



Welsh Government
Consultation Document

Social Services and Well-being (Wales) Act 2014

Amendments to Regulations in relation to Part 4 of the Act (direct payments and choice of accommodation) and Part 5 of the Act (charging and financial assessment)

Date of issue: 21 December 2016

Action required: Responses by 25 January 2017

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview This consultation seeks your views on a set of amending regulations which introduce changes to three sets of principle regulations governing local authority charging for social care and support under the Social Services and Well-being (Wales) Act 2014. The consultation also sets out the corresponding changes to the code of practice made under the Act which supports the principle regulations.

How to respond You can respond to this consultation by completing by the closing date, the consultation response form at the back of this document and returning it by post to:

Alison James
Paying for Care
Partnership and Cooperation Division
Social Services and Intergration Directorate
Welsh Government
Crown Buildings
Cathays Park
Cardiff, CF10 3NQ

Alternatively the consultation response form is available on our website

[https://consultations.gov.wales/consultations/search?f\[0\]=im_field_state%3A1&f\[1\]=im_field_topics%3A21](https://consultations.gov.wales/consultations/search?f[0]=im_field_state%3A1&f[1]=im_field_topics%3A21) and can be returned to us by e-mail to: consultationonchargingchanges@wales.gsi.gov.uk

Further information and related documents MS Word, large print, Welsh language and alternative versions of this document are available on request.

The Social Services and Well-being (Wales) Act 2014:
<http://www.legislation.gov.uk/anaw/2014/4/contents/enacted>

The Care and Support (Financial Assessment) (Wales) Regulations 2015:
http://www.legislation.gov.uk/wsi/2015/1844/pdfs/wsi_20151844_m_i.pdf

The Care and Support (Charging) (Wales) Regulations 2015:
http://www.legislation.gov.uk/wsi/2015/1843/pdfs/wsi_20151843_m_i.pdf

The Care and Support (Choice of Accommodation) (Wales) Regulations 2015:
http://www.legislation.gov.uk/wsi/2015/1840/pdfs/wsi_20151840_m_i.pdf

Part 4 and 5 Code of Practice (Charging and Financial Assessment):
<http://gov.wales/docs/phhs/publications/160106pt45en.pdf>

**Contact
details**

For further information:

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telephone: Cardiff (029) 2082 6946

**Data
protection**

How the views and information you give us will be used

Any response you send us will be seen in full by Welsh Government staff dealing with the issues which this consultation is about. It may also be seen by other Welsh Government staff to help them plan future consultations.

The Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. This helps to show that the consultation was carried out properly. If you do not want your name or address published, please tell us this in writing when you send your response. We will then blank them out.

Names or addresses we blank out might still get published later, though we do not think this would happen very often. The Freedom of Information Act 2000 and the Environmental Information Regulations 2004 allow the public to ask to see information held by many public bodies, including the Welsh Government. This includes information which has not been published. However, the law also allows us to withhold information in some circumstances. If anyone asks to see information we have withheld, we will have to decide whether to release it or not. If someone has asked for their name and address not to be published, that is an important fact we would take into account. However, there might sometimes be important reasons why we would have to reveal someone's name and address, even though they have asked for them not to be published. We would get in touch with the person and ask their views before we finally decided to reveal the information.

This consultation

This consultation seeks your views on a set of draft amending regulations to be made which introduce a number of changes to three sets of principle regulations in place. Those principle regulations govern local authority charging for social care and support and were made under Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Social Services and Well-being (Wales) Act 2014 (“the Act”). As a result of these changes, amendments will also need to be made to the corresponding sections of the code of practice made under the Act which supports the regulations.

The principle regulations are made under the appropriate sections of the Act. The code of practice is issued under section 145 of the Act, which allows the Welsh Ministers to issue codes of practice to local authorities on the exercise of social services functions. What is a social services function is set out in Schedule 2 of the Act.

Where are we now?

The Act forms the basis of a new statutory framework for social care in Wales. The statutory framework consists of three main elements: the Act itself; regulations made under the Act, and; codes of practice/statutory guidance made under the Act. These three elements work together to form the framework within which social care operates. The regulations, codes and statutory guidance under the Act came into effect on 6 April 2016.

In relation to financial assessment and charging, five sets of regulations were made under Part 4 (direct payments and choice of accommodation) and Part 5 (charging and financial assessment) of the Act with a single code of practice. These came into effect on 6 April 2016. Links to the Act, the three sets of regulations affected by this consultation and the code are given earlier in this document.

The Act provides local authorities, in certain circumstances, with the discretion to charge for social care and support. It also provides them with discretion to levy reimbursements or contributions for the receipt of direct payments. The regulations and code provide a clear framework within which local authorities must operate where they use this discretion. These cover such areas as persons and care for which no charge can be applied, the requirements governing financial assessments and the determination of a charge, reimbursement or contribution, and the maximum of these that can be made in certain circumstances.

The evidence for change

Since implementation of the Act a number of changes are proposed to its current arrangements. These result from the new Welsh Government’s “Taking Wales Forward” five year programme for government commitments, from a need to make various other updates and from the need to make a number of technical amendments. As result the following changes are planned, all to take effect from the 10 April 2017:

Welsh Government Commitments

Under its “Taking Wales Forward” programme for government, the Welsh Government has made two key commitments affecting charging for social care as follows:

- uplift the capital limit as it applies in charging for residential care

The first commitment is to more than double the capital limit used in charging for residential care from its current level of £24,000 to £50,000. The capital limit is used to determine whether a person self-funds the full cost of the residential care or whether they receive financial support towards this from their local authority. This uplift will enable people requiring residential care to retain more of their capital without having to use it to pay for such care. The commitment is to be introduced in a phased approach and will commence from April 2017 when the capital limit will increase from its current level of £24,000 to £30,000. The decision to take a phased approach followed initial stakeholder engagement and was deemed preferable so as to have a measured understanding of the day-to-day impact on local authorities and care home providers of the increase in its first year of implementation. Further increases will be introduced in later years;

- apply a full disregard of the War Disablement Pension (WDP) in financial assessments for charging for care and support

The second commitment is to apply a full disregard of the WDP in financial assessments. Under current regulations a person is able to retain up to £25 per week of any WDP payment receive, with the balance taken into account for assessing a charge. This commitment will enable a person to retain the full value of any WDP payment they receive and will no longer be required to use any of this payment towards the cost of their social care. This can be residential or non-residential care;

uplift the maximum weekly charge applied to non-residential care and support

Currently a maximum charge of £60 per week applies in relation to charging for non-residential care and support. Those in receipt of such care cannot, therefore, be charged more than this in a week for all of the non-residential care and support they require. This requirement was introduced to address the wide variation in charges which local authorities used to apply for care of a similar nature and level.

However, the current level of the maximum will have been in place for two years by April 2017. As a result, to keep pace with inflation and to enable local authorities to maintain the level and quality of care in the light of increasing financial pressures, Welsh Ministers and a number of stakeholders consider it to be an appropriate time to uplift its level. The financial pressures include the impact of initiatives such as the national living wage on a traditionally low-wage sector. Consequently, the maximum charge for non-residential care and support will be uplifted to £70 a week from April 2017.

The level of the maximum charge for 2018-19 and beyond will form part of the future charging arrangements. Separate engagement will, therefore, take place with stakeholders during next year as to the maximum's level in further years in the expectation that it will reach £100 per week by the end of this Welsh Government's term in 2021-22;

uplift the minimum income amount (MIA) applied in charging for residential care

The MIA is the sum of money a person in residential care, who is supported financially by their local authority, is able to retain from their weekly income to spend as they choose. It cannot be used to pay towards any aspect of a person's assessed care and support. The level of the MIA is reviewed annually in view of the annual increase made by the UK Government to state pensions and welfare benefits. As an outcome of Welsh Ministers'

consideration, it is proposed to uplift the MIA from £26.50 per week to £27.50 per week from 10 April 2017;

technical amendments

There is a need to make an amendment in the regulations applying to charging, where the word “non” appears inappropriately in one section. In addition, there is a need to make clearer in these regulations the situation as regards charging following a re-assessment of a person’s charge. Currently, this is not clearly described in the regulations. Lastly, there is a need to make clear in the regulations governing choice of accommodation (ie choice of a care home) that the arrangements for this were not intended to apply to short stays (ie those of up to eight weeks) but to situations where a stay is temporary (ie up to 52 weeks) or permanent.

The proposals

The above changes result in the draft amending regulations attached. These are planned to be laid early next year before the National Assembly for Wales to come into force on 10 April 2017. These introduce the following changes to the current regulations and code of practice:

The Care and Support (Choice of Accommodation) (Wales) Regulations 2015

- introduce an amendment to clarify that the choice of accommodation arrangements do not apply to a placement a local authority makes in a care home that is a short stay. Such stays will be defined in the regulations as a stay of a period not exceeding eight weeks;
- this will necessitate a change in the code to introduce the same amendment at chapter 10 “Choice of Accommodation” and Annex C “Choice of Accommodation and Additional Costs”;

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

- uplift the maximum charge applicable to non-residential care and support to £70 per week;
- correct an error to remove the word “non” which was inappropriately inserted into the original set of regulations;
- uplift the level of the minimum income amount applied in charging for residential care to £27.50 per week;
- a change to more accurately describe the situation as regards charging following a re-assessment of a person’s charge and the ability of a local authority to backdate charges in certain situations;
- uplift the capital limit as it applies to charging to residential care to £30,000. The current level of £24,000 will remain applicable in charging non-residential care and support;

- a change in the code at chapter 5 “Common Issues for Charging” and Annex A “Treatment of Capital” to highlight a different capital limit applying in charging for residential care from charging for non-residential care;

The Care and Support (Financial Assessment) (Wales) Regulations 2015

- introduce an amendment to apply a full disregard of any war disablement pension a person is in receipt of when undertaking a financial assessment for any form of charging for social care and support;
- this will necessitate a similar change in the code at Annex B “Treatment of Income”.

Consultation documents

This consultation seeks your views by **25 January 2017** on the draft amending regulations. These are attached at Annex A. A consultation response form to submit these can be found at Annex B.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

Email / telephone number:

Your address:

Charging for care and support – capital limit

The capital limit in relation to charging for residential care will increase to £30,000 from next April. This is part of a phased approach to delivery of the commitment to increase this limit to £50,000.

1. Are there any consequences of the decision to increase the capital limit that you would wish to make Welsh Government aware of?

Yes

☐

No

☐

Please provide a description of the consequences, and any mitigating actions, that you think might be necessary.

Financial assessment for care and support – full disregard of War Disablement Pension

A full disregard of the War Disablement Pension will ensure veterans in receipt of this, regardless of the amount, can protect its full value from charging to use as they wish.

2. Do you have any observations on the decision to apply a full disregard of the War Disablement Pension?

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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Please use this space for any comments you wish to make.

Financial assessment for care and support – maximum weekly charge

The maximum charge ensures consistency across Wales in the maximum weekly amount a person is asked to pay for their non-residential care. This addresses the wide variations in charges that local authorities previously made for similar care of a similar level. Around a third of those receiving non-residential care pay the maximum. The remainder receive their care free or at a charge up to the maximum due to their level of weekly income. The maximum charge will increase to £70 per week from next April for inflation and to ensure local authorities have sufficient funding to maintain the care they provide, and the quality of it.

3. Do you agree that this increase strikes the right balance between helping to raise additional income for local authorities (to help meet increasing cost pressures in providing care and ensuring the quality of the care provided) and being fair and affordable for people in receipt of

non-residential care?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Please explain your answer, and also let us know if there are other actions that you would like to see the Welsh Government take in order to make non-residential care sustainable for the future.

Other

The Welsh Government is interested in understanding the impact of the proposals in this consultation on groups with protected characteristics. Protected characteristics are: age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief; gender; and sexual orientation.

4. What impacts do you think the proposals in this consultation will have on groups with protected characteristics? Please describe them.

5. We have asked a number of specific questions. If there are any issues related to the proposals raised in this consultation which we have not specifically addressed, please use this space to tell us about them.

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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