
EXPLANATORY NOTE

(This note is not part of the Order)

This Order, made by the Welsh Ministers, commences sections 1 to 16 (inclusive) of the Social Care Charges (Wales) Measure 2010 (“the Measure”) with effect from 18 March 2011 (“the appointed day”).

Sections 17, 18 and 19 came into force, pursuant to section 18(2) of the Measure, with effect from 17 May 2010 (two months after the Measure was approved by her Majesty in Council).

On the appointed day, all sections of the Measure will be in force.

The effect of the provisions of the Measure which are brought into force on 18 March 2011 is as follows:

- section 1 provides that a local authority in Wales may impose a charge of such amount as it considers reasonable for providing a chargeable service. This power is subject to a number of legislative provisions, which are set out in section 1(3). It also provides that a local authority has the power to recover a charge imposed under this section and that such recovery may be undertaken summarily as a civil debt;
- section 2 requires a local authority to act in accordance with regulations made by the Welsh Ministers when considering what is a reasonable charge for a chargeable service and contains a power for the Welsh Ministers to make regulations controlling or limiting what will be a reasonable charge;
- section 3 enables the Welsh Ministers to make regulations which exclude certain persons or chargeable services from the charging regime;
- section 4 places a duty on a local authority to invite a service user, or prospective service user, to request a means assessment when it offers a chargeable service to that person and gives the Welsh Ministers the power to set out in regulations the form and content of such invitations and the manner in which they are to be made. It also provides that a local authority may not impose or alter a charge in accordance with section 1(1) of the Measure unless an invitation to request a means assessment has been given, such assessment has been undertaken or refused, and a determination of a person’s ability to pay a charge has been undertaken;
- section 5 imposes a duty on a local authority to carry out an assessment of the means of a service user or prospective service user when the conditions set out in section 6 are met and gives the Welsh Ministers the power to make regulations as to how means assessments must be carried out. Section 5 also sets out the circumstances in which a local authority is not under a duty to carry out a means assessment and gives the Welsh Ministers a power to make provision in regulations to specify additional circumstances;
- section 6 sets out the conditions which give rise to a local authority’s duty to carry out a means assessment and gives the Welsh Ministers the power to make regulations to provide who may make a request for a means assessment or provide financial information on behalf of a service user or a prospective service user;
- section 7 requires a local authority to determine whether, in the light of a means assessment, it is reasonably practicable for a service user to pay the standard charge; if it is not, then the local authority must determine what (if anything) it is reasonably practicable for that person to pay and requires the local authority to discharge its duties under subsection (1) of section 7 in accordance with regulations made by the Welsh Ministers;

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- section 8 requires a local authority to give effect to any determination made as to the ability of a service user or prospective service user to pay for a chargeable service and makes provision for the date from which such a determination (or replacement determination will have effect);
- section 9 allows a local authority to replace a determination with a new determination where one or more of the conditions that are specified in subsection (4) apply and to the extent that the authority considers appropriate;
- section 10 requires a local authority to provide information to those who receive, or may receive, a chargeable service and to those whom it decides to charge; it makes provision about the format in which such information may be provided and specifies that the information is to be provided free of charge;
- section 11 makes provision for the Welsh Ministers to make regulations concerning the arrangements that a local authority must make for the review of charging decisions;
- section 12 applies where a local authority makes direct payments to an individual under section 57 of the Health and Social Care Act 2001 and gives the Welsh Ministers a power to make regulations about direct payments which corresponds to the provision which is made, or may be made, under sections 1 to 11 of the Measure;
- section 13(2) contains a list of services and section 13(1) provides that a “chargeable service” for the purposes of the Measure is a service which falls within this list. Section 13(3) contains an order-making power for the Welsh Ministers to add, amend or remove a description of service from section 13(2);
- sections 14 to 16 contain consequential amendments.