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WELSH STATUTORY INSTRUMENTS

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**2015 No. 1843**

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

**PART 2**

**CHARGING UNDER PART 5 OF THE ACT**

**Persons in relation to whom regulations 2 to 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 to 15 apply in relation to persons who may be charged by virtue of section 60(2), 60(4)(a) and 60(5)(a) of the Act.

**Persons who may not be charged**

- 3.** A local authority may not impose a charge for care and support 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<sup>(1)</sup>;
  - (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<sup>(2)</sup> (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) reablement for the first 6 weeks of the specified period, or, where the specified period is less than 6 weeks, for that period;
  - (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

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(1) “Registered medical practitioner” is defined in Schedule 1 to the Interpretation Act 1978.

(2) 1983 c. 20.

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 for the purpose of applying the maximum weekly charge in paragraph (1), exclude any charges in relation to care and support for which it imposes a flat-rate charge so that any flat-rate charges are separate to the charges for care and support to which the maximum weekly charge applies.

#### **Procedure for determining a charge in relation to person for whom the local authority provides or arranges non-residential care and support**

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 regulations 11 (capital limit) and 12 (minimum income amount for a person being provided with non-residential care and support).

#### **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 non-residential care and support.

(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 must treat A as if A was receiving non-residential care and support and follow the procedure in regulation 8 and make a determination in accordance with regulations 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 being provided with non-residential care and support**

**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”);
- (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 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”);
- (c) an amount to compensate A 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 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 £26.50.

### **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 require payment of a charge until the date when the statement is sent to A.

(3) But once a statement has been issued a local authority may require A to pay a charge for care and support which was provided or arranged before the date of the statement<sup>(3)</sup>.

### **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);
- (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 A'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 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.

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(3) Section 66(9) of the Act provides power for regulations to provide for a determination to have effect from a date before that on which it was made.