



Welsh Government

Consultation Summary

Regulations and Code of Practice in Relation to Parts 4 (Direct Payments and Choice of Accommodation) and 5 (Financial Assessment and Charging) of the Social Services and Well-being (Wales) Act 2014

Regulations and Code of Practice in Relation to Parts 4 (Direct Payments and Choice of Accommodation) and 5 (Financial Assessment and Charging) of the Social Services and Well-being (Wales) Act 2014-Consultation Summary

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Section 1

Introduction

The Social Services and Well-being (Wales) Act 2014 (“the Act”) received Royal Assent on 1 May 2014. The Act forms the basis of the new statutory framework for social care in Wales.

A consultation was held on the proposals for regulations and a code of practice in relation to Parts 4 (setting a contribution or reimbursement for direct payments and choice of accommodation) and 5 (charging and financial assessment) of the Act. The consultation period ran from 8 May to 31 July 2015.

The consultation document was placed on the Welsh Government’s website with a range of organisations who represent children, carers, older and disabled people informed of this. In addition it was distributed to:

- *Association of Directors of Social Services (ADSS) Cymru*
- *Local Authority Charging Officers*
- *Children's Commissioner*
- *Older People's Commissioner*
- *Wales Community Rehabilitation Company (CRC) Wales*
- *Royal College of General Practitioners (RCGP) Secure Estate Improvement Network*
- *Welsh Medical Committee*
- *College of Occupational Therapists*
- *Care Council for Wales*
- *British Association of Social Workers (BASW) Cymru*

In total 61 responses were received. A list of recipients is attached at Annex A. A summary of consultation responses together with the Welsh Government’s analysis of these can be found in Section 2.

Background

The Welsh Ministers have made it clear that they wish the core elements of the new statutory framework to be in place for 6 April 2016, when the Act will be implemented.

The statutory 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 6 April 2016.

The consultation on, and laying of the regulations to be made under the Act, was conducted principally in two tranches. This particular consultation formed part of the second tranche. Regulations which formed part of the second tranche consultation were laid before the National Assembly for Wales on 3 November 2015 to give the health and social care sector the maximum amount of time to adjust to the new requirements stemming from these ahead of their implementation in April 2016.

The evidence for change

Social services are at the heart of Welsh public life. They support 150,000 young, old and disabled people every year to achieve their potential and help make them safe. Much of this support is delivered in partnership with others, including housing, health and education services. Society is changing and social services must change in response. There has been and will continue to be shifts in the public's expectations of social services, as a result of demographic change and changes in our society. Social services need to alter and to respond to all of these.

Furthermore, demand is rising across social services, yet the financial outlook for all public services is difficult. Whilst we have protected social services expenditure, we need to make a more fundamental change than just pursuing the obvious efficiency measures if social services are to be sustainable. Our White Paper *Sustainable Social Services for Wales: A Framework for Action* sets out a programme of change to meet these challenges based on the following nine principles:

- A strong voice and real control
- Supporting each other
- Safety
- Respect
- Recovery and restoration
- Adjusting to new circumstances
- Stability
- Simplicity
- Professionalism

These have been informed by discussion with stakeholders and debates in the National Assembly and elsewhere since *Sustainable Social Services for Wales* was published. They sit alongside the evidence of the Independent Commission on Social Services in Wales, the Law Commission review of adult social care legislation¹ and our Review of Safeguarding². All this forms the backbone of our case for change.

¹ <http://lawcommission.justice.gov.uk/areas/adult-social-care.htm>

² <http://wales.gov.uk/topics/health/publications/socialcare/reports/advisory/?lang=en>

This evidence, and the process of considering it through the National Assembly scrutiny process of the Bill, has informed and shaped the contents of the Act. The development of the regulations and codes of practice or statutory guidance has been informed by key strategic inputs such as “*More than just words*” (our strategic framework for Welsh language services in health, social services and social care³), the “*Enabling Wales*” project (which directly supports the delivery and implementation of the Welsh Government’s “*Framework for Action on Independent Living*”) and by evidence sourced through technical groups consisting of key stakeholders. These groups have looked at the Act’s provisions, and the policy underpinning these, in detail and provided advice to officials on how the regulations and codes of practice should be framed in order to achieve the aims of the Act and, through this, the requirements of “*Sustainable Social Services: A Framework for Action*”. This process has secured a range of valuable input which Welsh Government officials have drawn upon to develop the draft regulations and draft code of practice which were consulted upon.

The proposal

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

³ <http://wales.gov.uk/topics/health/publications/health/guidance/words/?lang=en>

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;
- provide for the ability for a local authority to charge a 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.

Consultation Events

Two consultation events were held as part of the consultation process. The purpose of these was to:

- promote engagement with the consultation;
- provide a base level of understanding to key stakeholder groups of the areas we were consulting on.

Attendees were asked to participate in discussions on the implementation of the regulations and also to share information from the events with their wider networks so as to promote deeper engagement with the proposals and a wider span of consultation responses.

The first event was held on 21 May 2015 in St. George's Hotel, Llandudno. The second was held on 4 June 2015 in The Liberty Stadium, Swansea. There were 200 attendees overall, representing a range of organisations. The range of stakeholders included representation from:

- Age Alliance Wales
- British Deaf Association
- Care Council for Wales
- Children in Wales
- College of Occupational Therapists
- Care and Social Services Inspectorate Wales
- Disability Wales
- Learning Disability Wales
- Local Authorities
- Local Health Boards
- Welsh Local Government Association
- Royal National Institute for the Blind Cymru
- Public Health Wales
- Office of the Older People's Commissioner
- North Wales Social Services Improvement Collabora

Workshops were held at the events on each of the Parts of the Act subject to consultation under tranche 2. The content of these workshops was tailored to suit the subject matter, but at the core of each was a presentation from officials and group discussions and activities. The comments and outputs from these events were considered alongside the formal written responses in order to inform the final regulations and code of practice in respect of Part 4 and Part 5.

In addition a dedicated workshop targeted at local authority financial assessment and charging officers was held in Llandrindod Wells on 16 July 2015. This event provided attendees with an opportunity to gain a better insight into the new financial assessment and charging framework proposed under the Act, to discuss common issues and to raise concerns specific to local authorities' day to day charging.

Consultation responses

In total 61 responses were received. Some responses, or parts of responses, were purely narrative and did not reply to the questions posed in the consultation document. Therefore these do not appear in the summary of responses which follows. All other responses have been considered equally in terms of the comments received. A list of respondents is attached at Annex A with a summary of the consultation responses received, and the Welsh Government's analysis of these, at Section 2. That section also includes the Welsh Government's response to these.

Section 2 - Response to the Consultation Questions

Question 1:

	1. Do you agree that the regulations and code of practice provide a clear framework for financial assessment and charging of recipients of care and support?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	5	26	13	2	14

Summary of responses

A range of views on various aspect of charging were expressed in response to this question, not just answers to the question posed. Most respondents agreed that the framework was clear and provided a base upon which to apply the financial assessment and charging arrangements.

General views expressed were:

Charging should not be applied to preventative services as this could present a barrier to accessing services, particularly by those with a sensory impairment or learning disability.

While some disagreed with the proposal to disapply charging of parents/guardians for the care and support their child requires, there was overall support for this.

Reablement to be provided free of charge or at least for the present “up to six weeks free home care policy following a hospital stay” to be revised to relate to the provision of reablement instead. This would help ensure a broader focus on prevention and assistance towards independence.

Some views were expressed that carers should not be charged for the support they receive given the vital role they provide.

Suggestions were made local authorities to be encouraged to work collaboratively to produce charging policies to help reduce inconsistencies and promote commonality.

Suggestions were made for the code to be extended to cover situations where a care and support recipient made a conscious decision to withhold financial information required as part of their financial assessment. Requests were also made for the code to contain examples and case studies to help explain and apply its requirements and deal with certain scenarios.

To remove inconsistency, clarification was sought on whether charging for short term respite residential care should be on the basis of the arrangements for charging for non-residential or residential care, rather than leaving this to local authorities to decide.

It was suggested that a change in a person's financial circumstances should not be classified as a reason for requesting a review of a charging decision. Instead this should be handled through a notification by the individual triggering a need for a new financial assessment.

Requests were made for the proposed extension to residential care of the requirement to provide a statement of charges before charging could commence not to occur as this could have significant financial implications for local authorities.

A number of technical issues were raised over the financial assessment outlined in the regulations and code. These included the calculation of the "standard charge" in residential care, the application of the savings disregards, the assessment of singles and couples, the treatment of Working Tax Credits given all forms of earnings are disregarded in full, whether any flat rate charges paid by a person should be included within the weekly maximum charge and the application of the property disregard when charging for residential care in relation to qualifying relatives.

Welsh Government response

The majority of respondents agreed that the regulations and code of practice provided a clear framework for financial assessment and charging. Respondents overall welcomed the framework as it made the minimum of changes needed to introduce financial assessment and charging under the Act whilst introducing some key reform of these.

As a result of responses the following changes will be made to the regulations and code:

- the "up to 6 weeks free homecare" policy is being revised to become a "up to 6 weeks free reablement" policy to match current practice;
- an additional annex to the code is being provided to cover recovery of debts and where a person deprives themselves of capital or income to reduce, or remove the ability to pay, a charge;
- through the code local authorities are to be encouraged to design their charging policies with neighbouring authorities;
- the regulations and code will be clear on the charging arrangements which should apply for a short term residential respite stay;
- the situations where a person can seek a review of a charge or charging decision will be updated to cater for a change in a person's financial circumstances;
- the point at which a person becomes liable for a charge for the care and support they receive will be updated to cater for the time it will take to undertake a financial assessment in relation to residential care. This is to address the concern of local authorities over the financial implications of this;
- a range of technical changes are being made to the financial assessment to respond to concerns over the assessment of singles

and couples, the treatment of Working Tax Credit, the treatment of saving disregards and the property disregard in residential care for qualifying relatives;

- in addition flat rate charges will continue, as now, to be set outside of the arrangements for the weekly maximum charge in relation to non-residential care and support.

With the requests that certain forms of care and support should be provided free of charge, or that certain types of recipients should receive their care and support free, the Minister has not been persuaded that the current forms of free care, or classes of persons who receive free care, should be extended any further beyond the current arrangements. Key individuals and forms of care are already free and the Minister is not of the view that this should be extended. This is particularly given that through the financial assessment and financial safeguards it already contains, all those on low incomes will currently received their care and support free of charge.

Question 2:

	2. Do you agree that the financial assessment arrangements identify the relevant forms of income and capital care and support recipients will have that should be taken into account?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	6	27	7	1	19

Summary of responses

There was a consensus that the financial assessment arrangements covered all relevant forms of income and capital.

General views expressed were:

Requests were made for better clarity on what elements of the Disability Related Expenditure Allowance (DRE) should be taken into account for charging purposes.

Clarification was requested on a number of technical issues including: the treatment of Working Time Credit; investment bonds; saving credits; trust funds; assessment of couples/singles; flat rate charges; up to six weeks free home care; property disregards and the Independent Living Fund.

Concerns were expressed over charging for residential care and the inability to backdate a charge given the time it would take to undertake a financial assessment and provide a statement of a charge.

Requests were made for carers' allowance and the carers' premium not to be included in the calculation of the Minimum Income Allowance in relation to charging for non-residential care and support.

A case was put forward for a full disregard of payments made under the Armed Forces' War Disablement Pensions Scheme.

Welsh Government response

The majority of respondents agreed that the financial assessment arrangements identified the relevant forms of income and capital as regards charging. The following changes have been made:

- the description of the disability related expenditure to take into account in a financial assessment is to be made clearer;
- as outlined in the response to Question 1, a range of technical updates to the arrangements are to be made;
- also as outlined above, the point at which a person becomes liable for a charge for the care and support they receive will be updated to cater for the time it will take to undertake a financial assessment in relation to residential care;
- an increase in the disregard for war disablement pensions will be introduced.

No change is planned in the Minimum Income Amount as regards charging carers for non-residential care and support. This is given that excluding their allowances from this amount increases the income they will have to be taken account of in setting a charge and potentially, therefore increase charges for carers.

Question 3:

	3. Do you agree that the arrangements for determining a charge strike an appropriate balance between minimising the impact upon care and support recipients with low financial means, while allowing local authorities to obtain a contribution towards the cost of provision?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	1	23	7	11	18

Summary of responses

Overall respondents felt the arrangements did strike a balance between protecting those on low incomes while allowing local authorities to obtain a reasonable contribution to the cost of the care and support a person received.

Individual comments made were:

Views were submitted suggesting the Minimum Income Allowance (MIA) applicable in charging for residential and non-residential care and support

was too low for those of working age.

Calls were made for an increase in the MIA and maximum charge to protect those on lower incomes but at the same time a higher charge should be placed on those who could afford to pay.

Requests were also made for the MIA to be increased to a set level of £550 per month to cover the increase in costs of living with a disability.

A number of technical issues were identified including: review of charging decisions in residential care; backdating charges; flat rate charges; property disregards; mortgage repayments; and assessment of couples/singles.

Views were expressed on the maximum charge being too low at its current level of £60 per week.

Suggestions were made that the reason why local authorities charge for care and support should be explained as part of the publicity campaign so as the general public is well informed (and prepared) as to why and how they might be charged when accessing care and support.

Some respondents felt a charge should never be applied for any form of care and support, regardless of a person's circumstances and financial means.

Welsh Government response

The majority of respondents agreed that the financial assessment and charging arrangements struck the right balance between protecting those on low incomes and collecting reasonable contributions to the cost of care. No material change to the arrangements is therefore planned or required.

Some of the comments made in response to this question were made in response to both Question 1 and 2. Accordingly, the action outlined in the Welsh Government's response to those questions is equally applicable here.

In relation to the MIA, there were conflicting views as to its future level. On balance the Minister has decided not to alter its current level given this is set so as to already provide a reasonable financial protection for those financially assessed for a charge. To increase this would reduce the financial means which can be taken into account for charging and therefore have financial implications for local authorities.

With the level of the weekly maximum charge, increasing this is one of the options being considered for the longer term reform of the arrangements for paying for care which the Minister is considering. Those options are due to be pursued further and so it would be premature to increase this at this time.

The national campaign to alert the public over the Act and its implications will refer to the financial assessment and charging aspects.

Question 4:

	4. Do you agree that the choice of accommodation arrangements for those entering residential care provide them with additional choice over their accommodation?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	5	27	4	1	23

Summary of responses

As the choice of accommodation arrangements set out in the Act and the proposed regulations and code of practice apply similar arrangements to those already in place, this part of the consultation attracted relatively few comments. On the whole the proposed arrangements received positive comments where they were made.

Some respondents suggested that, although the proposed arrangements could increase choice for some people, this would only be possible where a third party could afford to pay the additional cost. It was considered that affordability limited choice for authority supported residents.

A request was made for better clarification on a third party's ability to pay an additional payment where choice resulted in this being required. Concern was expressed over their ability to maintain payments and where they might default on such payments.

Clarification was sought on the terms of the notice to be issued to a person where choice could not be met.

Some respondents considered that choice could be restricted for those with specialist needs as care homes suitable to cater for individuals with these would be limited. In addition, concern was expressed by some respondents of a possible increase in the level of expectation by people and the problems which authorities might encounter where choice could not be met. That said, respondents considered people should always have choice with this not being a decision left to local authorities.

It was suggested there was a need to ensure additional payments were applied only in genuine circumstances which met the requirements set out in the regulations and the code.

The code's extension of choice by allowing 'first party' (the person in a care home) to pay an additional payment in certain circumstances was welcomed.

Welsh Government response

Given the arrangements on choice of accommodation are similar to those currently in place, and that there is broad agreement that those in residential

care should have a choice over their home, few material comments were received on this aspect of the consultation.

The regulations and code have been strengthened to allow local authorities to be satisfied that a person paying an additional cost is able to meet and maintain payments for the duration of a person's care home placement. The regulations also now set out the arrangements that apply should an arrangement fail.

The regulations now contain specific requirements that local authorities must follow when notifying a person that their choice of accommodation cannot be met.

More explicit information has also been added to the code on handling situations where a person requires a temporary placement in a care home pending a placement in their preferred care home becoming available.

Question 5:

	5. Do you agree that the revised deferred payment arrangements for those entering residential care with property will enable them to have an improved choice over the timing of any sale of this to pay for such care?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	6	23	4	2	25

Summary of responses

Overall the proposed deferred payment arrangements were well received and viewed as a positive and helpful provision. It was considered by a number of respondents that such arrangements offered choice, flexibility and time to make decisions about the sale of property during what could be an emotional and stressful time.

Views were expressed that the regulations and code should be extended to handle situations where a person enters a care home and has eligible property but has declined a deferred payment. This appeared to be an issue for some local authorities.

Some respondents considered that charging interest on a deferred payment would deter some people from entering into such an arrangement. Some local authorities, however, expressed support for the ability to apply interest to deferred payments, making them more affordable to operate.

Although a number of respondents supported deferred payments it was felt they were of limited benefit to individuals given those entering residential care

were often frail, elderly people who might not be willing or able to appreciate or engage in such arrangements.

Welsh Government response

Deferred payments arrangements will not be for everyone, either due to their situation or their reluctance to enter into these. The arrangements set out in the regulations and code were supported overall with only a few points of detail raised.

A new section will be added to the code (Annex F – Recovery of Debt and Deprivation of Assets) that covers local authorities' ability to recover a charge where this has not been met. This can be applied in situations where a person with an eligible property has not disposed of that property, or entered into a deferred payment arrangement, therefore not being able to meet their charge so as to accrue a debt in care home charges. In such instances a land charge can be placed on the property to secure payment of this.

While there were mixed views on a local authority's ability to charge interest on deferred amounts, it is considered this is appropriate so as to make such agreements affordable to authorities. To ensure such interest charge is appropriate, the level which can be charged is limited by the regulations.

Question 6:

	6. Do you agree that the different arrangements to charge for prevention and assistance strike an appropriate balance between promoting take up of these such services enabling local authorities to recover some of the costs of providing or arranging them?				
	Agree	Tend to agree	Tend to disagree	Disagree	Not ticked
Total -	2	10	16	13	19

Summary of responses

A number of respondents were unhappy with the proposed changed arrangements for charging for care and support. Even though this can and is being charged for at present, many thought that charging for prevention was contrary to the overall policy direction of the Act and could dissuade people taking up such support. On the other hand some respondents expressed their support for such charging.

Where charging occurred, guidance was requested on methods of collection of charges where prevention or assistance is provided by a third party under a local authority Service Level Agreement.

Some respondents considered charging for prevention (including

rehabilitation) would deter certain groups (particularly people with a sight or sensory impairment) from accessing support. It was felt that many people with a sensory impairment were currently reluctant to embark on a rehabilitation programme having concluded that their situation would not improve through such support. This could be exacerbated should a charge be applied. Respondents also considered there to be a risk of those currently receiving preventative services free of charge discontinuing this beneficial provision were a charge to be applied.

Some respondents suggested that charging for preventative services and assistance could lead to increased demand on the NHS where such provisions were free of charge.

Some respondents expressed concern over the cumulated effect of flat rate charges where no financial assessment has taken place. Without a financial assessment it could prove difficult to know what preventative services a person was being charged for and the actual amount they were paying.

A number of respondents considered “the 6 weeks free home care after a stay in hospital” policy outdated and should be revised to instead include reablement which is current practice.

It was viewed by some local authorities that flat rate charges should not be included in the calculation of the “buffer” and disability related expenditure (DRE) allowance when charging for non-residential care and support unless the 10% DRE had been exceeded. Neither should they be included in the calculation of the weekly maximum charge. Inclusion in both could act as a disincentive to prevention provision, as well as an income loss for local authorities.

Some respondents suggested charging for preventative services could be limited to a “one level” charge approach.

Welsh Government response

This was the consultation question which raised the most concerns in response. While charging for prevention and assistance can, and does, already occur many viewed this as being introduced for the first time whereas the proposal was a different set of arrangements applicable to this charging.

There were concerns about the proposed arrangements, both in terms of the practicalities of these and their effect on those who would be charged in this way. As a result the changed way in which flat rate charges could be imposed will be removed from the regulations and code. Instead the regulations and code will merely replicate the existing arrangements for this form of charging which have applied from 2011 under regulations made under the Social Care Charges (Wales) Measure 2010.

In addition, in response to consultation feedback the regulations and code will be amended to replace the “6 weeks free home care” policy with a “up to 6 weeks free reablement” policy so as to fit better with the reablement and

rehabilitation agenda and to match current practice.

Lastly, the regulation and code will be amended so as to replicate the current operation of flat rate charge outside of the calculation of the weekly maximum charge, buffer and DRE, rather than introduce its inclusion in these which was proposed.

Question 7:

Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

Summary of responses

A number of respondents felt that a person should not need to use savings or sell their property to pay for care and support.

Deferred payment arrangements were welcomed as they could act to remove some pressure from those whose property formed part of their eligible capital when charging for residential care.

The provision of the DRE allowance in charging in non-residential care and support was welcomed albeit a disappointment it was not set at a higher level. Others thought the retention of the protection of a Minimum Income Allowance and DRE Allowance as essential and should be applied equally across age groups.

Some respondents expressed views that there would be an overall neutral impact on protected characteristics, whereas some expressed the view that retaining the DRE and buffer in charging for non-residential care and support would have a positive impact on groups with protected characteristics

Some thought the proposals would not have a positive impact and considered any form of charging as discriminatory on those who require care and support as a direct consequence of their impairment. Others viewed this effect as neutral given the proposed charging framework is not that dissimilar to the existing framework.

Welsh Government response

It is clear that the proposals will have an effect on those with protected characteristics. Given that what is planned is similar to that currently in place, this effect should be similar to now. This is with the exception of children, where the disapplying of the ability to charge a parent or guardian for their child's care and support will have a significant positive benefit.

While those with protected characteristics could be required to pay for their care and support this would only be where they have the financial means to do so. In addition, the financial safeguards applicable in the financial assessment will ensure that all those on low financial means will receive their care and support at either a low charge or at no charge. This is remembering

that certain welfare benefits, elements of certain welfare benefits or certain other payments, are made to disabled and older people in the expressed expectation that this will be used to pay for the care and support they require.

Question 8:

Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

Summary of responses

Some thought there would be a negative impact as some people might get support only where they could afford to pay.

Some thought the proposals would have neither a negative nor positive impact on groups with protected characteristics. This was given the new framework is similar to the current framework.

Some respondents felt that certain groups, such as people with a sensory impairment or those with a learning disability, could be penalised financially which could lead to a reduced ability to access the support they required which would prove of benefit to them.

Some thought it was difficult to comment upon negative impacts on groups with protected characteristics in the absence of information on proposed welfare benefit changes by the UK Government and how they could affect the same groups. Suggestions were made for the code to be revisited when benefit changes were known.

Some respondents appeared to think there had been a change in policy in the assessment of single people and couples thus removing the ability to do a joint assessment where this method could prove more favourable to the persons involved.

Welsh Government response:

In one sense it could be argued that the proposals have a negative impact on those with a protected characteristic given they allow money to be taken from them to pay for their care. However, as highlighted in the response to Question 7 it must be remembered that certain welfare benefits, elements of certain welfare benefits and certain other payments, are made to disabled and older people in the expressed expectation that this will be used to pay for the care and support they require.

In addition, given the similarities between the new framework proposed and the existing charging framework no additional negative impact is envisaged.

While it is not possible to comment on the impact of the UK Government's future welfare reform on those with protected characteristics without further

detail of this, the regulations and code will be reviewed regularly to assess their impact and to make changes where required.

There has been no change in the approach taken in financially assessing a couple. Hence it will still be permissible to assess the person to be charged either as a single person or as part of a couple, depending upon which is more financially favourable for them.

Question 9:

Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?

Summary of responses

Some health boards felt funding for health and social care needed to be reviewed / revisited to ensure equality.

A national media campaign to raise awareness of the wholesale changes the Act would have on the care and support system was considered vital.

There would be a need for current charging policies to be revised and new policy guidelines and information to be produced.

It was considered by some that there was a need for transitional arrangements to make the implementation of changes manageable and to implement over time. Some local authorities highlighted these changes would take time to embed and would require pump primed funding to enable changes take place.

Some felt the whole system being put in place by the Act required initial funding from health and social care partners to establish regional partnership boards and arrangements, with on-going sustainable funding to provide care and support to people to ensure they achieve their well-being outcomes.

Suggestions were made for local authorities to collaborate to design charging policies so as to help enable more consistency where appropriate and feasible.

Welsh Government response

Many of the comments provided in response to this question were not linked to financial assessment and charging but were upon the wider implications of the whole set of changes the Act introduces and its financial effect. As such, these are being considered separately as part of the overall implementation of the Act.

As to those linked to financial assessment and charging, clearly the regulations and code will require local authorities to revise their charging policies. In this context the code has been amended to promote joint working

between authorities in the design of their charging policies so as to produce more consistency in these in local areas.

In addition, transitional provisions are planned so as to only require local authorities to implement the new financial framework from 6 April next year with new care and support recipients. Arrangements will be introduced to allow authorities to apply the new framework to existing recipients during 2016-17 as they receive an updated care assessment under the Act. Only then will this trigger the requirement for them to have a financial assessment and be charged in line with the new legislation.

Question 10:

We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

Summary of responses

To assist workforce understanding it would be helpful to reinforce the main elements of the new framework, the key changes and differences over the existing framework.

Requests were made for the code to be extended to include deprivation of assets.

Disappointment was expressed that the regulations and code do not refer to the UN Convention on the Rights of Persons with Disabilities.

Concerns were raised by some local authorities on the time taken to undertake financial assessments for residential care and the impact on their ability to start charging this would have.

Clarification was sought by some local authorities on their ability to place a land charge on property where a debt on assessed charges has occurred.

Requests were made by some local authorities that the review process be revisited as it was felt to be too bureaucratic with timescales for processing requests being unrealistic. There was also a view that it could act to deter some individuals from declaring their financial situation.

Clarification was requested by some local authorities on whether charging for respite should be based on non-residential or residential charging.

Clarification was requested on the treatment of Working Tax Credits as eligible or disregarded income in line with the treatment of earnings.

Calls were made by local authorities for early advance notice of annual changes to the financial assessment and charging framework.

Some local authorities requested clarification on the status of deferred payment in existence at the time the new legislation comes into effect.

Respondents welcomed local authorities' roles of providing advice etc. to people regarding welfare benefits.

Some calls were made for separate charging regimes for residential and non-residential care and support.

Suggestion was made that in instances where a property disregard was under consideration owing to a qualifying relative living there, clarification on the specific circumstances and length of residency should be taken into account.

Welsh Government response

A wide range of comments were made in response to this question. A number of these were raised in response to earlier questions posed and hence, have been answered earlier in this summary. In response to new issues raised:

- there is a wide ranging workforce development plan in place led by the Care Council for Wales to educate staff on the requirements of the legislation. This includes that relating to financial assessment and charging;
- The UN Convention on the Rights of Persons with Disabilities is included in the code of practice on part 2 of the Act (General Functions).
- section 71 of the Act already provides the ability for a local authority to place a land charge on a property to secure recovery of a debt.
- Welsh Government will provide local authorities with as much notice as possible of any annual changes to the charging arrangements and, as no changes will now be made until April 2017 at the earliest, has already done this for 2016-17.
- the transitional provisions planned will set out that deferred payment agreements in place before the 6 April next year, when the Act comes into force, will continue to be in place on the basis of their current arrangements. This is until such time as they are terminated under the arrangements set out in those agreements.

Annex A - List of respondents

No	Confidential Y / N		Name	Organisation/On behalf of
1.		N	Dawn Price	Maesnewydd Garden Centre Group - RCT people first
2.	Y			
3.		N	Dawn Price	Brynna Jones Group - RCT People First

4.		N	Richard Williams	Action on hearing loss Cymru
5.		N	Dawn Price	Taff Ely People First Group
6.	Y			
7.		N	Gordon Hill	-
8.		N	Peter Jones	Guide Dogs Cymru
9.		N	Ruth Crowder	Welsh Reablement Alliance
10.		N	Ruth Crowder	College of Occupational Therapists
11.		N	Sarah Payne	NOMS
12.		N	Phillipa Ford	Chartered Society of Physiotherapy (CSP)
13.		N	Rhian Huws Williams	Care Council for Wales
14.		N	Megan Walters	Ceredigion County Council
15.		N	Ruth Northway and Sophie Hinksman	Learning Disability Advisory Group
16.		N	Joe Powell	All Wales People First
17.	Y			
18.	Y			
19.		N	Ellie Munro	Motor Neurone Disease Association
20.		N	Eunice Jones	Torfaen County Borough Council
21.		N	Social Services, Health & Housing	Neath Port Talbot County Borough Council
22.		N	DMJ Warner	-
23.	Y			
24.		N	Susan Cooper	Bridgend County Borough Council
25.		N	Dave Street	Caerphilly County Borough Council
26.		N	Tess Saunders	RNIB
27.		N	Catrin Edwards	SENSE
28.		N	Helen Evans	Western Bay Third Sector Forum

29.		N	Helen Evans	Neath Port Talbot CVS
30.		N	Graeme Francis	Age Cymru
31.		N	Trevor Durham	-
32.	Y			
33.		N	Cathrin Manning	British Red Cross
34.	Y			
35.		N	Rachel Williams	Parkinsons UK
36.		N	Jean Davies	Pembrokeshire County Council
37.		N	Siobhan Cuddeford	Denbighshire County Council
38.		N	Stephanie O'Donnell	All Wales Heads of Children
39.		N	Dominic Carter	UKHCA
40.		N	Christy Jones	Flintshire County Council
41.		N	Mark Saunders	Greater Gwent Health, Social Care and Well-being
42.		N	Sarah Rochira	Older People's Commissioner
43.		N	Alice Southern	Alzheimer's Society
44.		N	Rachel Gingell	Care and Repair Cymru
45.	Y			
46.		N	Rhian Davies	Coalition on Charging Cymru
47.		N	Dafydd Jones	Gwynedd Council
48.		N	Sue Evans/Steve Thomas	ADSS/WLGA
49.		N	Nichola Poole	Cardiff and Vale County Borough Councils
50.		N	Sara Harvey	Western Bay
51.		N	Kay Board	Wrexham County Borough Council
52.		N	Owen Williams	Wales Vision Forum

53.		N	Vin West	Arfon Access Group
54.		N	Cheryl Evans	ABM UHB
55.		N	Kieron Rees	Carers Trust Wales
56.		N	Matthew Kennedy	Macmillan Cancer Support
57.		N	Peter Evans	Royal British Legion
58.		N	Mandi Glover	-
59.		N	Rhian Stangroom- Teel	Leonard Cheshire Disability
60.		N	Alice Owens	Law Society
61.		N		AWASH