

Explanatory Memorandum to the Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011

This Explanatory Memorandum has been prepared by the Adult Social Services Policy Division of the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Social Care Charges (Miscellaneous Amendments) (Wales) Regulations 2011.

Gwenda Thomas
Deputy Minister for Children and Social Services

6 July 2011

Description

1. This Statutory Instrument corrects a small number of technical inconsistencies within and between the English and Welsh text of the following Regulations:

- (SI 2011/962(W.136)) The Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011; and,
- (SI 2011/963(W.137)) The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

Matters of Special Interest to the Constitutional and Legislative Affairs Committee

2. The technical inconsistencies in the above Regulations were identified in draft reports prepared by the Legal Advisers to the then Constitutional Affairs Committee prior to the dissolution of the last Assembly.

Legislative Background

3. The powers to make the amending Regulations are exercisable by Welsh Ministers under sections 2(2), 3(1), 4(3) and (4), 5(2), 7(2), 10(4)(f), 12 and 17(2) of the Social Care Charges (Wales) Measure 2010. These sections were commenced by the Social Care Charges (Wales) Measure (Commencement) Order 2010.

4. This instrument is subject to the negative procedure.

Purpose & Intended Effect of the Legislation

Background

5. Local authorities have the discretion to charge for the provision of non-residential social services to meet assessed care needs. From 11 April 2011 a set of initiatives, known as the “First Steps Improvement Package”, was implemented to introduce greater consistency to such charging. One of the main changes was the introduction of a weekly maximum charge of £50 for a service or services being provided. The package was implemented by three pieces of legislation, made under the Social Care Charges (Wales) Measure 2010.

6. In scrutinising the Regulations, the Legal Advisers to the National Assembly for Wales’ Constitutional Affairs Committee noted a number of discrepancies in two of those Regulations; the Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 (SI 2011/962(W.136)) and the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 (SI 2011/963(W.137)).

7. These inconsistencies are solely technical in nature. There is one technical and one grammatical discrepancy in the English text in both Regulations. All remaining issues raised in the draft reports to the Committee relate to the

Welsh text of the Regulations. For example, in (SI 2011/963(W.137)) the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011, Regulation 2 (1) refers in its English version to 'words or figures', whereas the Welsh version refers to 'words and figures'.

8. The Welsh Government accepted these points and stated its intention to bring forward amending legislation at the earliest opportunity to correct these inconsistencies, and in any event within three months from the coming into force of the Regulations.

9. These Regulations amend those technical discrepancies contained within both instruments and ensure the Regulations support the Social Care Charges (Wales) Measure 2010 in an effective manner.

Consultation

10. There has not been any formal consultation on the proposed changes as the instrument is necessary to correct technical inconsistencies in existing Welsh legislation.

Regulatory Impact Assessment (RIA)

11. The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these regulations. As they only correct minor drafting and typographical errors in the existing Regulations it was not considered necessary to carry out a Regulatory Impact Assessment in this instance as to the likely costs and benefits of complying with these regulations.

Competition Assessment

12. Not Applicable

Post Implementation Review

13. Not Applicable. Following the recent implementation of the existing Regulations, arrangements are already underway with local authorities to undertake a review of their impact. These amending Regulations do not materially affect these arrangements.