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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1843**

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

**PART 4**

**CONTRIBUTIONS AND REIMBURSEMENTS FOR DIRECT PAYMENTS**

**Persons in relation to whom regulations 17 to 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 to 30.

(3) Regulations 17 to 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<sup>(1)</sup>; or
- (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) reablement for the first 6 weeks of the specified period or, if the specified period is less than 6 weeks, for that period;

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(1) See footnote (1) to regulation 3.

- (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 of 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 paragraph (2) 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) When calculating the maximum reasonable amount that B may be required to pay, a local authority—

- (a) must disregard the cost of securing any care and support for which it imposes a flat-rate charge, and
- (b) may impose the charges in respect of such a service in addition to the maximum weekly contribution or reimbursement.

(3) Where B receives a direct payment to enable the purchase of equipment, which would otherwise be provided by a local authority, the local authority—

- (a) must disregard the cost of the equipment when calculating the maximum weekly contribution or reimbursement that B may be required to pay, and
- (b) may require B to pay an amount in addition to the maximum weekly contribution or reimbursement towards the cost of securing the equipment.

### **Procedure for determining the amount of a contribution or reimbursement in relation to direct payment for non-residential care and support**

**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 non-residential care and support.

(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 with needs for non-residential care and support).

#### **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 to 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 must treat B as if B was receiving non-residential care and support 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 make any contribution or reimbursement from capital.

#### **Minimum income amount for a person with needs for non-residential care and support**

**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 non-residential care and support.

(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 B'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");
- (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");
- (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 £26.50.

### **Statement of determination- direct payments**

**29.—**(1) Where a local authority makes a determination in accordance with these Regulations about the amount which it is reasonably practicable for B to 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.

(3) But once a statement has been issued a local authority may require B to make a contribution or reimbursement in relation to any payments made before the date of the statement.

### **Revised determination – direct payments**

**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 reasonable cost of securing the care and support (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 of the Act;
- (d) it considers that a mistake was made in the assessment of B's capital or income or in making the determination; or
- (e) B requests a new determination.

(2) Where a local authority makes a further determination of B's ability to pay a contribution or reimbursement 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 revised amount and the earlier statement will continue to have effect until that date.