

2015 No. (W.)

SOCIAL CARE, WALES

**The Care and Support (Charging)
(Wales) Regulations 2015**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Local authorities have a discretion to charge for care and support provided to meet a person's needs. These regulations set out the requirements which local authorities must follow when making a determination of the amount of the charges which apply in relation to care and support which they are providing or arranging or propose to provide or arrange in the course of carrying out their functions under Part 4 of the Social Services and Well-being (Wales) Act 2014 ("the Act"). This is dealt with in Part 2 of the regulations.

Part 3 gives local authorities a discretion to charge for any services which they might provide in carrying out their duty to provide preventative services under section 15 of the Act or their duty to provide assistance under section 17 of the Act.

Part 4 contains parallel provision setting out the requirements which apply when a local authority makes direct payments to meet a person's needs for care and support. In those circumstances a local authority may make gross payments and require the person to make a reimbursement or make net payments on the basis that the person will be required to make a contribution towards the cost of the care and support required to meet the person's assessed needs.

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**The Care and Support (Charging)
(Wales) Regulations 2015**

Made ***

Laid before the National Assembly for Wales

Coming into force ***

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The Welsh Ministers, in exercise of the powers conferred by sections 50, 52, 53(3), 61, 62, 66, 67, 69 and 196(2)(1) of the Social Services and Well-being (Wales) Act(2), make the following Regulations.

(1) Note, in relation to each of the sections providing a power to make regulations, that s.197 defines “regulations” as meaning regulations made by the Welsh Ministers.

(2) 2014 nawm 4.

PART 1

GENERAL

Title, application commencement and interpretation

1.—(1) The title of these Regulations is The Care and Support (Charging) (Wales) Regulations 2015.

(2) These Regulations apply in relation to Wales.

(3) These Regulations come into force on 6th April 2016.

(4) In these Regulations—

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

“A” is used to refer to a person for whom care and support is being or may be provided or arranged by a local authority under Part 4 of the Act and who is liable to be charged, as provided for in regulation 2(1) of these Regulations **(1)**;

“B” is used to refer to a person in relation to whose needs a local authority is providing direct payments or may be required to make direct payments pursuant to regulations made under sections 50 or 52 of the Act and who is liable to make a contribution or reimbursement;

“assessed income” means that part of A’s income calculated in accordance with the Financial Assessment Regulations **(2)** which a local authority may take into account in making a determination under these Regulations;

“assessed needs” means the needs of a person identified in an assessment under section 19 (*duty to assess the needs of an adult for care and support*), or 24 (*duty to assess the needs of a carer for support*) of the Act;

“basic entitlement” (“*hawlogaeth sylfaenol*”) means, in relation to—

(a) income support—

the personal allowance**(3)** and any premiums**(4)** to which A is entitled, but need not include the severe disability

(1) Section 66(2) of the Act refers to the a person whose financial resources have been assessed under section 63 as “the assessed person”.

(2) 2015/

(3) The personal allowance is as set out in paragraphs 1,1A and 2 of Schedule 2 to the Income Support (General) Regulations 198 (S.I. 1987/1967)

(4) The premiums are those set out in parts II and III of Schedule 2 to the Income Support (General) Regulations 1987.

premium (“SDP”)(1) where is it paid, and where A is a carer, includes any carer premium that A receives,

(b) employment and support allowance—
the personal allowance and any premiums and components to which A is entitled, but need not include the SDP where is it paid, and where A is a carer includes any carer premium that A receives,

(c) guarantee credit –
the personal allowance and any additional amount to which A is entitled, but need not include the additional amount added for severe disability where it is paid, and where A is a carer, includes any additional amount applicable for carers that A receives;

“capital limit” means the maximum amount of capital, assessed in accordance with the Financial Assessment Regulations, which a chargeable person may have, above which that person will be required, in accordance with regulation 11 to meet the standard charge in full;

“care home” means a care home within the meaning of section 3(1) of the Care Standards Act 2000(2);

“contribution” in relation to a person whose needs are met by the local authority making direct payments has the meaning ascribed in the definition of “net payments” in section 53(2);

“day service” means a service provided by a local authority which meets part of an adult’s assessed needs, which takes place away from that adult’s home and which is intended to assist the adult in meeting others, or taking up new, or practising existing interests, including work opportunities;

“employment and support allowance” (“*lwfans cyflogaeth a chymorth*”) means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007(3);

“direct payment” has the meaning given to it in sections 50(7) and 52(7) of the Act;

(1) Severe disability premium is provided for by paragraph 13 of Schedule 2 to the Income Support (General) Regulations 1987.

(2) 2000 c.14

(3) 2007 c.5

“Direct Payments Regulations” means the Care and Support (Direct Payments) (Wales) Regulations 2015(1)

“financial limit” means the limit in relation to A’s capital set by the capital limit;

“Financial Assessment Regulations” means the Care and Support (Financial Assessment) (Wales) Regulations 2015(2);

“flat-rate charge” (“*flat-rate charge*”) means a fixed rate charge which is imposed by a local authority regardless of the means of the person who is liable to be charged for—

- (a) care and support arranged or provided by a local authority under Part 4 of the Act (meeting needs); or
- (b) services provided under section 15 (preventative services) or for assistance provided under section 17 (information advice and assistance) of the Act;

“guarantee credit” (“*credyd gwarant*”) is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002(3);

“income support” (“*cymorth incwm*”) means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992(4);

“net weekly income” means the weekly income which A has, or would have left, after the deduction from A’s assessed income of the standard charge (or any other charge) imposed under Part 5 of the Act and these Regulations;

“non-residential care and support” means any care and support provided to meet a person’s need for care and support other than provision of accommodation in a care home;

“reimbursement” in relation to a person whose needs are met by the local authority making direct payments has the meaning ascribed in the definition of “gross payments” in section 53(2);

“relevant benefit” (“*budd-dal perthnasol*”) means—

- (c) income support, or
- (d) employment and support allowance, or
- (e) guarantee credit;

“short-term resident” means (“*short-term resident*”) a person who is provided or is to be provided with accommodation in

(1) S.I. 2015/
(2) S.I. 2015/
(3) 2002 c.16
(4) 1992 c.4

a care home under the Act for a period not exceeding 8 weeks;

“standard charge” has the meaning given in section 63(3) of the Act.

(5) References in these regulations to provision or arrangement of care and support are, in the case of carers, to be read as meaning provision or arrangement of support.

PART 2

CHARGING UNDER PART 5

Persons in relation to whom regulations 2 – 15 apply

2.—(1) When a local authority exercises its discretion to require a person to pay a charge it must do so in accordance with the requirements of these regulations

(2) Regulations 2 -15 apply in relation to persons who may be charged by virtue of section 60(2), 60(4)(a) and 60(5)(a).

Persons who may not be charged

3. A local authority may not impose a charge for care and support provided or arranged to be provided or arranged—

- (a) to meet the needs of a child;
- (b) for a person who is suffering from any form of Creutzfeldt-Jakob disease where that disease has been clinically diagnosed by a registered medical practitioner;
- (c) for a person who has been offered or is receiving a service provided as part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (after care).

Services for which no charge may be made

4. A local authority may not impose a charge for —

- (a) care and support which consists of the provision of transport to attend a day service where the transport is provided by a local authority and where attendance at the day service and the provision of transport to enable attendance are required to meet the assessed needs of the person;
- (b) providing a statement setting out its determination in accordance with regulation 14;

- (c) care and support provided to enable A to return to the A's own home following discharge from hospital in the first 6 weeks following discharge.
- (d) for advocacy services provided in fulfilment of its functions under Part 4 of the Act.

Determinations about charging

5. Where a local authority thinks it would impose a charge under section 59 of the Act and has carried out a financial assessment of A in accordance with the requirements of the Financial Assessment Regulations, it must make a determination about what amount, if any, it is reasonably practicable for A to pay in accordance with the requirements of these Regulations.

Circumstances where a local authority need not make a determination

6. A local authority need not make a determination under these Regulations where the only services provided are either those to which a flat-rate charge applies or to which no charge applies.

Maximum weekly charge for non-residential care and support

7.—(1) Except where the care and support which is provided, or is to be provided consists of provision of care and accommodation in a care home, a local authority may not determine that it is reasonably practicable for A to pay a total charge greater than £60 per week for the care and support.

(2) But a local authority must, in calculating the total charge for the care and support which the person receives, disregard the charges in relation to any services for which it imposes a flat-rate charge.

Procedure for determining a charge in relation to person for whom the local authority provides or arranges care and support otherwise than through provision of accommodation in a care home

8.—(1) This regulation applies in relation to the charges for provision of care and support which does not consist of provision of accommodation in a care home.

(2) When calculating the amount that A may be required to pay a local authority must adopt the procedure set out in paragraph (3).

(3) A local authority must—

- (a) calculate the amount of the standard charge for the care and support provided or to be provided to the person;
- (b) disregard from that total the amount of any charges which are flat-rate charges;
- (c) apply the maximum weekly charge for non-residential care and support where the resulting amount would otherwise exceed it;
- (d) subject the amount calculated in accordance with this regulation to a determination of what it would be reasonably practicable for the person to pay in accordance with regulation 11 (capital limit) and 12 (minimum income amount for a person not being provided with residential accommodation).

Procedure for determining a charge in relation to person for whom the local authority provides or arranges care and support through provision of accommodation in a care home

9.—(1) This regulation applies in relation to the charges for care and support which consists of provision of accommodation in a care home.

(2) When calculating the amount that A pays or may be required to pay for the care and support the local authority must adopt the following procedure—

- (a) calculate the amount of the standard charge for the care and support received by, or offered to A;
- (b) subject the amount calculated in accordance with this regulation to a determination of what it would be reasonably practicable for A to pay in accordance with regulation 11 (capital limit) and regulation 13 (minimum income amount where a person is provided with accommodation in a care home).

(3) Where a local authority thinks it would impose a charge in relation to A where A is a short-term resident it may treat A as if A was receiving care and support otherwise than through provision of accommodation in a care home and follow the procedure in regulation 8 and make a determination in accordance with regulation 11 and 12.

Procedure for determining a charge where financial assessment not carried out

10. Where regulation 7(1)(b) or (c) of the Financial Assessment Regulations applies (circumstances in which there is no duty to carry out a financial assessment) a local authority must determine that it is reasonably practicable for A to pay the standard

charge, subject to the maximum weekly charge in relation to non-residential care and support.

Capital limit

11.—(1) Where A has capital above the capital limit a local authority must determine that it is reasonably practicable for A to pay the standard charge subject to the maximum weekly charge in relation to non-residential care and support.

(2) The capital limit is £24,000 and this is the financial limit for the purposes of section 66(5) of the Act.

(3) Where A has capital at or below the capital limit then a local authority must determine that it is not reasonably practicable for A to pay the standard charge or any lesser amount from capital.

Minimum income amount for a person not being provided with residential accommodation

12.—(1) This regulation applies where a local authority is meeting, or is proposing to meet A's needs for care and support other than by provision of accommodation in a care home.

(2) A local authority must determine that it would not be reasonably practicable for A to pay any sum whose payment would reduce A's net weekly income below the minimum income amount set out in this regulation.

(3) Where A is in receipt of a relevant benefit, the minimum income amount is—

- (a) the basic weekly entitlement to the relevant benefit that is being received by A (“the basic entitlement”);
- (b) an amount of not less than 35% of that entitlement (“the buffer”)(“y *clustog*”);
- (c) a further amount to compensate A for disability-related expenditure of not less than 10% of the basic entitlement; and
- (d) a weekly amount equivalent to any flat-rate charges being paid or to be paid by A whether for services provided under Part 4 of the Act, for services provided under section 15 or assistance provided under section 17 of the Act.

(4) Where A is not in receipt of a relevant benefit, the minimum income amount is—

- (a) the weekly amount which the local authority reasonably assesses would be A's basic entitlement to benefits, having regard to the A's age, circumstances and level of disability (“the estimated basic entitlement”);

- (b) an amount of not less than 35% of the estimated basic entitlement (“the buffer”) (“*y clustog*”); and
- (c) an amount to compensate A for disability-related expenditure of not less than 10% of the estimated basic entitlement;
- (d) a weekly amount equivalent to any flat-rate charges being paid or to be paid by A whether for services provided under Part 4 of the Act, for services provided under section 15 or assistance provided under section 17 of the Act.

(5) Nothing in this regulation affects the discretion of a local authority to increase the percentage of the buffer or the amount to compensate for any disability-related expenditure when calculating the minimum income amount.

Minimum income amount where a person is provided with accommodation in a care home

13. Where a local authority is meeting or is proposing to meet A’s needs for care and support by provision of accommodation in a care home, a local authority must determine that it would not be reasonably practicable for A to pay any sum whose payment would reduce A’s net weekly income below £25.50.

Statement of determination

14.—(1) Where a local authority makes a determination in accordance with these regulations about the amount which it is reasonably practicable for A to pay for care and support which—

- (a) is being offered to A for the first time; or
- (b) is being provided to A but for which a charge is being imposed for the first time,

it must provide A with a statement setting out the payment which A must make.

(2) A local authority may not impose the charge until the date when the statement is sent to A.

Revised determination

15.—(1) A local authority may carry out a new determination where—

- (a) it considers that there has been a change in the capital or income of A;

- (b) it considers that there has been a change in the standard charge for the service (including a change resulting from a change in the level at which or degree to which care and support is provided); or
- (c) it has changed its policy about the exercise of the discretion to charge under section 59;
- (d) it considers that a mistake was made in the assessment of A's capital or income or in making the determination;
- (e) A requests a new determination.

(2) Where a local authority makes a further determination of A's ability to pay a charge in accordance with this regulation, it may not require the revised payment to be made until the date that a further statement is provided setting out the further charge and the earlier statement will continue to have effect until that date.

PART 3

CHARGING UNDER SECTIONS 15 AND 17

Charging for preventative services and for assistance

16.—(1) A local authority may impose charges for services provided under section 15 of the Act (preventative services) or for assistance provided under section 17 of the Act (information, advice and assistance) in accordance with this regulation.

(2) If a local authority exercises its discretion under paragraph (1) in relation to a particular service, it may only do so to impose a flat-rate charge in relation to that service.

(3) A flat-rate charge imposed under this regulation may not exceed the cost incurred in providing the services or the assistance to which the charge relates.

(4) A local authority may not exercise its discretion under paragraph (1) to impose a charge —

- (a) on a child;
- (b) in relation to any provision of a service or assistance in relation to which a charge is being imposed under Part 5 of the Act.

PART 4
CONTRIBUTIONS AND
REIMBURSEMENTS FOR DIRECT
PAYMENTS

Persons in relation to whom regulations 17 - 30 apply

17.—(1) A local authority has a discretion to require a person to whom it makes direct payments to make a contribution or reimbursement towards the cost of securing the provision of the care and support in respect of which the payments are made.

(2) When exercising the discretion to require a contribution or reimbursement, a local authority must act in accordance with regulations 17 -30.

(3) Regulations 17 - 30 apply in relation to a person whose needs for care and support a local authority is meeting in accordance with a duty or a power to make direct payments conferred by the Direct Payments Regulations by virtue of sections 50 and 52 of the Act.

Persons who may not be required to make a contribution or reimbursement

18.—(1) A local authority may not require a contribution or impose a condition for reimbursement in relation to B where B—

- (a) is suffering from any form of Creutzfeldt-Jakob disease where that disease has been clinically diagnosed by a registered medical practitioner;
- (b) has been offered or is receiving a service provided as part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (after care).

(2) A local authority may not require a contribution or impose a condition for reimbursement in relation to a person whose needs for care and support a local authority is meeting in accordance with a duty or a power conferred by the Direct Payments Regulations by virtue of section 51 of the Act.

Services for which no charge may be made

19. A local authority may not require a contribution or reimbursement in relation to direct payments for —

- (a) care and support which consists of the provision of transport to attend a day service where the transport is provided by a local authority and where attendance at the day service and the provision of transport to enable attendance are required to meet the assessed needs of the person;

- (b) providing a statement setting out its determination in accordance with regulation 29;
- (c) care and support to enable B to return to the B's own home following discharge from hospital in the first 6 weeks following discharge;
- (d) advocacy services required in fulfilment of its functions under Part 4 of the Act.

Determinations about contributions or reimbursements

20. Where a local authority thinks it would require a contribution or a reimbursement in relation to direct payments which it is making or proposing to make, and has carried out a financial assessment of B in accordance with the requirements of the Financial Assessment Regulations, it must make a determination about what amount, if any, it is reasonably practicable for B to contribute towards the cost securing the care and support in respect of which the payments are made, whether by way of contribution or reimbursement, in accordance with the requirements of these regulations.

Circumstances where a local authority need not make a determination

21. A local authority need not make a determination under these Regulations where the only care and support in respect of which direct payments are made is either that to which a flat-rate charge applies or to which no charge applies.

Maximum weekly contribution or reimbursement for non-residential care and support

22.—(1) Except where the care and support in respect of which direct payments are made consists of provision of care and accommodation in a care home, and subject to paragraphs (2) and (3) of this regulation, a local authority may not determine that it is reasonably practicable for B to make a contribution or a reimbursement greater than £60 per week towards the cost of the care and support.

(2) Where a local authority makes direct payments in relation to needs for care and support which are to be met by—

- (a) care and support to which a flat-rate charge applies,
- (b) the purchase of equipment which would otherwise be provided by a local authority,

it must disregard the cost of those things in calculating the total cost of the care and support which is subject

to the maximum weekly contribution or reimbursement.

Procedure for determining the amount of a contribution or reimbursement in relation to direct payment for care and support other than provision of accommodation in a care home

23.—(1) This regulation applies in relation to the determination of the level of contribution or reimbursement that B is, or may be, required to make in respect of direct payments for care and support which does not consist of accommodation in a care home.

(2) When calculating the amount that B may be required to contribute by way of contribution or reimbursement, a local authority must adopt the procedure set out in paragraph (3).

(3) A local authority must—

- (a) calculate the reasonable cost of securing the provision of care and support for B;
- (b) disregard from that total
 - (i) an amount equivalent to the flat-rate charge in respect of those services to which a flat-rate charge applies in accordance with regulation 22(2); and
 - (ii) any sum paid for the purchase of equipment which would otherwise be provided by the local authority;
- (c) apply the maximum weekly contribution or reimbursement for direct payments for non-residential care and support where the resulting amount would otherwise exceed it;
- (d) subject the amount calculated in accordance with this regulation to a determination of what it would be reasonably practicable for the person to contribute by way of contribution or reimbursement in accordance with the regulation 26 (capital limit) and 27 (minimum income amount for a person not being provided with residential accommodation).

Procedure for determining the level of a contribution or reimbursement in relation to direct payments for accommodation in a care home

24.—(1) This regulation applies in relation to the determination of the level of contribution or reimbursement in relation to direct payments for accommodation in a care home.

(2) When calculating the amount that B may be required contribute by way of contribution or

reimbursement the local authority must adopt the following procedure—

- (a) calculate the amount of the reasonable cost of securing the care and support to meet B's needs;
- (b) subject the amount in (a) to a determination of what it would be reasonably practicable for B to pay in accordance with regulation 26 (capital limit) and regulation 28 (minimum income amount where a person is provided with accommodation in a care home).

(3) Where a local authority thinks it would impose a charge in relation to B where B is a short-term resident it may treat B as if B was receiving care and support otherwise than through provision of accommodation in a care home and follow the procedure in regulation 23 and make a determination in accordance with regulations 26 and 27.

Procedure for determining the level of contribution or reimbursement where financial assessment not carried out

25.—(1) Where regulation 7(1)(b) or (c) of the Financial Assessment Regulations applies (circumstances in which there is no duty to carry out a financial assessment) a local authority must determine that it is reasonably practicable for B to contribute by way of contribution or reimbursement an amount equal to the reasonable cost of securing the care and support in respect of which the payments are made.

(2) Where direct payments are made or are to be made to meet B's needs for non-residential care and support, the requirement in paragraph (1) is subject to the maximum weekly contribution or reimbursement in relation to non-residential services imposed by regulation 22.

Capital limit – direct payments

26.—(1) Where B has capital above the capital limit in regulation 11(2) a local authority must determine that it is reasonably practicable for B to make a contribution or reimbursement equal to the reasonable cost of securing the care and support in respect of which payments are made, subject to the maximum weekly contribution or reimbursement in relation to non-residential services.

(2) Where B has capital at or below the capital limit then a local authority must determine that it is not reasonably practicable for B to pay the standard charge or any lesser amount from capital.

Minimum income amount for a person not being provided with residential accommodation

27.—(1) This regulation applies where a local authority is making, or is proposing to make direct payments to B to meet B’s needs for care and support other than provision of accommodation in a care home.

(2) A local authority must determine that it would not be reasonably practicable for B to contribute as a contribution or a reimbursement any sum whose payment would reduce A’s net weekly income below the minimum income amount set out in this regulation.

(3) Where B is in receipt of a relevant benefit, the minimum income amount is—

- (a) the basic weekly entitlement to the relevant benefit that is being received by B (“the basic entitlement”);
- (b) an amount of not less than 35% of that entitlement (“the buffer”) (“*y clustog*”);
- (c) a further amount to compensate B for disability-related expenditure of not less than 10% of the basic entitlement; and
- (d) a weekly amount equivalent to any flat-rate charges being paid or to be paid by B whether for services provided under Part 4 of the Act, for services provided under section 15 or assistance provided under section 17 of the Act.

(4) Where B is not in receipt of a relevant benefit, the minimum income amount is—

- (a) the weekly amount which the local authority reasonably assesses would be B’s basic entitlement to benefits, having regard to the B’s age, circumstances and level of disability (“the estimated basic entitlement”);
- (b) an amount of not less than 35% of the estimated basic entitlement (“the buffer”) (“*y clustog*”);
- (c) an amount to compensate B for disability-related expenditure of not less than 10% of the estimated basic entitlement; and
- (d) a weekly amount equivalent to any flat-rate charges being paid or to be paid by B whether for services provided under Part 4 of the Act, for services provided under section 15 or assistance provided under section 17 of the Act.

(5) Nothing in this regulation affects the discretion of a local authority to increase the percentage of the buffer or the amount to compensate for any disability-related expenditure when calculating the minimum income amount.

Minimum income amount where a person is provided with accommodation in a care home

28. Where a local authority is making or is proposing to make direct payments to B to meet B's needs for care and support in the form of accommodation in a care home, a local authority must determine that it would not be reasonably practicable for B to contribute, as a contribution or reimbursement, any sum whose payment would reduce B's net weekly income below £25.50.

Statement of determination

29.—(1) Where a local authority makes a determination in accordance with these Regulations about the amount which it is reasonably practicable for B contribute as a contribution or reimbursement towards the cost of the care and support in respect of which direct payments are—

- (a) being offered to B for the first time; or
- (b) already being made to B but where a contribution or reimbursement is being required for the first time,

it must provide B with a statement setting out the payment which B must make.

(2) A local authority may not require a contribution or reimbursement until the date when the statement is sent to B.

Revised determination

30.—(1) A local authority may carry out a new determination where—

- (a) it considers that there has been a change in the capital or income of B;
- (b) it considers that there has been a change in the standard charge for the service (including a change resulting from a change in the level at which or degree to which care and support is provided);
- (c) it has changed its policy about the exercise of the discretion to charge under section 59;
- (d) it considers that a mistake was made in the assessment of B's capital or income or in making the determination; or
- (e) A requests a new determination.

(2) Where a local authority makes a further determination of B's ability to pay a charge in accordance with this regulation, it may not require the revised payment to be made until the date that a further statement is provided setting out the further charge and the earlier statement will continue to have effect until that date.

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