

SL(6)152 – The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022

Background and Purpose

The Care and Support (Charging) and (Financial Assessment) (Wales) (Miscellaneous Amendments) Regulations 2022 ([“the Regulations”](#)) are made by the Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 64(1), 64(2)(b), 66, 69 and 196(2) of the Social Services and Well-being (Wales) Act 2014 (“the 2014 Act”).

The Regulations amend the Care and Support (Charging) (Wales) Regulations 2015 (“the Charging Regulations”) and the Care and Support (Financial Assessment) (Wales) Regulations 2015 (“the Financial Assessment Regulations”).

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 2014 Act. The Financial Assessment Regulations set out the method by which local authorities must carry out an assessment of a person’s financial resources in order to determine a charge where appropriate. Both sets of regulations came into force on 6 April 2016.

The changes that amend the Charging Regulations will uplift from £33.00 a week to £35.00 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. 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.

The changes that amend the Financial Assessment Regulations will recognise a number of compensation schemes awarded to people who have been caused harm, abuse or injury and are to receive payments in recognition of their suffering. Schemes are typically new pieces of legislation introduced by other UK governments, or the Welsh Government. This will be achieved by amending Schedule 1 and Schedule 2 to the Financial Assessment Regulations to include payments made under:

- The Historical Institutional Abuse (Northern Ireland) Act 2019;
- The Redress for Survivors (Historical Child Abuse in Care) (Scotland) Act 2021;
- The Victims Payment Regulations 2020; and



- Payments made under the payment scheme for former British child migrants established by the Secretary of State.

In addition, there are a number of infected blood and blood products compensation schemes applied to a person infected by contaminated blood products that need to be recognised under Schedule 1 and Schedule 2 of the Financial Assessment Regulations. An approved infected blood support scheme and the Scotland Infected Blood Support Scheme are already recognised under Schedule 1 and Schedule 2. The 2022 Regulations amend the Financial Assessment Regulations to also include the:

- Wales Infected Blood Support Scheme; and
- Northern Ireland Infected Blood Support Scheme.

Procedure

Negative.

The Regulations were made by the Welsh Ministers before they were laid before the Senedd.

The Senedd can annul the Regulations within 40 days (excluding any days when the Senedd is: (i) dissolved, or (ii) in recess for more than four days) of the date they were laid before the Senedd.

Technical Scrutiny

The following point is identified for reporting under Standing Order 21.2 in respect of this instrument.

1. Standing Order 21.2(i) – that there appears to be doubt as to whether it is intra vires.

The preamble to the Regulation sets out the 2014 Act enabling powers relied upon by the Welsh Ministers. However, it is unclear why section 64(2)(b) is included specifically, but not 64(2)(a). The former provision requires that regulations dealing with financial assessments must make provision for assessing capital, and the latter for assessing income. It is noted that regulation 3(a) of the Regulations amends Part 1 of Schedule 1 (sums to be disregarded in the calculation for income) to the Financial Assessment Regulations with regard income to be disregarded when carrying out a financial assessment. This being the case, it is unclear why regulation 64(2)(a) is not also cited as an enabling power, and whether its absence impacts vires in this regard.

Further, the Explanatory Memorandum, at paragraph 3, purports to quote the enabling powers in the Regulations. Whilst some are omitted, it also includes section 65 of the 2014 Act, which is not cited in the Regulations. This disparity between the Regulations and the Explanatory Memorandum is, in itself, potentially confusing to the citizen. But, further, Section 65 is a specific power to disapply the duty to carry out a financial assessment. This being the case, it is unclear why this enabling power is not included in the Regulations, and what impact this may have on vires, bearing in mind the changes made to the Financial



Assessment Regulations with regards the disregarding of payments under the specified compensation schemes when carrying out a financial assessment.

Merits Scrutiny

The following two points are identified for reporting under Standing Order 21.3 in respect of this instrument.

2. Standing Order 21.3(i) – that it imposes a charge on the Welsh Consolidated Fund or contains provisions requiring payments to be made to that Fund or any part of the government or to any local or public authority in consideration of any licence or consent or of any services to be rendered, or prescribes the amount of any such charge or payment.

It is noted that, according to the Regulatory Impact Assessment set out in Part 2 of the Explanatory Memorandum, the amendments made by the Regulations will result in a potential increase in charge income to local authorities in the sum of £1.9 million per annum.

3. Standing Order 21.3(ii) – that it is of political or legal importance or gives rise to issues of public policy likely to be of interest to the Senedd

It is noted that the Explanatory Memorandum has not been laid in Welsh. The relevant Notice of Laying form states, "This document is laid in English only, in accordance with Standing Order 15.4, as it is not considered appropriate in the circumstances or reasonably practicable to lay it in English and Welsh." The Committee would welcome clarification on this reason, particularly whether a bilingual version has not been produced due to lack of resource.

Welsh Government response

A Welsh Government response is required in relation to the Technical and second Merits reporting points.

Legal Advisers

Legislation, Justice and Constitution Committee

8 February 2022



Senedd Cymru
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—
Welsh Parliament
Legislation, Justice and Constitution Committee