



Welsh Government

Executive summary

Social Services and Well-being (Wales) Act 2014 –
Consultation on the Regulations and code of
practice in relation to Part 4 (Direct Payments
and Choice of Accommodation) and Part 5
(Charging and Financial Assessment) of the Act

Date of issue: **8 May 2015**

Action required: Responses by **31 July 2015**

The Social Services and Well-being (Wales) Act 2014

The Social Services and Well-being (Wales) Act 2014 forms the basis for a new statutory framework for social care in Wales.

Ministers have made it clear that they wish the core elements of this framework to be in place for April 2016, when the Act will be implemented.

The framework will consist of three main elements, the Act itself, regulations made under the Act, and codes of practice/statutory guidance. These three elements work together to form the framework within which social services will operate from April 2016.

The process of making codes and regulations under the Act

The regulations, codes and statutory guidance have been developed through a consultative process with key stakeholders and are now presented to stakeholders across Wales for their input.

The consultation on and laying of the Regulations to be made under the Act will be conducted principally in two tranches. The first tranche was made available for a 12-week public consultation starting in November 2014. This second tranche consultation exercise will run from May and July 2015. The intention is to lay this second tranche of regulations before the Assembly in November 2015, which will provide the health and social care sector the maximum amount of time to adjust to the new requirements ahead of implementation in 6 April 2016.

What the second tranche of regulations and codes of practice covers

The second tranche will create a system that secures outcomes for looked after and accommodated children, drives regional collaboration, and puts in place a system of charging, financial assessment and paying for care. It will also support the provision of advocacy.

Coverage of the codes of practice and regulations in relation to Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Act

Overview

Sections 50-53 (direct payments) and section 57 (choice of accommodation) of Part 4 of the Act, and Part 5 of the Act (charging and financial assessment), relate to situations where a charge can be made in relation to care and support that is being provided under the Act. Part 5 provides local authorities with the discretion to charge for care and support that is being provided (or

support that is being provided to a carer) where the person in question has the financial means to pay such a charge. This includes the provision of homecare and other community based care and support, residential care and support, preventative services and assistance. Sections 50-53 of Part 4 provide a similar discretion to set a contribution or reimbursement for direct payments, where care and support needs are being met through the provision of these. A local authority cannot set a charge, contribution or reimbursement that is more than the cost of the care and support being provided or arranged and has to be assured that the person upon whom these are levied has the financial means to meet them. Section 57 of Part 4 also provides that where a person is in residential care, the local authority can arrange accommodation that costs more than it would normally provide if a person is willing to pay the difference in cost.

Part 4 – Direct Payments

Sections 50-53 of the Act continue the ability of a local authority to provide direct payments to meet a person's needs for care and support, or in the case of a carer support, where the person wants to exercise choice over how those needs are met. These sections also continue the discretion local authorities have to set a contribution, or reimbursement, for the direct payments provided. This is the equivalent of a charge being made for the care and support being provided via the direct payments. As a result the draft regulations and code of practice in relation to charging and financial assessment include provisions which provide local authorities with the discretion to set such contributions or reimbursements, where direct payments recipients have the financial means to meet these, to put them on a par with those who may be charged for the care and support they receive direct from their authority.

Part 4 – Choice of Accommodation

Section 57 of the Act will replace current legislation which enables a person who requires residential accommodation to meet their care and support needs to express a preference for particular accommodation. Consequently, where a local authority is responsible for placing a person into such accommodation, that person must be able to exercise choice over this accommodation as long as their preferred accommodation is of the same type and can meet their care and support needs in full. Where a person's preferred accommodation is of a higher cost than their authority would usually pay for such accommodation, the person concerned or a third party, such as a family member, is able to meet this additional cost. The draft regulations being made under section 57, and the draft code of practice on choice of accommodation, look to enable this situation to continue so as to maintain the choice of those entering residential care as to the accommodation provided.

Part 5 – Charging and Financial Assessment

Part 5 of the Act will replace current legislation which allows local authorities the discretion to set a charge for the non-residential care and support they provide or arrange, and places a duty on them to set a charge for the residential care and accommodation they provide or arrange. It will clarify such charging powers to become a universal discretion to charge for care and support, whether it is non-residential care and support provided in the community or residential care provided in a care home.

The draft regulations and code of practice under Part 5 will therefore:

- introduce one set of financial assessment arrangements rather than the differing arrangements for charging for non-residential and residential care and support which presently exist;
- maintain within these the present weekly maximum charge and “buffer” for non-residential care and support, as well as the current capital limit of £24,000 used to determine who pays the full cost of their residential care themselves;
- maintain the current individuals, or forms of care and support, for which a charge cannot be made, e.g. undertaking a financial assessment or six weeks free home care following a period in hospital;
- provide for the ability for a local authority to charge a low level flat rate charge for prevention or assistance provided (the provision of information or advice is exempt from charging under the Act);
- introduce more transparency in charging by extending the current requirement that all those who receive a charge for non-residential care and support must receive a statement detailing this and its calculation, to those who also receive a charge for their residential care and support.

Part 5 - Deferred Payments

Under present legislation those entering residential accommodation, and who have a property that is unoccupied and hence is taken into account in their financial assessment, can defer or delay the need to sell their property to meet their costs. Instead the cost of their residential care is met by their local authority with the value of this placed against the value of their property by means of placing a land charge upon it. This presents the opportunity for a person to be flexible about whether to sell their property immediately on entering care or to delay such a sale until a more appropriate time for them.

Section 68 of the Act continues the ability of those entering residential care to do this should they wish. The draft regulations and code of practice on deferred payments enable this but introduce more consistency in their operation by local authorities. In addition, given the potential length of time that authorities could be meeting a resident’s residential care costs before they are able to recoup this from the sale of a property, they also provide the ability of the local authority to charge a low level of interest on care costs met during the period of the deferment.

Part 5 - Review of Charges

Under present legislation those who are charged for non-residential care and support can access a review process to have errors corrected, to challenge charges made inappropriately or to identify situations where paying a charge would cause them financial hardship. Section 73 of the Act allows regulations to be made to continue this arrangement.

The draft regulations and code of practice in connection with such reviews do this but importantly extend the review process to charging for residential care and support. This is to afford a right of review to those who have been subject to a determination of their ability to pay and to enable them to have the decision looked at again.