

2015 No. 1842 (W. 270)

SOCIAL CARE, WALES

**The Care and Support (Review of
Charging Decisions and
Determinations) (Wales)
Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 59 of the Social Services and Well-being (Wales) Act 2014 (“the Act”) gives local authorities in Wales a discretionary power to impose a reasonable charge where care and support are being provided under the Act.

Section 60 of the Act sets out the categories of persons upon whom a charge may be imposed. Where a local authority has decided to exercise the power to impose a charge, section 63 of the Act imposes a duty upon the local authority to carry out a financial assessment of the person upon whom the charge will be imposed.

Section 66 of the Act places a duty upon the local authority to make a determination in relation to the ability of a person, upon whom a charge will be imposed under section 59, to pay the standard charge or a proportion of it in relation to the care and support provided.

Section 72 of the Act creates a liability to pay a charge for care and support upon a person to whom an asset has been transferred by the person whose needs are being met under the Act where the purpose of that transfer was to avoid the charge being imposed.

Section 73 of the Act requires regulations to be made to provide for review of charging decisions and determinations made by the local authority under sections 59, 66 and 72 of the Act.

Sections 50 to 53 of the Act permit regulations to be made to give local authorities a power to make direct payments to meet a person’s needs for care and support under the Act. Section 53(3) provides that

regulations under sections 50 to 52 may make provision in relation to direct payments which correspond with provisions made under sections 59, 67 and 73.

Regulation 3 sets out the categories of people who are permitted to request a review (“requester”) of those decisions and regulation 4 sets out the circumstances in which a review may be requested.

Regulations 5 and 6 set out details of the process for requesting a review and appointing a representative to deal with the review on behalf of the requester. Regulation 7 provides that the local authority must appoint a person, who is a member of staff of the local authority, to deal with the request. Regulation 8 permits a withdrawal of a request for review.

Regulation 9 sets out the circumstances in which a request for review must be accepted and circumstances in which the local authority may reject the request.

Regulation 10 requires a local authority to provide the requester with a written acknowledgement within 5 working days of receiving the request. This regulation also prescribes what the acknowledgement must contain.

In the event that the local authority requires further information or documentation to carry out the review, regulations 11, 12 and 13 provide for, whom the information can be requested from and how and when that information must be provided.

Regulation 14 requires the local authority to provide the requester with a decision, with reasons, within 10 working days of having sufficient information and documentation to carry out the review. This regulation also sets out what the local authority must have regard to before making its decision.

Regulation 15 deals with what happens to the charge from the date the request is received by a local authority until its withdrawal or until the local authority sends a decision to the requester (“review period”). A requester is not obliged to pay the charge that is the subject of the review during the review period but the liability continues to accrue. The local authority may recover the accrued amount after the review period.

In relation to direct payments, if the requester notifies the local authority that they will not pay the contribution during the review period, the local authority must make gross payments during the review period.

In the event that the local authority decides that the charge was too high it must return any over payment to the requester within 10 working days. If a local

authority decides that the charge was too low, it may recover any underpayment from the requester.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result, a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Health and Social Services Group, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.

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The Care and Support (Review of
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Regulations 2015

Made 27 October 2015

*Laid before the National Assembly
for Wales* 3 November 2015

Coming into force 6 April 2016

The Welsh Ministers in exercise of the powers conferred on them by sections 50, 51, 52, 53(3), 67(2), 70(8)(a), 73 and 196(2) of the Social Services and Well-being (Wales) Act 2014⁽¹⁾, make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 and they come into force on 6 April 2016.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the Act” (“*y Ddeddf*”) means the Social Services and Well-being (Wales) Act 2014;

“the Regulations” (“*y Rheoliadau*”) mean the Care and Support (Charging) (Wales) Regulations 2015;

“appointed person” (“*person penodedig*”) means a person appointed to deal with the review in accordance with regulation 7 of these Regulations;

“care and support” (“*gofal a chymorth*”) has the meaning given in section 4 of the Act;

(1) 2014 anaw 4.

“charge” (“*ffi*”) means—

- (a) any charge imposed in accordance with section 59 of the Act;
- (b) any reimbursement or contribution determined in accordance with regulations made under sections 50 to 53 of the Act; or
- (c) any charge imposed upon a person who has become liable, in accordance with section 72 of the Act, for an amount in respect of the costs of a person’s needs being met;

“contribution” (“*cyfraniad*”) means an amount determined by way of contribution as mentioned in section 53(1)(c)(ii) of the Act in relation to direct payments;

“financial assessment” (“*asesiad ariannol*”) means a financial assessment under section 63 of the Act;

“gross payments” (“*taliadau gros*”) has the meaning given in section 53(2) of the Act;

“home visit” (“*ymweliad â’r cartref*”) means a visit which is undertaken by an officer of a local authority to the current place of residence of—

- (a) a requester; or
- (b) a person from whom the local authority requests information or documentation under regulation 13,

or such other venue as is reasonably requested by the persons referred to in (a) or (b);

“in writing” (“*mewn ysgrif*”) 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;

“liable transferee” (“*trosglwyddai atebol*”) means a transferee within the meaning of section 72 of the Act against whom liability arises under that section;

“reimbursement” (“*ad-daliad*”) means an amount determined by way of reimbursement as mentioned in section 53(1)(c)(ii) of the Act in relation to direct payments;

“requester” (“*ceisydd*”) means—

- (a) a person listed in paragraphs (a) to (c) of regulation 3; and
- (b) who has requested a review of any decision relating to charging referred to in section 73(1) of the Act or a determination of a reimbursement or contribution made in accordance with regulations made under sections 50 to 53 of the Act;

“review period” (“*cyfnod adolygu*”) means a period commencing on the date the local authority receives a request for a review and ending on the earlier of the date the local authority sends its decision on the review to the requester or the date the local authority receives a withdrawal of the request;

“standard charge” (“*ffi safonol*”) has the meaning given in section 63(3) of the Act;

“statement” (“*datganiad*”) means a statement that is in a form that is appropriate to the communication needs of each of—

- (a) the requester;
- (b) any appointed representative; or
- (c) a person from whom the local authority requests information or documentation under regulation 13;

“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(1).

Persons who may request a review

3. The following persons may request a review of any of the decisions relating to charging set out in section 73(1) of the Act or a determination of a reimbursement or contribution made in accordance with regulations made under sections 50 to 53 of the Act—

- (a) persons upon whom a charge may be imposed in accordance with section 60 of the Act;
- (b) a person who is required to pay a reimbursement or contribution in respect of a direct payment determined in accordance with regulations made under sections 50 to 53 of the Act;
- (c) a liable transferee; or
- (d) subject to regulation 6, any representative appointed to make the request on behalf of persons falling within paragraphs (a) to (c) above.

Circumstances in which a review may be requested

4. A request may relate to the following circumstances asserted by the requester—

- (a) a local authority not having complied, where appropriate, with any of the duties imposed upon it, by—

(1) 1971 c. 80.

- (i) Part 5 of the Act or by regulations made under it;
 - (ii) any regulations made under sections 50 to 53 of the Act; or
 - (iii) the code of practice on financial assessment and charging issued under section 145 of the Act;
- (b) a local authority having not correctly applied its own charging policy in imposing any charge;
 - (c) an error having been made in the calculation of the charge;
 - (d) a charge having been imposed for care and support that has not at any time been provided to the requester;
 - (e) a requester considering that they do not have the financial means to pay the charge as to do so would cause them financial hardship;
 - (f) a requester who is a liable transferee asserts that the relevant transfer of assets does not satisfy the conditions in section 72(1) of the Act because either or both of the following apply—
 - (i) the transfer was not undertaken with the intention of avoiding charges for having a person’s needs met; or
 - (ii) the consideration for the transfer of the asset was the amount that would have been realised if it had been sold on the open market by a willing seller at the time of the transfer.

Process for requesting a review

5.—(1) A request for review may be made at any time after a local authority has made its decision to impose a charge and has communicated that decision to the requester.

(2) A request must state which one or more of the circumstances listed in regulation 4, are the reason for the review being requested.

(3) A request may be made either orally or in writing.

Representatives

6.—(1) Subject to paragraph (2), a review may be requested by a person (a “representative”) acting on behalf of a requester and reference to a “representative” in these Regulations is to be construed accordingly.

(2) If a requester wishes to appoint a representative to request a review on the requester’s behalf, the

requester must provide the local authority with their authorisation, either orally or in writing, of the appointment.

(3) If the local authority receives the requester's oral authorisation, the local authority must provide the requester and their representative with a statement confirming that the requester has given their oral authorisation of the appointment.

(4) Where a representative has been appointed in accordance with this regulation, the representative may act on the requester's behalf for the whole of the review period unless the requester's authorisation states otherwise or the requester has withdrawn their authorisation under paragraph (5).

(5) A requester may withdraw their authorisation by giving notice, either orally or in writing, to the appointed person.

(6) Where a representative has been appointed in accordance with this regulation, any reference in regulations 8(1) and (2), 10(1)(m) and (n), 11(1), 12(1), (2) and (4) and 14(3) to a requester means that person's representative to the extent that it is consistent with the requester's authorisation.

The appointed person

7.—(1) Upon receipt of a request for review the local authority must appoint a person, in these Regulations referred to as the appointed person.

(2) The function of the appointed person is to manage the review process up to but not including the making of the decision in accordance with regulation 14.

(3) The appointed person must be a member of staff of the local authority.

Withdrawal of request

8.—(1) A requester may withdraw a request for review at any time during the review period.

(2) A requester may withdraw a request by informing the appointed person orally or in writing.

(3) Where a request is withdrawn, the local authority must provide the requester and any representative with a statement to confirm that the request has been withdrawn and that no further action upon it will be taken as a result.

Acceptance of the request

9.—(1) Where a request for review complies with regulations 3, 4 and 5, regulations 10 to 17 apply.

(2) Regulations 10 to 17 do not apply where a local authority believes that there has been no material

change in any of the circumstances listed in regulation 4 that gave rise to a previous request for a review by or on behalf of the same person and the requester has not relied upon any other additional circumstances.

(3) Where paragraph (2) applies, the local authority must send a statement to the requester and any representative stating that the request for a review will not be considered by the authority because the authority believes that—

- (a) there has been no material change in any of the circumstances listed in regulation 4 that gave rise to a previous request for a review by or on behalf of the same person; and
- (b) the requester has not relied upon any other additional circumstances.

Acknowledgement of the Request

10.—(1) Subject to paragraph (2) a local authority must, within five working days of receipt of any request that is accepted as valid under regulation 9, send the requester and any representative a statement stating—

- (a) the date on which the request was received;
- (b) the nature of the request;
- (c) if the requester has not already appointed a representative, that the requester may appoint a representative to assist them and act on their behalf during the whole or part of the review period;
- (d) how the local authority will carry out the review;
- (e) that the requester need not pay the charge, or the part of the charge which is the subject of the review, during the review period;
- (f) if the requester decides not to pay the charge, or the part of the charge that is the subject of the review, during the review period, that the requester, or any representative must notify the local authority, either orally or in writing, of that decision;
- (g) whether, in the event that the requester does not pay the charge during the review period, the local authority will seek to recover, after the review period, any amount that has accrued and not been paid during the review period;
- (h) that if the requester has—
 - (i) requested a review of a determination made in accordance with regulations made under section 53(1) of the Act that the requester should pay a contribution towards direct payments, and

(ii) notified the local authority that they will not pay the contribution during the review period,

the local authority will make gross direct payments;

- (i) what, if any, further information or documentation the local authority reasonably requires from the requester in order to carry out a review and the time limit for the provision of such information or documentation, which is specified in regulation 12;
- (j) where the requester is a liable transferee—
 - (i) whether the local authority intends to request information or documentation from a person other than the requester in accordance with regulation 13; and
 - (ii) what information or documentation is required from that person;
- (k) that an appropriate officer of the local authority would be available to carry out a home visit for the purpose of collecting the further information or documentation;
- (l) the procedure for requesting a home visit;
- (m) the identity and contact details of the appointed person who will be responsible for providing a response to any enquiries the requester may have about the review;
- (n) the contact details of any organisation that might be able to assist the requester during the review period.

(2) Paragraph (1) does not apply where a local authority sends its decision on the review to the requester and any representative within 5 working days of receipt of the request.

(3) Where the statement under paragraph (1) includes a request for information and documentation under paragraph (1)(j), the local authority must send a statement to the person (“P”) from whom the information and documentation is requested stating—

- (i) the nature of the request in so far as it relates to the transfer of an asset by P that meets the conditions in section 72(1) of the Act;
- (ii) what information and documentation is required from P in order to carry out the review and the time limit for the provision of such information or documentation which is specified in regulation 12;
- (iii) that an officer of the local authority would be available to carry out a home

- visit for the purpose of collecting the further information and documentation;
- (iv) the procedure for requesting a home visit; and
- (v) the identity and contact details of the appointed person.

Home visit

11.—(1) The requester or a person from whom information or documentation is requested in accordance with regulation 13 may notify the appointed person, orally or in writing, that they intend to comply with the request for further information and documentation during a home visit.

(2) If notification is given under paragraph (1), the local authority must carry out a home visit.

Time limit for the provision of further information or documentation

12.—(1) Subject to paragraph (2), if further information or documentation is required by the local authority, the requester must provide the local authority with that information or documentation within 15 working days of the date of the request for further information or documentation being made.

(2) Within the period specified in paragraph (1), the requester may ask the local authority, either orally or in writing, for an extension of time to provide the further information or documentation, giving reasons as to why an extension is necessary.

(3) A local authority must grant any reasonable request for an extension.

(4) If an extension is granted by the local authority, the local authority must confirm in a statement sent to the requester that—

- (a) the time limit for the provision of further information or documentation has been extended; and
- (b) the length of that extension.

(5) In the event that the local authority does not receive the further information or documentation or a request for an extension of time within the time specified in paragraph (1), it may treat the request as if it has been withdrawn.

(6) If paragraph (5) applies, the local authority must send a statement to the requester and any representative stating—

- (a) that the local authority is now treating the request as if it has been withdrawn;
- (b) that the charge is now payable;

- (c) the amount (if any) that has accrued and not been paid by the requester during the review period; and
- (d) if the local authority seeks to recover any accrued amount, the amount and the date by which the amount must be paid.

Provision of information or documentation by a person other than the requester

13.—(1) Where the requester is a liable transferee, the local authority may request information or documentation from the person (“P”) whose needs are being met under the Act and who transferred the asset to the requester, where such information is relevant to the issues to be considered in the review.

(2) Paragraphs (1) to (4) of regulation 12 apply to any request made by the local authority in accordance with paragraph (1) of this regulation save that the statement the local authority is required to send in accordance with paragraph (4) of regulation 12 must also be sent to P.

(3) In the event that the local authority does not receive the information or documentation from P or a request for an extension of time within the time specified in paragraph (1) of regulation 12, the local authority must send a statement to P, the requester and any representative—

- (a) stating that P has failed to provide the information or documentation requested by the local authority;
- (b) advising that the local authority will continue with the review and will make the decision on the information and documentation that is available to them; and
- (c) advising that the failure by P to provide the further information and documentation may have an adverse impact upon the decision upon the review.

(4) If the information and documentation requested is provided after the time limit for providing it has expired, but before a decision upon the review is made, that information may be taken into account in the decision making process.

Decision

14.—(1) Subject to paragraphs (2) and (3), as soon as possible after receipt of sufficient information and documentation to carry out the review and in any event within 10 working days of that time, the local authority must—

- (a) make a decision on the review and the action that is necessary to implement it;

- (b) send a statement to the requester and any representative stating—
 - (i) the decision;
 - (ii) the reasons for that decision;
 - (iii) that the requester has a right to make a complaint under the Social Services Complaints Procedure (Wales) Regulations 2014⁽¹⁾ if they are dissatisfied with the decision;
 - (iv) if the requester's charge has been amended as a result of the review, include in the statement the following information—
 - (aa) information about the care and support, to which the charge relates;
 - (bb) the standard charge for the care and support;
 - (cc) if the charge imposed following the review is not the standard charge, the amount of the charge imposed;
 - (dd) information about how the charge was calculated (including details of any financial assessment).

(2) Where regulation 13(3) applies and the further information and documentation has not been provided, the local authority must make a decision under paragraph (1)(a) as soon as possible, or in any event within 10 working days of receiving sufficient information and documentation but excluding the information and documentation requested under regulation 13 but not provided.

(3) If the local authority concludes that it is unable to meet the deadline specified in paragraphs (1) or (2), it must as soon as possible and in any event within the periods specified in paragraphs (1) or (2) provide the requester with a statement stating—

- (a) that it will not be able to provide a decision within the deadline specified in paragraph (1) or (2);
- (b) the reason for not being able to comply with that deadline;
- (c) the date by which it will provide a decision; and
- (d) that the requester may elect not to pay the charge for the remainder of the review period by notifying the local authority either orally or in writing.

(1) S.I. 2014/1794.

(4) Before making a decision under paragraph (1)(a), the local authority must consider—

- (a) the details of the request;
- (b) the local authority's current charging policy;
- (c) Part 5 of the Act or, where appropriate, any regulations made under sections 50 to 53 of the Act;
- (d) the Regulations;
- (e) any other Regulations made under Part 5 of the Act which the local authority considers relevant;
- (f) any relevant Code or guidance published by the Welsh Ministers under section 145 of the Act;
- (g) the requestor's income and expenses;
- (h) where one has been carried out, the requestor's financial assessment carried out for the purpose of a determination under section 66 of the Act or for the purpose of determining a reimbursement or contribution in accordance with regulations made under sections 50 to 53 of the Act which has led to the charge which is the subject of the review; and
- (i) any circumstances both current and foreseeable that may affect the requester's ability to pay the charge.

(5) A statement will be deemed to have been provided under paragraph (1) on the date it is issued by the local authority.

Payment of the charge during and after the review

15.—(1) If a request is made, the requester may elect not to pay their charge, or the part of the charge which is the subject of the review, during the whole of the review period but the unpaid amount will accrue.

(2) If an election is made under paragraph (1), the requester must notify the local authority of their election, either orally or in writing, within 5 working days of receiving a statement under regulation 10(1).

(3) If a local authority sends a statement to the requester under regulation 14(3), the requester may elect not to pay their charge or the part of the charge which is the subject of the review, during the remainder of the review period and any amount that is not paid during the remainder of the review period will not accrue.

(4) If an election is made under paragraph (3), the requester must notify the local authority of the election, either orally or in working, within 5 working days of receiving a statement under regulation 14(3).

(5) Where the local authority is notified that the requester will not pay their contribution towards direct payments during the whole or the remainder of the review period, the local authority must make gross direct payments during—

- (a) the whole of the review period where an election under paragraph (1) is made; or
- (b) the remainder of the review period where an election under paragraph (3) is made.

(6) Subject to paragraphs (7) and (8), a local authority may recover any unpaid amount that has accrued during the review period under paragraph (1) after the end of the review period.

(7) The accrued amount that may be recovered under paragraph (6) is the amount of the charge that the local authority has decided is correct under regulation 14 (1)(a).

(8) A local authority may not recover any charge, or the part of the charge which is the subject of the review, that has not been paid between the sending of a statement under regulation 14(3) and the end of the review period.

(9) If a local authority decides that the charge that should be payable by the requester is less than that previously imposed on the requester, the local authority must within 10 working days of sending its decision to the requester, pay the requester the difference between the amount that should be payable and the amount, if any, that has already been paid by the requester.

(10) If a local authority decides that the amount that should be payable by the requester is more than that previously imposed on the requester, the local authority may, subject to paragraph (8), recover the difference between the amount of the charge that should be payable and the amount, if any, that has already been paid by the requester.

(11) The amount that a local authority must pay under paragraph (9) or may recover under paragraph (10), where the amount of the charge has been amended due to a change in the requester's financial circumstances, cannot relate to any period of time before that change in financial circumstances.

(12) If recovering an amount from the requester under paragraph (6) or (10) the local authority must—

- (a) have regard to the requester's personal financial circumstances; and
- (b) be satisfied that the recovery of the amount will not cause the requester to suffer financial hardship; or
- (c) if the local authority believes that the recovery of that amount would cause the requester to suffer financial hardship, offer the requester

the option of repaying the amount in periodic instalments.

(13) Where the local authority is seeking to recover any amount from a liable transferee, paragraph (12) does not apply.

Revocation

16. The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011⁽¹⁾ are revoked.

Transitional provision

17. Where, immediately before the coming into force of these Regulations, a review of a charge, reimbursement or contribution has been requested but not yet been decided by the local authority, the local authority may continue with the review and these Regulations do not apply in relation to that review except that the local authority must send a decision to the requester within 3 months of the coming into force of these Regulations.

Mark Drakeford

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

27 October 2015

(1) S.I. 2011/964.