

Explanatory Memorandum to the code of practice on the exercise of social services functions in relation to charging and financial assessment under part 4 and 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 code of practice in accordance with Standing Order 27.1 and 27.14

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the code of practice in relation to charging and financial assessment under part 4 and part 5 of the Social Services and Well-being (Wales) Act 2014. I am satisfied that the benefits outweigh any costs.

Mark Drakeford

Minister for Health and Social Services

22 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 charging and financial assessment statutory framework is made up of 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of a number of separate pieces of legislation, some having existed for a number of years which are now fragmented and out of date.

The current framework provides a good basis for local authorities to undertake and apply charging of those who can afford to pay for their care and support. We see no merit in moving away from these arrangements as such, therefore. With this in mind we would wish to see the new framework based on the existing structure and it is proposed that a charging and financial assessment framework should be put in place under the Act that is akin to the existing framework. The Act does, however, of itself already make one significant change, in that local authorities will in future have a discretion as to whether they charge for residential accommodation. This is in addition to a discretion as to whether to charge for non-residential care and support. This is unlike the situation at present where they have a duty to charge for residential care and a discretion to charge for non-residential care and support. This change was introduced in the Act to have a consistent approach to financial assessment and charging across both forms of care and support.

Regulations to be made under the Act will enable a local authority to exercise its powers and duties in undertaking charging and financial assessments under sections 50 to 53 and 57 of Part 4 (for direct payments and choice of preferred accommodation), and under sections 59 to 69, and 73 of Part 5 of the Act (for all forms of care and support). The code of practice which is the subject of this Explanatory Memorandum, will supplement these regulations by setting out for local authorities the detail of how they must implement and operate their requirements.

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

Section 146 of the Act lays down the procedure to be followed before issuing and approving this code of practice. As set out in section 146 a

draft of this code of practice was subjected to a 12 week public consultation. This final version of the code will be laid before the National Assembly for 40 days after which time, if no resolutions are made, Welsh Ministers must issue the code of practice.

There are no other matters the Minister wishes to bring to the Committee's attention.

3. Legislative background

The powers enabling the making of this code are contained in sections 145 and 146 of the Act. Section 145 of the Act permits Welsh Ministers to issue, and from time to time revise, one or more codes of practice on the exercise of social services functions. Section 146 of the Act lays down the procedure to be followed when issuing or revising a code under Section 145.

4. Purpose and intended effect of the legislation

The code of practice seeks to introduce under the Act the existing financial assessment and charging framework. Differences which the new framework will introduce, however, are limited to:

- extending to charging for non-residential care and support the financial assessment framework currently used in charging for residential care;
- extending the requirement in charging for non-residential care and support, to provide a detailed statement of charges being levied, to charging for residential care. Similarly, also extending to charging for residential care the requirement to operate a review of charges process to consider concerns care recipients may have over charges made;
- introducing enhanced arrangements for deferred payments in charging for residential care with the ability of local authorities to charge a low, set rate of interest on these to make such arrangements cost neutral.

5. Consultation

Section 146 (1) of the Act states that before issuing or revising a code under section 145 Welsh Ministers must consult on a draft code. The code was consulted upon on in a 12 week consultation that ran from 8 May 2015 to 31 July 2015.

Prior to going to formal consultation the operational requirements behind the code were developed through a technical group made up of representatives with the relevant expertise, technical knowledge and practical experience to work with officials on the details necessary to develop the code of practice.

There were 61 substantive written responses to the consultation received from a wide range of individuals, representative groups, local authority officers and professional organisations.

Overall the draft code was well received with respondents supporting the proposed streamlined approach of having a single financial assessment and charging framework.

The code of practice has been updated to correspond with changes made to the regulations as a result of respondent's responses. These include:

- A more detailed section on deprivation of assets to assist authorities in collecting debts;
- A clarification on undertaking financial assessments so as to be clear that while a person should be assessed only on the basis of their financial means, they could be assessed as a couple where this was more financially advantageous to them;
- A clearer description of what disability related expenditure to take into account in financial assessments;
- Guidance on the length of stay which a qualifying relative has lived at a property for it to be disregarded in a financial assessment;
- How authorities are able to charge a flat rate charge for care, support, prevention or assistance;
- An encouragement for authorities to design charging policies on a regional public services footprint basis.

A summary report of the consultation responses is available on the Welsh Government website –

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

6. Regulatory Impact Assessment (RIA)

The code is not subordinate legislation made by statutory instrument and for that reason a RIA is not required under 4.2 of the Welsh Ministers Regulatory Impact Assessment Code.

A full RIA has been completed for the relevant regulations under Part 4 and Part 5 of the Act, to consider the impact on costs and benefits of introducing the regulations on charging and financial assessment. The regulatory impact assessments will be part of the Explanatory Memoranda that accompanies the following relevant regulations

- The Care and Support (Choice of Accommodation) (Wales) Regulations 2015
- The Care and Support (Charging) (Wales) Regulations 2015
- The Care and Support (Financial Assessment) (Wales) Regulations 2015
- The Care and Support (Deferred Payment) (Wales) Regulations 2015

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

However, consideration has been given to whether the impact of the code is in any case sufficient to warrant completion of an RIA. The code of practice has been subjected to a broad spectrum of impact assessments including: Equality Impact Assessment, Welsh Language Impact Assessment and Children's Rights Impact Assessment. These impact assessments have shown that there are no significant negative impacts on any of the areas under consideration. Additionally, the code does not create any additional regulatory financial burden; therefore a full RIA has not been completed.

In relation to the implementation of the full statutory framework, there may be associated implementation costs for local authorities and other bodies in the form of training and preparedness requirements. Financial support is being made available to local authorities and supporting partners to support implementation. In 2013-14 and 2014-15, a Delivering Transformation grant of £1.5 million per annum was made available to the six regional partnerships and selected national partners to enable local government and its partners to put in place the requirements of the new Act. This funding has been increased to £3m in 2015-16.

The impact assessments are available on the Welsh Government website www.wales.gov.uk