'w dilyn gan gynnwys y mesurau diogelwch ariannol i ddefnyddwyr gwasanaethau;
- Y weithdrefn y dylai awdurdod ei dilyn wrth benderfynu ffioedd;

Rheoliadau Ffioedd Gofal Cymdeithasol (Taliadau Uniongyrchol) (Asesu Modd A Phenderfynu Ar Ad-Daliad Neu Gyfraniad) (Cymru) 2011

- I'r rheini sy'n derbyn taliadau uniongyrchol i gael y gwasanaethau cymdeithasol amhreswyl y mae eu hangen arnynt, darpariaeth sy'n cyfateb â'r hyn a amlinellir uchod;

Rheoliadau Codi Ffioedd Am Wasanaethau Gofal Cymdeithasol (Adolygu Penderfyniadau Ar Godi Ffioedd) (Cymru) 2011

- Yn cyflwyno hawl i ofyn am adolygiad ar unrhyw benderfyniad i godi ffioedd, ac yn achos y rheini sy'n derbyn taliadau uniongyrchol, gorfodi cyfraniad neu ad-daliad am y taliadau uniongyrchol y maent yn eu derbyn;
- Y sefyllfaoedd lle ceir gwneud cais am adolygiad, cynnwys a fformat y cais hwnnw a'r gydnabyddiaeth y mae'n rhaid i awdurdod ei chyhoeddi;
- Y broses y mae'n rhaid i awdurdod ei dilyn wrth ystyried ceisiadau o'r fath, yr amserlen ar gyfer hyn a'r ffactorau y mae'n rhaid i awdurdod eu hystyried wrth benderfynu arnynt;
- Y camau y mae'n rhaid i awdurdod eu cymryd ar ôl gwneud penderfyniad a'r trefniadau ar gyfer talu unrhyw ffioedd, cyfraniad neu ad-daliad sy'n destun dadl yn ystod cyfnod yr adolygiad ac wedi hynny.

O ystyried faint o fanylder sydd yn y Rheoliadau hyn er mwyn i ni fod yn fwy cyson, rydym wedi gorfod ymgysylltu'n helaeth gyda rhanddeiliaid dros gyfnod hir; gyda'r rheini sy'n cynrychioli awdurdodau lleol a'r rheini sy'n cynrychioli defnyddwyr gwasanaethau fel ei gilydd. Roedd hyn i sicrhau bod defnyddwyr gwasanaethau yn cael y cysondeb a'r sicrwydd ariannol sy'n ofynnol mewn cyfundrefn o'r fath, tra ar yr un pryd bod trefniadau'n cael eu cyflwyno sy'n ymarferol i awdurdodau eu gweinyddu. Mae'r broses hon felly wedi bod yn hynod o dechnegol gyda swyddogion ffioedd, ariannol a chwynion mewn llywodraeth leol, yn ogystal ag ystod o unigolion o'r cyrff sy'n cynrychioli pobl hyn ac anabl.

Roedd y rheoliadau drafft yn destun ymgynghoriad cyhoeddus a ddaeth i ben ar 4 Chwefror eleni. Ers hynny mae swyddogion wedi bod yn ystyried yr ymatebion ar y cyd â'r cynrychiolwyr rhanddeiliaid a nodir uchod. Mae hyn yn cynnwys sicrhau, mewn perthynas â thaliadau uniongyrchol, bod y newidiadau yn ystyried yr holl categorïau unigolion sy'n gymwys i dderbyn taliadau uniongyrchol. Mae'r categori hwnnw'n cael ei ymestyn ac yn ddiweddar bu'n destun Rheoliadau ar wahân a gafodd eu gosod mewn perthynas â thaliadau uniongyrchol, a fydd hefyd yn dod i rym ar 11 Ebrill. O ganlyniad ni fu modd gosod y Rheoliadau ynghylch ffioedd awdurdodau lleol am wasanaethau cymdeithasol amhreswyl cyn hyn.

Anfonir copi o'r llythyr hwn at Janet Ryder, Cadeirydd y Pwyllgor Materion Cyfansoddiadol, ac at Stephen George, Clerc y Pwyllgor Materion Cyfansoddiadol.

Jane Hutt