

## WELSH STATUTORY INSTRUMENTS

# 2015 No. 1844

## The Care and Support (Financial Assessment) (Wales) Regulations 2015

PROSPECTIVE

### PART 2

#### Assessment of financial resources

##### Information to be provided by local authority

3. Before a local authority carries out a financial assessment in accordance with these Regulations it must give A the following—

- (a) details of care and support to meet A's needs which are offered or being provided for A and in respect of which it thinks it would impose a charge under section 59 of the Act;
- (b) details of the care and support that A has been assessed as requiring and for which direct payments<sup>(1)</sup> are being considered or made in accordance with section 50 or 52 of the Act;
- (c) where paragraph (a) applies, details of its charging policy for the provision of care and support, including—
  - (i) which elements, if any, are subject to a charge,
  - (ii) the standard charge<sup>(2)</sup> which may be imposed in relation to any of them,
  - (iii) any care and support, assistance or service for which a flat-rate charge is imposed,
  - (iv) the maximum weekly charge<sup>(3)</sup> that may be imposed or the maximum weekly charge that the local authority applies, where that charge is lower;
- (d) where paragraph (b) applies, details of its direct payments policy, which must include the following—
  - (i) details of the care and support, if any, for which direct payments may be, or are being provided, in respect of which A may be required to pay towards the cost of securing,
  - (ii) details of the standard amount which A may be required to pay towards the cost of securing such care and support,
  - (iii) any care and support, assistance or service for which a flat-rate charge is imposed,

(1) "Direct payment" is defined in section 50(7) and 52(7) of the Act.

(2) "Standard charge" is defined in section 63(3) of the Act as meaning "...the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person's ability to pay that amount". Section 59(2) of the Act (power to impose charges) provides that a charge imposed under subsection (1) may cover only the reasonable cost that the local authority incurs in meeting the needs to which the charge applies.

(3) "The maximum weekly charge" is specified in regulation 7 of the Charging Regulations and applies in relation to the provision of care and support to meet an assessed need otherwise than by the provision of accommodation in a care home.

*Status: This version of this part contains provisions that are prospective.*

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Care and Support (Financial Assessment) (Wales) Regulations 2015. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (iv) the amount of the maximum weekly contribution or reimbursement<sup>(4)</sup> that may be imposed or the amount of the maximum weekly contribution or reimbursement that the local authority applies, where that amount is lower;
- (e) details of its financial assessment process;
- (f) details of the information and any documents that A is required to provide to the local authority for the purposes of the financial assessment, and the time limit, and format for providing them;
- (g) information about the consequences of failing to provide the information and documents within the time limit and in an appropriate format;
- (h) information about the consequences of not providing the information or documents required for the purposes of the assessment or of refusing to allow the local authority to carry out a financial assessment;
- (i) information about the statement of determination of A's ability to pay a charge for, or to pay towards the cost of securing, A's care and support that the local authority will provide following the completion of the financial assessment process<sup>(5)</sup>;
- (j) details of the capital limit specified in regulation 11 or regulation 26 of the Charging Regulations and information about the consequences of<sup>(6)</sup> A being assessed as having capital in excess of that limit;
- (k) details of any home visiting facility that the local authority provides within its area;
- (l) the names of an individual or individuals within the authority who may be contacted if A requires additional information or assistance in respect of the financial assessment process; and
- (m) information about A's right to appoint a third party to assist, or to act on A's behalf, in respect of all or part of the financial assessment process and the contact details of any organisation in its area which provides this type of support or assistance.

#### Commencement Information

**II** Reg. 3 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Time limits

**4.—(1)** Subject to paragraph (2), a local authority must allow A 15 working days, or such longer time limit as it thinks reasonable, to provide the information and documents described in regulation 3(f).

(2) If A makes a reasonable request for an extension of the time limit specified in paragraph (1), giving reasons why the extension is required, a local authority must agree to the request and advise A of the period of the extension.

(3) If a local authority refuses a request for an extension of the time limit, it must inform A of its refusal and it must give reasons for its refusal.

- (4) "The maximum weekly contribution or reimbursement" and the basis upon which a local authority may calculate it are specified in regulation 22 of the Charging Regulations and applies in relation to the making of direct payments to secure the provision of care and support to meet an assessed need otherwise than by the provision of accommodation in a care home.
- (5) A local authority is required to provide a statement of determination in regulation 14 (statement of determination) or regulation 29 (statement of determination – direct payments) of the Charging Regulations.
- (6) Regulation 2 of the Charging Regulations defines the "capital limit". The capital limit is the maximum amount of capital which a person may have, above which that person will be required to pay the standard charge or standard amount in full. The amount of the capital limit is specified in the Charging Regulations, in regulation 11 (which relates to charges) and regulation 26 (which relates to direct payments).

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#### Commencement Information

**I2** Reg. 4 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Format

**5.—(1)** The information provided by a local authority in accordance with regulation 3 may be in electronic or paper format, and must be in a format that is appropriate to A's communication needs.

**(2)** The information and documents to be provided by A under regulation 3(f) must be in electronic or paper format or such other format that the local authority has agreed to accept.

#### Commencement Information

**I3** Reg. 5 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Duty to carry out a financial assessment

**6.—(1)** Where a local authority thinks—

- (a)** it would impose a charge under section 59 of the Act (power to impose a charge), were it to meet A's needs for care and support;
- (b)** that if it were to make payments towards meeting the cost of A's needs for care and support by making direct payments by virtue of section 50 or 52 of the Act<sup>(7)</sup>, it would require A to pay by way of reimbursement<sup>(8)</sup> (in the case of a gross payment) or contribution (in the case of a net payment) towards the costs of securing the provision of that care and support,

it must carry out an assessment of A's financial resources in accordance with these Regulations.

**(2)** The duty in paragraph (1) does not apply where A falls within any of the circumstances specified in regulation 7.

#### Commencement Information

**I4** Reg. 6 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Circumstances in which there is no duty to carry out a financial assessment

**7.—(1)** A local authority is under no duty to carry out an assessment of A's financial resources in circumstances, where A—

- (a)** has been assessed as needing or is receiving care and support, assistance or a service or any combination of the same for which the local authority applies a flat-rate charge;
- (b)** declines to undergo a financial assessment;
- (c)** fails to provide the local authority with the information or documents required by the authority in accordance with regulation 3(f) within a reasonable time or at all;

<sup>(7)</sup> Section 53(3) of the Act (direct payments: further provision) provides that regulations made in accordance with sections 50, 51, or 52 of the Act may make provision in relation to direct payments which corresponds to the provision which is made, or may be made, under sections 59 to 67 or section 73 of the Act.

<sup>(8)</sup> "Reimbursement", "gross payment", "contribution" and "net payment" are defined in section 53(2) of the Act.

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- (d) is suffering from any form of Creutzfeldt-Jakob disease, where that disease has been diagnosed by a registered medical practitioner;
- (e) has been offered or is receiving care and support, advice or a service, or has been offered or provided with direct payments to secure the provision of care and support as part of a package of after-care services in accordance with section 117 of the Mental Health Act 1983 (after-care)(9);
- (f) has been offered or is receiving reablement for the first 6 weeks of the specified period or, if the specified period is less than 6 weeks, for that period;
- (g) has been assessed as needing, or is receiving, only advocacy services(10).

(2) Where paragraph (1)(c) applies, a local authority may, if it considers that it has sufficient information, make an assessment of A's financial resources on the basis of the partial information or partial document (or both) that is in its possession.

#### Commencement Information

**I5** Reg. 7 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Power to carry out a financial assessment

**8.** A local authority may carry out a new assessment of A's financial resources in accordance with these Regulations if any of the circumstances specified in regulation 15 (revised determination) or regulation 30 (revised determination) of the Charging Regulations apply in A's case.

#### Commencement Information

**I6** Reg. 8 in force at 6.4.2016, see [reg. 1\(2\)](#)

#### Financial assessment process

**9.—(1)** Where a local authority carries out a financial assessment in accordance with regulation 6 (duty to carry out a financial assessment) or regulation 8 (power to carry out a financial assessment), it must ensure that the process of assessment that it employs gives effect to the requirements of this regulation.

(2) Where a local authority is meeting or proposing to meet A's needs for care and support, or where it is making, or is proposing to make, direct payments towards the cost of securing the provision of care and support to meet A's needs otherwise than by the provision of accommodation in a care home, it must—

- (a) calculate A's capital in accordance with the provisions of Part 4;
- (b) disregard the value of A's only or main home from that calculation.

(3) Where a local authority is meeting or proposing to meet A's needs for care and support, or where it is making, or is proposing to make, direct payments towards the cost of securing care and support to meet A's needs by the provision of accommodation in a care home, it must calculate A's capital in accordance with the provisions of Part 4.

(9) 1983 c. 20.

(10) "Advocacy services" is defined in section 181(2) of the Act as "...services which provide assistance (by way of representation or otherwise) to persons for purposes relating to their care and support".

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(4) The provision made in paragraphs (2) and (3) does not affect the discretion of a local authority to apply criteria that are more generous to A than the provision made by these Regulations.

**Commencement Information**

**I7** Reg. 9 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Duty of local authority to carry out a financial assessment of a short-term resident as if the resident is receiving care and support otherwise than the provision of accommodation in a care home**

**10.** Where A is a short-term resident, a local authority must carry out an assessment of A's financial resources as if A is receiving care and support, or is receiving direct payments to secure the provision of care and support, other than by the provision of accommodation in a care home.

**Commencement Information**

**I8** Reg. 10 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Saving**

**11.—(1)** Where, immediately before the coming into force of these Regulations an assessment of A's financial resources has effect, such assessment will continue to have effect notwithstanding that it was not made in accordance with the Act and these Regulations.

**(2)** An assessment referred to in paragraph (1) will continue to have effect until replaced by an assessment of A's financial resources carried out in accordance with the Act and these Regulations.

**Commencement Information**

**I9** Reg. 11 in force at 6.4.2016, see [reg. 1\(2\)](#)

**Rounding of fractions**

**12.** Where any assessment of A's financial resources results in a fraction of a penny, that fraction is, if it would be to A's advantage, to be treated as a penny, otherwise it is to be disregarded.

**Commencement Information**

**I10** Reg. 12 in force at 6.4.2016, see [reg. 1\(2\)](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 para. 16A inserted by [S.I. 2017/214 reg. 4\(b\)](#)
- Sch. 1 para. 44A44B inserted by [S.I. 2022/99 reg. 3\(a\)\(ii\)](#)
- Sch. 2 para. 35 inserted by [S.I. 2019/234 reg. 3](#)
- Sch. 2 para. 36-39 inserted by [S.I. 2022/99 reg. 3\(b\)\(ii\)](#)
- Sch. 2 para. 4041 inserted by [S.I. 2023/67 reg. 3\(a\)\(ii\)](#)
- Sch. 2 para. 40 words substituted by [S.I. 2023/424 Sch. para. 61](#)