

2011 No. 962 (W. 136)

SOCIAL CARE, WALES

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 1 of the Social Care Charges (Wales) Measure 2010 (“the Measure”) gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services (a “service user”).

These Regulations do not require a local authority to impose a charge when it provides or makes arrangements for the provision of a chargeable service (“chargeable service” is defined in section 13 of the Measure); however, in cases where a local authority does determine to impose a charge upon the service user, the charging policy of that local authority must comply with the relevant provisions of these Regulations (and with any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003).

Regulation 4 prescribes the classes of persons upon whom and services in respect of which no charge may be imposed by a local authority.

Regulation 5 prescribes that a local authority’s power to determine a reasonable charge for a chargeable service, or combination of services is subject to a maximum reasonable charge of £50 per week; it also contains qualifications to this general proposition and specifies the steps to be taken by a local authority to calculate the amount of the charge which a service user will be liable to pay.

Regulations 6 to 16 detail the steps in the process of assessing a service user’s financial means. They also specify the matters which a local authority must take into account when making an assessment of a service user’s means and in making a determination as to the

ability of that person to pay a reasonable charge for the service or services provided.

Regulation 7 requires a local authority to issue an invitation to a service user to request a means assessment. Subsequent regulations make provision for the time in which information or documentation is to be supplied to a local authority (regulation 8), requests for an extension of time in which to provide such information or documentation (regulation 9), the consequences of failing to respond to an invitation to request a means assessment in full or at all (regulations 10 and 11), and the withdrawal of such a request (regulation 12).

Regulation 13 prescribes the circumstances in which a local authority is not under a duty to undertake an assessment of a service user's means.

Regulation 14 contains provision to which a local authority must give effect when undertaking an assessment of a service user's means in accordance with section 5(1) of the Measure.

Regulation 15 makes provision about the matters which a local authority must take into account when determining the ability of a service user to pay a reasonable charge for the chargeable services that are offered to, or provided for, that person.

Regulation 16 makes provision for the date from which a charge may be imposed.

Regulations 17 and 18 contain savings provision for assessments of means and determinations of a service user's ability to pay a charge made before the coming into force of these Regulations.

Regulations 19 and 20 contain transitional and transitory provision.

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SOCIAL CARE, WALES

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

Made 24 March 2011

Laid before the National Assembly for Wales
29 March 2011

Coming into force 11 April 2011

The Welsh Ministers, in exercise of the powers conferred by sections 2(2), 3(1), 4(1)(d), 4(3)(b), 4(4), 5(2)(a), 5(4), 6(5), 7(2), 8(3), 9(4)(d), 10(4)(f) and 17(2) of the Social Care Charges (Wales) Measure 2010(1), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Measure” (*“y Mesur”*) means the Social Care Charges (Wales) Measure 2010;

“assessable income” (*“incwm asesadwy”*) means that part of a service user’s income in respect of which a local authority may make a determination in accordance with section 7 of the Measure; it does not include the income which a local authority must disregard in accordance with regulation 14;

(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for the definition of “regulations”.

“assessment of needs” (*“asesiad anghenion”*) means an assessment by a local authority of a service user’s need for community care services undertaken in accordance with section 47 of the National Health Service and Community Care Act 1990⁽¹⁾ or section 1 of the Carers and Disabled Children Act 2000⁽²⁾ and “assessed as needing” (*“aseswyd bod arno angen”*) is to be read accordingly;

“basic entitlement” (*“hawlogaeth sylfaenol”*) means, in relation to—

(a) income support—

the personal allowance and any premiums to which a service user is entitled, but need not include the severe disability premium (“SDP”) where it is paid, and where a service user is a carer, includes any carer premium that person receives,

(b) employment and support allowance—

the personal allowance and any premiums and components to which a service user is entitled, but need not include the SDP where it is paid, and where a service user is a carer includes any carer premium that person receives,

(c) guarantee credit –

the personal allowance and any additional amount to which a service user is entitled, but need not include the additional amount added for severe disability where it is paid, and where a service user is a carer, includes any additional amount applicable for carers that person receives;

“day service” (*“gwasanaeth dydd”*) means a service provided by a local authority which meets a part of a service user’s assessed needs, which takes place away from that person’s home and which is intended to assist the person in meeting others, or taking up new or practising existing interests and includes work opportunities;

“direct payment” (*“taliad uniongyrchol”*) has the meaning given in regulations 8 and 9 of the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011;

(1) 1990 c.19.
(2) 2000 c.16.

“dual provision” (*“darpariaeth ddeuol”*) means that the assessed needs of a service user are being met—

- (a) in part by a local authority providing or securing a service or services for that person, and
- (b) in part by the person receiving a direct payment in order to secure the provision of another or other services;

“employment and support allowance” (*“lwfans cyflogaeth a chymorth”*) means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007⁽¹⁾;

“flat-rate charge” (*“ffi unffurf”*) means a fixed rate charge for a chargeable service received by a service user which is imposed by a local authority regardless of the means of that service user;

“guarantee credit” (*“credyd gwarant”*) is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002⁽²⁾;

“home visiting facility” (*“cyfleuster ymweliadau cartref”*) means a visit (or visits) which are undertaken by an appropriate officer of a local authority to a service user’s current place of residence, or at such other venue as the service user reasonably requests, for the purposes of gathering information to inform a means assessment for that person and for providing information and offering assistance in relation to that process;

“in writing” (*“mewn ysgriflen”*) means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“income support” (*“cymorth incwm”*) means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992;

“means assessment” (*“asesiad modd”*) means an assessment of the financial means of a service user undertaken in accordance with section 5(1) of the Measure and regulation 14 and “assessment of a service user’s means” (*“asesiad o fodd defnyddiwr gwasanaeth”*) is to be read accordingly;

(1) 2007 c. 5.
(2) 2002 c. 16.

“net income” (“*incwm net*”) means, the income that a service user has, or would have left after the deduction from that person’s assessable income of the standard charge (or any other charge) imposed under these Regulations, for a service that has been offered to, or provided, for that person;

“provided” (“*darparwyd*”) in these Regulations includes making arrangements for the provision;

“relevant benefit” (“*budd-dal perthnasol*”) means—

- (a) income support, or
- (b) employment and support allowance, or
- (c) guarantee credit;

“savings credit” (“*credyd cynilion*”) has the meaning given in sections 1 and 3 of the State Pension Credit Act 2002;

“service” (“*gwasanaeth*”) means a chargeable service⁽¹⁾, and where the context requires, chargeable services or a combination of chargeable services and “services” (“*gwasanaethau*”) and “combination of services” (“*cyfuniad o wasanaethau*”) are to be interpreted accordingly;

“service user” (“*defnyddiwr gwasanaeth*”) means an adult who has been offered, or who is receiving, a service provided by a local authority;

“working day” (“*diwrnod gwaith*”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971⁽²⁾.

Local authority – power to charge for services

3. If a local authority exercises its power to charge for a service in accordance with section 1 of the Measure (*general power to charge for care services*) it must give effect to the provisions of these Regulations.

Service users upon whom and services in respect of which a charge must not be imposed

4.—(1) A local authority must not impose a charge under section 1 of the Measure upon a service user who—

- (a) has been offered or is receiving a service and who is suffering from any form of Creutzfeldt Jacob disease where that disease has been

(1) “Chargeable service” is defined in section 13 of the Measure.
(2) 1971 c.80.

clinically diagnosed by a registered medical practitioner;

- (b) has been offered or is receiving a service provided as part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (*after care*)(1); or,
- (c) has had a means assessment undertaken by a local authority and has been assessed as having an income of less than the total amount referred to regulation 15(2).

(2) A local authority must not impose a charge under section 1 of the Measure for any of the services specified in this paragraph—

- (a) the provision of transport to attend a day service where the transport is provided by a local authority and where attendance at the day service and the provision of transport to enable such attendance are included as part of the service user's assessment of needs;
- (b) the provision of a statement of information in accordance with section 10(4) of the Measure (*provision of information about charges*).

(3) Nothing in this regulation affects the discretion of a local authority to specify additional categories of service user or services upon whom or in respect of which a charge may not be imposed.

(4) Regulations 5 to 16 do not apply to a service user referred to in sub-paragraphs (a) or (b) of paragraph (1).

Maximum reasonable charge for a service

5.—(1) A local authority must exercise the power in section 1(2) of the Measure (*to determine a reasonable charge for the provision of a service*) in accordance with the provisions of this regulation.

(2) Subject to paragraphs (3) and (4), the maximum amount that a local authority may determine to be a reasonable charge for the provision of a service or combination of services to a service user (“maximum reasonable charge”) (*“uchafswm ffi rhesymol”*) is £50 per week.

(3) Subject to paragraph (4), where a service user has assessed needs which are met by way of dual provision £50 per week is the maximum of the aggregate of the amounts that a local authority may require the service user to pay in respect of that provision by way of—

- (a) a charge, and
- (b) a payment towards the cost of securing the provision of the service calculated in accordance with the Social Care Charges

(1) 1983 c. 20.

(Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

(4) When calculating the maximum reasonable charge that a service user may be liable to pay, a local authority—

- (a) must disregard the charge for any service for which it imposes a flat-rate charge, and
- (b) may impose the charges in respect of such a service in addition to the maximum reasonable charge.

Procedure for determining a charge

6.—(1) When calculating the amount that a service user pays or may be required to pay for the service received by or offered to that service user, a local authority must adopt the following procedure—

- (a) calculate the amount of its reasonable costs for the service received by or offered to the service user;
- (b) disregard from that total the amount of any charges for a service referred to in regulation 5(4);
- (c) apply the maximum reasonable charge to this resulting amount where the resulting amount would otherwise exceed it and this, subject to sub-paragraph (d), is the amount of the charge that the service user may be required to pay;
- (d) subject the amount calculated in accordance with sub-paragraph (c) to a determination of the service user's ability to pay a charge in accordance with section 7 of the Measure and regulation 15.

(2) The step referred to in paragraph (1)(d) will only be applied where—

- (a) the service user has requested, and
- (b) the local authority has undertaken,

an assessment of the service user's means in accordance with section 5(1) of the Measure and regulation 14.

Invitation to request a means assessment

7.—(1) Where a local authority is required by section 4 of the Measure (*invitation to request a means assessment*) or determines in accordance with paragraph (2) to issue an invitation to a service user to request an assessment of his or her means under section 5(1) of the Measure (*duty to carry out a means assessment*), the local authority must ensure that the invitation contains full details of—

- (a) the services that are being offered to, or provided for, the service user for which a charge is being considered;
- (b) its charging policy, which must include the following—
 - (i) its policy in relation to which, if any, of the services it provides are subject to a charge,
 - (ii) details of the standard charge⁽¹⁾ which may be imposed in relation to any such service,
 - (iii) details of any service for which a flat-rate charge is imposed, and
 - (iv) details of the maximum reasonable charge for services that may be imposed in accordance with regulation 5, or the maximum reasonable charge that the local authority applies, where that charge is lower;
- (c) its means assessment process;
- (d) its procedure for dealing with a means assessment for a service user who receives only services for which a flat-rate charge is imposed;
- (e) the information and documentation that a service user is required to provide in order that an assessment of the service user's means can be undertaken;
- (f) the time, as specified in regulation 8, within which a service user is required to supply the information and documentation referred to in sub-paragraph (e);
- (g) the format in which it will accept the information and documentation referred to in sub-paragraph (e);
- (h) any home visiting facility that it provides within its area;
- (i) the consequences of failing to respond to the invitation in accordance with sub-paragraph (f);
- (j) the named individuals within the authority whom a service user should contact should that person require additional information or assistance in respect of any of the processes attendant upon the issue of the invitation;
- (k) a service user's right to appoint a third party to assist, or to act on his or her behalf, in respect of all or part of the means assessment process; and

(1) "Standard charge" is defined in section 7(4) of the Measure.

(1) the contact details of any organisation in its area which provides support or assistance of the type referred to in sub-paragraph (k).

(2) Where a local authority reasonably considers that one or more of the circumstances prescribed by section 9(4) of the Measure (*replacement by authority of determinations as to ability to pay*) applies, it must invite a service user to request a new assessment of his or her means under section 5(1) of the Measure with a view to its making a further determination of that person's ability to pay a charge in accordance with section 9 of the Measure and regulation 15.

(3) A local authority must provide a service user with the information referred to in paragraph (1) in writing, or in any other format that is appropriate to the communication needs of the service user⁽¹⁾.

Response to an invitation to request a means assessment

8.—(1) A service user or, subject to paragraphs (3) or (4), a service user's representative, must provide a response to the local authority within 15 working days (or such longer period as a local authority may reasonably allow in accordance with regulation 9) of the date the invitation was issued.

(2) A service user complies with the requirement set out in paragraph (1) if that person or that person's representative—

- (a) requests that the local authority carries out an assessment of his or her means in accordance with section 5(1) of the Measure;
- (b) requests assistance from any home visiting service that is available, if such assistance is required;
- (c) provides the information that has been requested by the local authority in the format that the local authority has agreed to accept it;
- (d) provides the documentation that has been requested by the local authority;
- (e) requests an extension of time, where one is required, in which to provide the information or documentation (or both) that has been requested in accordance with regulation 7(1)(e), giving the reason or reasons why an extension of time is required.

(3) Where a service user has appointed a representative to act on his or her behalf, the service

(1) For an explanation of the meaning of "*any format appropriate to the communication needs of the service user*", please refer to the guidance published by the Welsh Ministers, entitled *Introducing More Consistency in Local Authority Charging for Non-Residential Social Services*.

user must provide the local authority with the following—

- (a) the name and address of the representative,
- (b) confirmation that the representative is willing to act on his or her behalf,
- (c) details of the nature and extent of the representative's involvement in the means assessment process, and
- (d) details of the nature and extent of the information that the local authority may share with his or her representative.

(4) Where a representative has been appointed to act on behalf of a service user by the Court of Protection or in accordance with the Enduring Powers of Attorney Act 1985⁽¹⁾ or the Mental Capacity Act 2005⁽²⁾, the deputy or attorney so appointed must provide the local authority with—

- (a) the original or a certified copy of the registered enduring power of attorney, or lasting power of attorney, or a certified copy of the appropriate order of the court, and
- (b) documentation to prove the identity and address of the attorney or deputy and of the service user for whom he or she is acting.

(5) Unless the context otherwise requires, where a representative has been appointed in accordance with paragraph (3) or (4), any reference in this regulation or in regulations 9 to 13 to a service user, includes that person's representative.

(6) Any request made in accordance with paragraph (2) or appointment made in accordance with paragraph (3) may be made or communicated orally or in writing by a service user but must be confirmed by a local authority in writing, or in any other format that is appropriate to the communication needs of the service user.

Request for extension of time in which to provide information or documentation

9.—(1) A local authority must agree to any reasonable request for an extension of time made in accordance with regulation 8(2)(e).

(1) 1985 c. 29 ("the 1985 Act"). The Mental Capacity Act 2005 ("the 2005 Act") has replaced the 1985 Act, replacing enduring powers of attorney (although enduring powers of attorney made before 1st October 2007 will continue to be valid) with lasting powers of attorney. The 2005 Act permits the Court of Protection to appoint deputies to make decisions for persons who lack capacity under the 2005 Act. Deputies replace "receivers" (although any receiver appointed before 1st October 2007 will continue to retain their powers but will be treated as a deputy by the Office of the Public Guardian (which has replaced the Public Guardianship Office).

(2) 2005 c.9.

(2) If a service user requests an extension of time orally, a local authority may give its response to that request orally, but it must also confirm the response in writing or in any other format that is appropriate to the communication needs of the service user.

(3) When responding to a request for an extension of time a local authority must confirm whether or not the request is granted and if granted, must state the period of the extension.

(4) Where a local authority refuses a request for an extension of time, it must give reasons for its refusal of the request.

Failure to respond to an invitation to request a means assessment

10.—(1) Where a service user fails to respond to an invitation in accordance with regulation 8, a local authority may impose the standard charge for the service that has been offered, or which the service user is receiving, and in either case which is the subject of the invitation.

(2) A local authority's power to impose the standard charge in accordance with paragraph (1) is subject to the maximum reasonable charge prescribed in regulation 5.

(3) Where paragraph (1) applies, the charge imposed upon a service user will be payable from the date that a statement is provided by the local authority in accordance with section 10(4) of the Measure (*provision of information about charges*).

(4) If a service user responds to an invitation to request a means assessment after a local authority has imposed the standard charge, or where relevant, the maximum reasonable charge—

- (a) the local authority must proceed to undertake an assessment of the service user's means in accordance with section 5(1) of the Measure (*duty to carry out a means assessment*) and regulation 14 and make a determination in accordance with section 7 of the Measure (*determinations as to ability to pay*)(1) and regulation 15;
- (b) the actions taken by a local authority under sub-paragraph (a) will not affect the liability of the service user to pay any charges that have been incurred from the date the statement referred to in paragraph (3) was provided; and

(1) Section 7 of the Measure makes provision for a local authority to determine whether it is reasonably practicable for a service user to pay the standard (or any) charge for a service offered or provided to that service user by a local authority.

- (c) the statement provided in accordance with section 10(4) of the Measure as a result of the assessment and determination referred to in sub-paragraph (a) (“the second statement”) (*“yr ail ddatganiad”*) will replace the statement provided in accordance with paragraph (3) and the second statement will take effect from the date that it is provided.

(5) In these Regulations any statement, which a local authority is required to provide in accordance with section 10(4) of the Measure is, “provided” (*“ddarparu”*) on the date that it is issued by a local authority.

Failure to supply all relevant information and documentation

11.—(1) Where a service user has failed to—

- (a) supply, or
- (b) seek an extension of time in which to supply,

all the information and documentation reasonably requested by a local authority to enable it to undertake an assessment of the service user’s means in accordance with section 5(1) of the Measure and regulation 14, the local authority may make an assessment of that service user’s means on the basis of the partial information or partial documentation (or both) that has been supplied.

(2) Where paragraph (1) applies, the local authority may—

- (a) make a determination in accordance with section 7 of the Measure and regulation 15;
- (b) subject to the maximum reasonable charge prescribed in regulation 5, impose a charge upon the service user on the basis of its determination; and
- (c) proceed to provide a statement in accordance with section 10(4) of the Measure.

(3) Where a charge is imposed in accordance with paragraph (2), that charge will be imposed from the date that the local authority provides the statement referred to in paragraph (2)(c).

Withdrawal of a request for a means assessment

12.—(1) A service user may withdraw a request for a means assessment by notifying a local authority of his or her decision at any time before the means assessment has been completed.

(2) A service user may notify a local authority of the decision to withdraw a request for a means assessment orally, in writing, or in any other format

that is appropriate to the communication needs of the service user.

(3) Where a request is withdrawn in accordance with this regulation, a local authority may, subject to the maximum reasonable charge prescribed by regulation 5, impose the standard charge for the service that was the subject of the invitation to request a means assessment.

(4) In any case where a service user notifies a local authority of the withdrawal of his or her request for a means assessment, the local authority must—

- (a) acknowledge receipt of the notification in writing and in any other format that is appropriate to the communication needs of the service user;
- (b) advise the service user that the withdrawal of this request does not preclude him or her from the submission of a further request for a means assessment in respect of the same or a different service; and
- (c) advise the service user whether the standard charge, or the maximum reasonable charge prescribed in regulation 5, will be imposed in respect of the service offered or being received by the service user.

(5) Where a charge is imposed upon a service user in accordance with paragraph (3) it will be imposed from the date that the local authority provides a statement in accordance with section 10(4) of the Measure.

No duty to carry out a means assessment

13. A local authority is under no duty to carry out an assessment of the means of a service user who—

- (a) receives only a service or combination of services for which the local authority applies a flat-rate charge, or
- (b) fails to respond to an invitation to request a means assessment in accordance with regulation 8, or
- (c) withdraws his or her request for a means assessment in accordance with regulation 12.

Means assessment process

14.—(1) Where a local authority carries out an assessment of a service user's means in accordance with section 5(1) of the Measure, it must ensure that the process of assessment that it employs gives effect to the requirements of this regulation.

(2) When undertaking a means assessment, if a local authority takes into account a service user's savings or capital, the local authority must—

- (a) subject to sub-paragraph (b) and to paragraph (3), calculate the capital of a service user in accordance with Part 3 of the 1992 Regulations;
- (b) disregard the value of a service user's main residence from its calculation of that person's capital.

(3) Nothing in paragraph (2) affects the discretion of a local authority when calculating a service user's capital to apply any criteria that are more generous to the service user than those as from time to time applied in the provisions referred to in paragraph (2)(a).

(4) When undertaking a means assessment, if a local authority takes into account a service user's income, the local authority must—

- (a) assess what part of the service user's income properly constitutes "earnings" (*"enillion"*) in accordance with the definition of "earnings" in regulations 35 and 37 of the Housing Benefit Regulations 2006⁽¹⁾, or as the case may be, in regulations 35 and 37 of the Housing Benefit (Persons who have attained qualifying age for state pension credit) Regulations 2006⁽²⁾;
- (b) disregard in full those earnings;
- (c) disregard in full any amount received by a service user in respect of savings credit; and
- (d) disregard in full any payment received by a service user which is referred to in paragraph 24 of Schedule 3 to the 1992 Regulations (sums to be disregarded in the calculation of income other than earnings)⁽³⁾.

(5) Nothing in paragraph (4) affects the discretion of a local authority when calculating a service user's income to apply any criteria that are more generous to the service user than the provisions in paragraph (4).

- (6) In this regulation—

(1) S.I. 2006/213.

(2) S.I. 2006/214.

(3) Payments referred to in paragraph 24 of Schedule 3 to the National Assistance (Assessment of Resources) Regulation 1992 are described in paragraph 39 of Schedule 9 to the Income Support (General) Regulations 1987 (S.I. 1987/1967) (sums to be disregarded in the calculation of income other than earnings) as "any payment made under or by the Macfarlane Trust, the Macfarlane (Special Payments) Trust, the Macfarlane (Special Payments) (No.2) Trust ..., the Fund, the Eileen Trust, MFET Limited or the Independent Living Fund (2006).".

“the 1992 Regulations” (“*Rheoliadau 1992*”) means the National Assistance (Assessment of Resources) Regulations 1992(1).

Determination as to a service user’s ability to pay a charge

15.—(1) Where a local authority makes a determination as to a service user’s ability to pay a charge in accordance with section 7 (*determinations as to ability to pay*) or section 9 of the Measure (*replacement by authority of determinations as to ability to pay*) it must give effect to the requirements of this regulation.

(2) A local authority must ensure when determining the charge to be imposed for a service offered to or being received by a service user, that it does not reduce the service user’s net income—

- (a) where the service user is in receipt of a relevant benefit, to an amount below the total of—
 - (i) the basic entitlement to the relevant benefit that is being received by that person, and
 - (ii) an amount of not less than 35% of that entitlement (“a buffer”) (“*clustog*”), and
 - (iii) an amount to compensate the service user for disability-related expenditure of not less than 10% of the amount referred to in paragraph (i); or
- (b) where the service user is not in receipt of a relevant benefit, to an amount below the total of—
 - (i) the amount the local authority reasonably assesses, having regard to the person’s age, circumstances and level of disability, would be equal to the service user’s basic entitlement to a relevant benefit, and
 - (ii) a buffer of not less than 35% of the amount estimated in paragraph (i), and
 - (iii) an amount to compensate the service user for disability-related expenditure of not less than 10% of the amount referred to in paragraph (i).

(3) Nothing in this regulation affects the discretion of a local authority to increase the percentage of the buffer or the amount to compensate for any disability-related expenditure when making a determination in accordance with paragraph (1).

(1) S.I. 1992/2977.

Effect of a determination of a service user's ability to pay a charge

16.—(1) Where a local authority makes a determination in accordance with regulation 15 as to a service user's ability to pay a charge for a service which—

- (a) is being offered to a service user for the first time; or
- (b) is being provided for a service user, but for which a charge is being imposed for the first time,

it may not impose a charge until the date that a statement is provided in accordance with section 10(4) of the Measure.

(2) Where a local authority makes a further determination as to a service user's ability to pay a charge in accordance with regulation 7(2) it may not impose, or alter a charge until the date that a statement is provided in accordance with section 10(4) of the Measure.

(3) Where a statement referred to in paragraph (1) or (2) replaces a statement that has previously been provided in accordance with section 10(4) of the Measure (“the earlier statement”) (*“y datganiad cynharach”*), the earlier statement will continue to have effect until the date the subsequent statement is provided.

Saving

17. Where, immediately before the coming into force of these Regulations —

- (a) an assessment of a service user's means, or
- (b) a determination of the charge a service user is to pay,

has effect, such assessment or determination will continue to have effect notwithstanding that it was not made in accordance with the Measure and these Regulations.

18. Any assessment or determination referred to in regulation 17 will continue to have effect until replaced by an assessment or determination made in accordance with the Measure and these Regulations.

Transitional provision

19. Where before the coming into force of these Regulations a local authority has obtained information and documentation from a service user to enable it to—

- (a) undertake an assessment of the service user's means, or

- (b) make a determination of the charge the service user is to pay,

but the assessment has not been undertaken or the determination has not been made upon the coming into force of these Regulations, the local authority must undertake such an assessment in accordance with the provisions of section 5 of the Measure and regulation 14 or such a determination in accordance with the provisions of sections 7 or 9 of the Measure and regulation 15.

Transitory provision

20.—(1) Where an assessment has effect in accordance with regulation 18 a local authority—

- (a) must apply the provisions of regulations 4, 5, 6 and 14 to such an assessment, notwithstanding that it was not undertaken in accordance with these Regulations, save that regulation 6(2) does not have effect,
- (b) is not required to act in accordance with section 4 of the Measure or regulation 7, save that regulation 7(2) has effect,
- (c) must carry out an assessment of a service user's means in accordance with section 5 of the Measure where each of the conditions in section 6 of the Measure are met and the service user has requested such an assessment, and
- (d) must make a determination as to a service user's ability to pay a charge, in accordance with regulation 15, as though the assessment of the service user's means had been undertaken in accordance with section 7 or 9 of the Measure.

(2) Regulation 16(3) has effect in respect of any determination made in accordance with paragraph (1)(d) as though the earlier statement referred to in that regulation is a determination which has effect in accordance with regulation 18.

Gwenda Thomas

Deputy Minister for Social Services under authority of the Minister for Health and Social Services, one of the Welsh Ministers

24 March 2011