

**Explanatory Memorandum to the Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 made under Part 5 of the Social Services and Well-being (Wales) Act 2014**

This Explanatory Memorandum has been prepared by the Health and Social Services Group 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 Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 made under Part 5 of the Social Services and Well-being (Wales) Act 2014 in relation to operating a review process for charges imposed for care and support. I am satisfied that the benefits outweigh any costs.

**Mark Drakeford**  
**Minister for Health and Social Services**  
**27 October 2015**

## **Part 1 – OVERVIEW**

### **1. Description**

The Social Services and Well-being (Wales) Act 2014 (“the Act”) brings together local authorities’ duties and functions in relation to improving the well-being of people who need care and support, and carers who need support, into a single Act. The Act provides the statutory framework to deliver the Welsh Government’s commitment to focus on well-being, rights and responsibilities.

The existing financial assessment and charging statutory framework for social care and support is derived from separate pieces of legislation that originally stem from the National Assistance Act 1948, as regards charging for residential accommodation with care, and the Social Care Charges (Wales) Measure 2010, in respect of charging for non-residential, community based care and support. As such the framework is made up of a number of separate pieces of legislation, some of which have existed for a number of years so that they have become fragmented and out of date.

The current statutory framework does, however, provides a good basis for local authorities’ charging for the provision or arrangement of care and support, ensuring that only those who can afford to pay for their care and support are required to do so. We see no merit in moving away from this framework and propose that the framework for local authority financial assessment and charging under the Act is akin to the existing framework. That said, we propose to take the opportunity to revise the statutory framework where we consider it appropriate to do.

The Care and Support (Review of Charging Decisions and Determinations) (Wales) Regulations 2015 (“the Regulations”) do this by continuing the ability of a person in receipt of non-residential care and support, or in receipt of direct payments to enable them to secure such care, to seek a review of a determination of their ability to meet a charge, contribution or reimbursement for this, or of the level of these charges. This is where local authorities exercise their discretion under section 59 of the Act to impose a charge for non-residential care and support it provides or arranges, or their discretion under sections 50, 52 and 53(3) of the Act to impose a contribution or reimbursement for receiving direct payments to secure this care. The Regulations also extend this ability to seek a review of a determination of a person’s ability to pay a charge, contribution or reimbursement, and of the level of these, to those in receipt of residential care provided or arranged by their local authority, or in receipt of direct payments to secure such care.

### **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

No specific matters have been identified.

### **3. Legislative background**

The powers enabling the making of the Regulations in relation to deferred payment agreements are contained in Part 5 (section 73) of the Act.

These Regulations are subject to the negative procedure. They will come into force on 6 April 2016.

#### **4. Purpose & intended effect of the legislation**

The overall purpose of the Regulations is to enable a person who is subject to a determination of their ability to pay a charge, contribution or reimbursement for the care and support they receive, or for direct payments they receive to secure this care, to seek a review of this determination and of the level of any charge, contribution or reimbursement set. The intention is that this ability should extend to where a person is in receipt of non-residential care and support or residential care. This is to afford them the ability of having a determination or charge level reviewed where the person feels that an error has been made, or where the person is of the opinion that to meet the charge would cause them undue financial hardship. Provisions under the Regulations provide local authorities with a structure to enable them to put in place and operate such a review process. As such the Regulations impose the following requirements on a local authority:

- regulation 3 stipulates the persons who may request a review (ie a person upon whom a charge, contribution or reimbursement has been imposed, a liable transferee – as defined by section 72 of the Act as a person in receipt of assets to reduce or avoid charges – or a representative of these persons);
- regulation 4 stipulates the circumstances where a review may be requested (eg a local authority has not complied with the relevant legislation, there has been an error in the calculation of the charge or for the person to meet the charge set would cause them financial hardship);
- regulation 5 sets out the process for requesting a review (ie that it may be made either orally or in writing at any time after a local authority has made a decision to impose a charge, contribution or reimbursement, setting out the reason(s) for the review);
- regulation 6 sets out the arrangements applicable where a representative acts on behalf of a person seeking a review (eg that if the person wishes to have a representative, for either all or part of the review, they must provide orally or in writing their authorisation for this to the local authority);
- regulations 7 requires a local authority receiving a request for a review to appoint a member of staff to manage the review;
- regulation 8 sets out the process if a person subsequently wishes to withdraw a request for a review (eg that this can be made either orally or in writing at any time during the review period);
- regulation 9 sets out the acceptance of a review requested and the consequential requirements it then places on the local authority receiving the review (ie a request that complies with regulations 3, 4 and 5 as regards the person making the request, the reason(s) for the request being made and that it does relate to a decision on a charge, contribution or reimbursement that the authority has made). It also sets out the process an authority must follow where a request is not accepted;
- regulation 10 then sets out the acknowledgement of a request for a review once it has been accepted (ie the local authority must within 5 working days of acceptance of a review send the requester an acknowledgement confirming certain information set out in the regulation, such as how the review will be undertaken, what information and documentation the authority requires from the person or a transferee to undertake the review, that during the review period the person need

not pay the charge or part of a charge which is the subject of the review and if they chose to do this, whether the authority will seek to recover this should it prove that the person is liable for the charge set);

- regulation 11 requires a local authority to carry out a home visit for the purposes of complying with any request it makes for further information and documentation to undertake a review, if the person requests this;
- regulation 12 sets out the time limit that a person has to provide further information and documentation requested by a local authority to undertake a review (ie within 15 working days of the request for this being made unless the person during this period makes a reasonable request for a longer period). It also confirms that if the information and documentation, or a request for a longer period, is not received within the 15 working days the local authority may treat the request for a review as withdrawn and confirm this to the requester;
- regulation 14 confirms the process that applies to the making of a decision on a review (eg that a local authority must make a decision within 10 working days of receipt of sufficient information and document to do this – or of such information and document not being received – and send a statement to the requester to confirm the decision and the consequences of this for the charge, contribution or reimbursement set). Where a local authority concludes it is not able to make a decision within the period set it must inform the requester, provide the reason(s) for this, provide a date by which a decision will be made and inform the requester that they may choose not to pay the charge, contribution or reimbursement which is the subject of the review until that decision is made;
- regulation 14 also sets out the factors which a local authority must take into account in making a decision on a review (eg the authority's charging policy, the requester's income and capital, and any circumstances that may affect the requester's ability to pay the charge);
- regulation 15 sets out the arrangements for the payment of the charge, contribution or reimbursement during and after the review.

## **5. Consultation**

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. In total 61 substantive written responses were received from a wide range of individuals, representative groups, local authority officers and professional organisations. Overall these Regulations were well received with respondents generally supportive of the proposed continuation of the ability of a person being charged to seek a review of this. Where responses have resulted in material changes to the Regulations, these have been reflected in the final version of the Regulations being laid.

A summary report of the consultation responses is available on the Welsh Government website at: <http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options and Benefits**

This Regulatory Impact Assessment considers the following options and their benefits:

- “do nothing” and not make any regulations (option 1);

- make regulations but only to implement the same review process as currently exists (option 2); and
- make the Regulations to implement a review process but with appropriate revisions (option 3).

### **Option 1: Do Nothing**

This option involves no regulations in relation to a review of charging decisions and determinations being made under the relevant powers under Part 5 of the Act referred to earlier. As a result no requirements are placed on local authorities in this respect.

This would result in a person upon whom a charge has been imposed for the care and support they receive not being able to seek a review of this decision or of the level of this charge. Instead the only course of redress a person in this position would have would be to make a complaint to the authority under its formal complaints procedure it is required to operate under Part 10 of the Act. This would be where the person felt that the authority had not taken a properly considered decision in imposing a charge. This option therefore has limited benefits.

### **Option 2 – make regulations to implement the current review process**

This option would enable a person upon whom a charge has been imposed for the care and support they receive, or a contribution or reimbursement for the direct payments they receive to secure this care, being able to seek a review of this decision or of the level of this charge. This option would afford those in this position the opportunity of querying charges imposed and of getting errors in these corrected. It would also enable them to highlight situations where to meet a charge would cause the person undue financial hardship.

However, this would only apply as now to those in receipt of non-residential care and support, or direct payments to secure that care. It would not apply to those in residential care who would not have this course of redress. This option, therefore, has the benefit of maintaining the present ability of those receiving non-residential care and support to seek a review if they wish but does not have the benefit of extending this to those who receive residential care. As a result, while it has more benefits than option 1 those benefits are still limited.

### **Option 3 – make the Regulations to introduce a review process but with appropriate revisions**

Like option 2 this option would enable a person upon whom a charge has been imposed for the care and support they receive, or a contribution or reimbursement for the direct payments they receive to secure this care, being able to seek a review of this decision or of the level of this charge. Importantly, however, it would also extend this ability to those who are charged for their residential care so as to provide parity with those in receipt of non-residential care and support. This option affords all those in this position the opportunity of querying charges imposed, getting errors in these corrected and of highlight situations where to meet a charge would cause the person undue financial hardship. It therefore, has the most benefits of the three options as it affords this opportunity to all those charged for their care.

### **Costs**

### **Option 1 – do nothing**

This option results in no review process being in place and so has no financial implications for local authorities. It does, however, have the potential to have costs for care and support receipts, whose charges may be inappropriately set. It may also lead to some enduring financial hardship, where they have problems meeting a charge set, due to a lack of a process in which to raise concerns over this.

### **Option 2 – make regulations to implement the existing review process**

This option maintains the status quo as regards the provision of a review process so that it has no additional cost for local authorities beyond costs currently incurred. It does, however, have the same potential financial implications for care and support recipients as highlighted in option 1 for those in residential care.

### **Option 3 – make the Regulations to introduce a review process but with appropriate revisions**

On face value this option appears to have the potential to increase the number of reviews requested, and hence the costs for local authorities, given its extension of the ability to do this to those in residential care. However, in reality this would not seem to be the case. Authorities will already have ad hoc, discretionary arrangements in place to consider queries over charges that care and support recipients make. What the review process introduced will do is replace these with a consistent, clear and equitable set of arrangements across all authorities to do this.

In addition the single, more consistent financial assessment for charging that we are introducing through the Care and Support (Financial Assessment) (Wales) Regulations 2015 should lead to fewer instances where a person upon whom a charge has been imposed makes a request for a review. This, coupled with the updated determination of a charge arrangements introduced by the Care and Support (Charging) (Wales) Regulations 2015, should lead to more consistency in charging determinations with charges being more clearly explained to those being charged. This in turn would lead to fewer situations where a person seeks a review.

As a consequence of these, this option should not lead to any material additional financial implications for local authorities. As regards local authority officer familiarisation with these arrangements, any costs associated with this would be met from the Social Care Workforce Development Grant provided by the Welsh Government to assist with the workforce costs associated with implementing the Act.

### **Consultation**

A 12 week public consultation on a draft of these Regulations was held between 8 May and 31 July 2015. The documents can be found at:

<http://gov.wales/consultations/healthsocialcare/part5/?status=closed&lang=en>

### **Competition Assessment**

Competition Filter Test	
Question	Answer: yes/no
Q1: In the market(s) affected by the new	No

regulation, does any firm have more than 10% market share?	
Q2: In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
Q3: In the market(s) affected by the new regulations do the largest three firms together have at least 50% market share?	No
Q4: Would the costs of the regulation affect some firms substantially more than others?	No
Q5: Is the regulation likely to affect the market structure, changing the number or size of businesses/organisations?	No
Q6: Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q7: Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
Q8: Is the sector characterised by rapid technological change?	No
Q9: Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No

### **Post implementation review**

The Act contains provisions to allow for the Welsh Ministers to monitor functions of it carried out by local authorities and other bodies. Ministers may require these bodies to report on their duties in implementing these Regulations.

The Welsh Government will continue to monitor the impact of the Regulations on areas such as the Welsh language, the UN Convention on the Rights of the Child and Older People and Equality.