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WELSH STATUTORY INSTRUMENTS

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**2011 No. 964 (W.138)**

**SOCIAL CARE, WALES**

**The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011**

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| <i>Made</i>  | - - - - | <i>24 March 2011</i> |
| <i>Laid before the National Assembly for Wales</i> | - -     | <i>29 March 2011</i> |
| <i>Coming into force</i>                           | - -     | <i>11 April 2011</i> |

The Welsh Ministers, in exercise of the powers conferred on them by sections 11, 12 and 17(2) of the Social Care Charges (Wales) Measure 2010<sup>(1)</sup>, make the following Regulations:

**Title, commencement and application**

1.—(1) The title of these Regulations is the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

**Interpretation**

2.—(1) In these Regulations—

“the Measure” (“*y Mesur*”) means the Social Care Charges (Wales) Measure 2010;

“the Regulations” (“*y Rheoliadau*”) means the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011;

“charge” (“*ffi*”) means a charge imposed under section 1 of the Measure;

“gross payments” (“*taliadau gros*”) means payments which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned;

“home visit” (“*ymweliad â'r cartref*”) means a visit which is undertaken by an appropriate officer of a local authority to a requester’s current place of residence or such other venue as the requester reasonably requests;

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(1) 2010 nawm 2 (“the Measure”). See section 17 of the Measure for a definition of “regulations”.

“in writing” (“*yn ysgrifenedig*”) means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

“requester” (“*ceisydd*”) means any person—

- (a) to whom a statement must be provided under section 10(4) of the Measure and who requests a local authority to review its decision to impose a charge on them; or
- (b) to whom a statement must be provided under regulation 19 of the Regulations and who requests a local authority to review its decision to determine a reimbursement or contribution;

“review period” (“*cyfnod adolygu*”) means a period commencing on the date the local authority receives a request for a review and ending on the earlier of the date the local authority sends its decision on the review to the requester or the date the local authority receives a withdrawal of the request;

“service” (“*gwasanaeth*”) means a chargeable service as defined by section 13 of the Measure;

“statement” (“*datganiad*”) means a statement that is in a format that is appropriate to the communication needs of the requester and, if a requester has appointed a representative, their representative;

“working day” (“*diwrnod gwaith*”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(2).

### **Right to request a review**

**3.—**(1) A requester may request a review of a decision to impose upon them or determine, in relation to a service received by the requester, a—

- (a) charge;
- (b) reimbursement; or
- (c) contribution(3).

(2) A request may relate to (but is not limited to) the following circumstances—

- (a) a local authority having not complied with any of the duties imposed upon it by the Measure or by regulations made under it;
- (b) a local authority having not correctly applied its own charging policy in imposing a charge, or determining a reimbursement or contribution;
- (c) an error having been made in the calculation of the charge, reimbursement or contribution;
- (d) a charge having been imposed for a service that has not at any time been provided to the requester;
- (e) the requester’s financial circumstances having changed since the charge, reimbursement or contribution was calculated;
- (f) a requester considering that they do not have the financial means to pay the charge, reimbursement or contribution as to do so would cause them financial hardship.

(3) A request for a review must state which one or more of the circumstances listed in paragraph (2) or any other circumstances are the reason for the review being requested.

(4) A request may be made at any time after a local authority has issued a statement under—

- (a) section 10(4) of the Measure; or

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(2) 1971 c. 80.

(3) “Reimbursement” and “contribution” are defined in section 12(5) of the Measure.

(b) regulation 19 of the Regulations.

(5) A request may be made to a local authority either orally or in writing.

(6) A local authority must appoint a person (an “appointed person”) who is a member of the staff of the local authority to deal with the review and reference to “appointed person” in these Regulations is to be construed accordingly.

(7) Regulations 4 to 11 will not apply where a local authority reasonably believes that there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person and the requester has not stated any other additional circumstances.

(8) Where paragraph (7) applies, the local authority must send a statement to the requester stating that the request for a review will not be considered by the authority because the authority reasonably believes that—

- (a) there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person; and
- (b) the requester has not stated any other additional circumstances.

### **Representatives**

4.—(1) Subject to paragraph (2), a review may be requested by a person (a “representative”) acting on behalf of a requester and reference to a “representative” in these Regulations is to be construed accordingly.

(2) If the requester wishes to appoint a representative to request a review on the requester’s behalf, the requester must provide the local authority with their authorisation, either orally or in writing, of the appointment.

(3) If the local authority receives the requester’s oral authorisation, the local authority must provide the requester and their representative with a statement confirming that the requester has given their oral authorisation of the appointment.

(4) Where a representative has been appointed in accordance with this regulation, the representative may act on the requester’s behalf for the whole of the review period unless the requester’s authorisation states otherwise or the requester has withdrawn their authorisation under paragraph (5).

(5) A requester may withdraw their authorisation by giving notice, either orally or in writing, to the appointed person.

(6) Where a representative has been appointed in accordance with this regulation, any reference in regulations 5(1), 6(1)(l) and (m), 7(1), 8(1), (2) and (5) and 9(2) to a requester means that person’s representative to the extent that it is consistent with the requester’s authorisation.

### **Withdrawal of request**

5.—(1) A request may be withdrawn orally or in writing by the requester at any time during the review period.

(2) A withdrawal can only be made to the appointed person.

(3) Where a request is withdrawn, the local authority must provide the requester and any representative with a statement to confirm that the request has been withdrawn and that no further action upon it will be taken as a result.

### **Acknowledgement of the request**

6.—(1) Subject to paragraph (2), a local authority must within five working days of the receipt of any request that complies with regulation 3 send the requester and any representative a statement stating—

- (a) the date on which the request was received;
- (b) the nature of the request;
- (c) if the requester has not already appointed a representative, that the requester may appoint a representative to assist them and act on their behalf during the whole or part of the review period;
- (d) how the local authority will carry out the review;
- (e) that the requester need not pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period;
- (f) if the requester decides not to pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period, that the requester or any representative must notify the local authority, either orally or in writing, of that decision;
- (g) whether, in the event that the requester does not pay the charge, reimbursement or contribution during the review period, the local authority will seek to recover, after the review period, any amount that has accrued and not been paid during the review period;
- (h) that if the requester has requested a review of a contribution and has notified the local authority that they will not pay the contribution during the review period, the local authority will make gross payments to the requester during the review period;
- (i) what, if any, further information or documentation the local authority reasonably requires from the requester in order to carry out a review and the time limit for the provision of such information or documentation which is specified in regulation 8;
- (j) that an appropriate officer of the local authority would be available to carry out a home visit for the purposes of collecting the further information or documentation;
- (k) the procedure for requesting a home visit;
- (l) the contact details of the appointed person who will be responsible for providing a response to any enquiries the requester may have about the review;
- (m) the contact details of any organisation that might be able to assist the requester during the review period.

(2) Paragraph (1) does not apply where a local authority sends its decision on the review to the requester and any representative within five working days of the receipt of the request.

### **Home visit**

7.—(1) The requester may elect to provide any information or documentation reasonably required by the local authority during a home visit by notifying the appointed person either orally or in writing.

(2) If an election is made under paragraph (1), the local authority must carry out a home visit.

### **Time limit for the provision of further information or documentation**

8.—(1) Subject to paragraph (2), if further information or documentation is reasonably required by the local authority, the requester must provide the local authority with that information or documentation within 15 working days of the date of the request for further information or documentation being made.

(2) Within the period specified in paragraph (1), the requester may ask the local authority, either orally or in writing, for an extension of time to provide the further information or documentation.

(3) Any request for an extension should state the reason why the information or documentation required cannot be provided within the period specified by paragraph (1).

(4) A local authority must grant any reasonable request for an extension.

(5) If an extension is granted by the local authority, the local authority must confirm in a statement sent to the requester that—

- (a) the time limit for the provision of further information or documentation has been extended; and
- (b) the length of that extension.

(6) In the event that the local authority does not receive the further information or documentation or a request for an extension of time within the time specified in paragraph (1), it may treat the request as if it has been withdrawn.

(7) If paragraph (6) applies, the local authority must send a statement to the requester and any representative stating—

- (a) that the local authority are now treating the request as if it has been withdrawn;
- (b) that the charge, reimbursement or contribution is now payable;
- (c) the amount (if any) that has accrued and not been paid by the requester during the review period; and
- (d) if the local authority seeks to recover any accrued amount from the requester, the amount and the date by which the amount must be paid.

## **Decision**

**9.—(1)** As soon as possible, and in any event within 10 working days of receiving sufficient information and documentation to carry out the review, the local authority must—

- (a) make a decision on the review and the action that is necessary to implement it;
- (b) send a statement to the requester and any representative stating—
  - (i) the decision;
  - (ii) the reasons for that decision;
  - (iii) that the requester has a right to make a complaint under the Social Services Complaints Procedure (Wales) Regulations 2005<sup>(4)</sup> if they are dissatisfied with the decision;
- (c) if the requester's charge has been amended as a result of the review, provide the requester with a statement containing the information set out in section 10(4) of the Measure; and
- (d) if the requester's reimbursement or contribution has been amended as a result of the review, provide the requester with a statement containing the information set out in regulation 19(2) of the Regulations.

(2) If the local authority concludes that it is unable to meet the deadline specified in paragraph (1), it must as soon as possible and in any event within the period specified in paragraph (1) provide the requester with a statement stating—

- (a) that it will not be able to provide a decision within the deadline specified in paragraph (1);
- (b) the reasons for not being able to comply with that deadline;
- (c) the date by which it will provide a decision; and

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(4) S.I.2005/3366 (W 263).

- (d) that the requester may elect not to pay the charge, reimbursement or contribution for the remainder of the review period by notifying the local authority either orally or in writing.
- (3) Before making a decision under paragraph (1)(a), the local authority must consider—
- (a) the details of the request;
  - (b) the local authority's current charging policy;
  - (c) the Measure;
  - (d) the Regulations;
  - (e) the Social Care Charges (Means Assessments and Determination of Charges) (Wales) Regulations 2011;
  - (f) the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011;
  - (g) any guidance published by the Welsh Ministers under section 7 of the Local Authority Social Services Act 1970<sup>(5)</sup>;
  - (h) the requester's income and expenses; and
  - (i) any circumstances both current and foreseeable that may affect the requester's ability to pay the charge.
- (4) A statement will be deemed to have been provided under paragraph (1) on the date it is issued by the local authority.

#### **Payment of the charge, reimbursement or contribution during and after the review period**

**10.**—(1) If a request is made, the requester may elect to not pay their charge, reimbursement or contribution or the part which is the subject of the review, during the whole of the review period but any unpaid amount will accrue.

(2) If an election is made under paragraph (1), the requester must notify the local authority of their election, either orally or in writing, within five working days of receiving a statement under regulation 6(1).

(3) If a local authority sends a statement to the requester under regulation 9(2), the requester may elect to not pay their charge, reimbursement or contribution or the part which is the subject of the review, during the remainder of the review period and any amount that is not paid during the remainder of the review period will not accrue.

(4) If an election is made under paragraph (3), the requester must notify the local authority of the election, either orally or in writing, within five working days of receiving a statement under regulation 9(2).

(5) Where a local authority is notified that the requester will not pay their contribution during the whole or remainder of the review period, the local authority must make gross payments to the requester during—

- (a) the whole of the review period where an election under paragraph (1) is made; or
- (b) the remainder of the review period where an election under paragraph (3) is made.

(6) Subject to paragraphs (7) and (8), a local authority may recover any unpaid amount that has accrued during the review period under paragraph (1) after the review period.

(7) The accrued amount that may be recovered under paragraph (6) is the amount of the charge, reimbursement or contribution that the local authority has decided is correct under regulation 9(1)(a).

(8) A local authority may not recover any charge, reimbursement or contribution, or the part which is the subject of the review, that has not been paid between the sending of a statement under regulation 9(2) and the end of the review period.

(9) If a local authority decides that the charge, reimbursement or contribution that should be payable by the requester is less than that previously imposed on the requester, the local authority must within 10 working days of sending its decision to the requester, pay the requester the difference between the amount that should be payable and the amount, if any, that has already been paid by the requester.

(10) If a local authority decides that the amount that should be payable by the requester is more than that previously imposed on the requester, the local authority may, subject to paragraph (8), recover the difference between the amount of the charge, reimbursement or contribution that should be payable and the amount, if any, that has already been paid by the requester.

(11) The amount that a local authority must pay under paragraph (9) or may recover under paragraph (10), where the amount of the charge, reimbursement or contribution has been amended due to a change in the requester's financial circumstances, can not relate to any period of time before that change in financial circumstances.

(12) If recovering any amount from the requester under paragraph (6) or (10) the local authority must—

- (a) have regard to the requester's personal financial circumstances; and
- (b) be satisfied that the recovery of the amount will not cause the requester to suffer financial hardship<sup>(6)</sup>; or
- (c) if the local authority believes that the recovery of the amount would cause the requester to suffer financial hardship, offer the requester the option of repaying the amount in periodic instalments.

### **Transitional provision**

**11.** Where, immediately before the coming into force of these Regulations, a review of a charge, reimbursement or contribution has been requested but not yet been decided by the local authority, the local authority may continue with the review and these Regulations do not apply in relation to that review except that the local authority must send a decision to the requester within three months of the coming into force of these Regulations.

*Gwenda Thomas*  
Deputy Minister for Social Services, under  
authority of the Minister for Health and Social  
Services, one of the Welsh Ministers

24 March 2011

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<sup>(6)</sup> For an explanation of the meaning of "financial hardship", please refer to guidance published under section 7 of the Local Authority Social Services Act 1970 (c. 42).

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

Section 1 of the Social Care Charges (Wales) Measure 2010 gives local authorities in Wales a discretionary power to impose a reasonable charge upon adult recipients of non-residential social care services. Regulations 10(2) and 11(2) of the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011 give local authorities in Wales a discretionary power to determine the amount that it is reasonably practicable for a recipient of social care services to pay by means of a reimbursement or contribution towards securing the provision of services by means of a direct payment.

Where a local authority decides to impose a charge or determine a reimbursement or contribution, regulation 3 of these Regulations gives the recipient of the service in relation to which a charge has been imposed or a reimbursement or contribution has been determined ("the requester") the right to request a review of that decision.

Regulation 4 provides that a request may also be made by a representative acting on behalf of the requester, providing that the requester gives their authorisation.

Regulation 5 gives the requester the right to withdraw a request.

Regulation 6 requires the local authority to provide the requester with a written acknowledgement within five working days of receiving the request. This regulation also prescribes what the acknowledgment must contain.

In the event that the local authority requests further information or documentation from the requester, regulations 7 and 8 provide for how and when that information or documentation must be provided.

Regulation 9 requires the local authority to provide the requester with a decision, with reasons, within 10 working days of having sufficient information and documentation to carry out the review. This regulation also sets out what a local authority must have regard to before making its decision.

Regulation 10 deals with what happens to the charge, reimbursement or contribution from the date the request is received by a local authority until its withdrawal or until the local authority sends a decision to the requester ("the review period"). A requester is not obliged to pay the charge, reimbursement or contribution during the review period but the liability continues to accrue. The local authority may recover any accrued amount after the review period.

In relation to direct payments, if the requester notifies the local authority that they will not pay their contribution during the review period, the local authority must make gross payments to the requester during the review period.

In the event that the local authority decides that the charge, reimbursement or contribution was too high, it must return any over-payment to the requester within 10 working days. If a local authority decides that the charge, reimbursement or contribution was too low, it may recover any under-payment from the requester.

Local authorities must have regard to any guidance issued by the Welsh Ministers under section 7 of the Local Authority Social Services Act 1970, which provides more detail about the review process.