

SOCIAL CARE CHARGES (WALES) MEASURE 2010

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 1 – General power to charge for care services

3. **Section 1(1)** and **(2)** provide that a local authority in Wales providing a chargeable service may charge for that service such amount as it considers reasonable (for a description of the chargeable services to which the Measure relates see the notes on section 13). **Section 1(3)** provides that this power shall be subject, however, to a number of legislative provisions referred to in subsection **(3)** which are:
 - the provisions of section 2 on maximum charges;
 - the provisions of section 3 about persons and services in respect of which charges must not be imposed;
 - the provisions of section 8(1) (effect of determinations as to ability to pay); and
 - any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003 (free provision of services in Wales).
4. Subsections **(4)** and **(5)** provide a power for a local authority to recover a charge for services to which this Measure applies, and in particular to recover it as a civil debt in court proceedings.

Section 2 – Maximum charges

5. Subsection **(1)** requires local authorities to act in accordance with regulations made by Welsh Ministers under subsection **(2)** when considering what is a reasonable charge for a chargeable service.
6. Subsection **(2)** gives the Welsh Ministers the power to make regulations controlling or limiting what will be a reasonable charge. Subsection **(3)** gives examples of the type of provision that may be included in regulations made under this section. This includes provision setting out the maximum that a local authority may charge for a particular chargeable service or for any combination of chargeable services and provision establishing a maximum hourly or weekly charge.

Section 3 – Persons and services in respect of which charges must not be imposed

7. This section enables the Welsh Ministers to make regulations excluding certain persons or chargeable services from the charging regime. Subsection **(2)(a)** and **(b)** gives examples of how categories of excluded persons may be defined; this includes by reference to their age or the receipt of certain payments, facilities or services. Subsection **(2)(c)** provides that categories of chargeable services may be excluded by reference to (among other things) the period of time for which they are provided.

Section 4 – Invitation to request means assessment

8. Section 4(1) places a duty on local authorities to invite a service user or prospective service user to request a means assessment when it offers a chargeable service or as soon as reasonably practicable thereafter. It also places an obligation on a local authority, where a person is being provided with a chargeable service, to issue an invite in such cases as may be specified in regulations.
9. Subsection (2) provides that where an invitation is required to be given, a local authority may not impose or alter a charge unless certain requirements are met. These are that the invitation has been given and that, where it has been responded to in accordance with provisions to be set out in regulations, the authority has carried out a means assessment and made a determination as to ability to pay.
10. This section also gives the Welsh Ministers the power to set out in regulations the form and content of invitations and the manner in which they are to be made.

Section 5 – Duty to carry out a means assessment

11. Subsection (1) imposes a duty on local authorities to carry out an assessment of the means of a service user or prospective service user where the conditions set out in section 6 are met. Subsection (2) disappplies this duty in such cases as may be specified in regulations made under that subsection. Subsection (5) disappplies the duty in the circumstances set out in subsection (5), unless regulations made under that subsection make provision to the contrary.
12. Subsections (3) and (4) enable the Welsh Ministers to make regulations as to how means assessments must be carried out.

Section 6 – Conditions giving rise to the duty to carry out a means assessment

13. This section sets out the conditions which give rise to the local authorities' duty to carry out a means assessment, as referred to at section 5(1). It also enables the Welsh Ministers to make provision in regulations as to who may make the request for a means assessment or provide any necessary financial information on behalf of a service user or prospective service user.

Section 7 – Determinations as to ability to pay

14. Subsection (1) applies where a means assessment is carried out. It requires a local authority to determine, in the light of the assessment, whether it is reasonably practicable for the service user to pay the standard charge. If it is not, the local authority is required to determine what (if anything) it would be reasonably practicable for them to pay.
15. Subsection (2) requires the local authority to discharge its duties under subsection (1) in accordance with provision made in regulations by the Welsh Ministers. Subsection (3) gives some examples of how this power might be exercised.
16. Subsection (4) defines the term 'standard charge', as referred to in subsection (1) and in section 10.

Section 8 – Effect of determinations as to ability to pay

17. Subsection (1) requires local authorities to give effect to any determination made as to the ability of a service user or a prospective service user to pay for a chargeable service.
18. Subsections (2) and (3) make provision as to the date from which determinations shall have effect.
19. Subsections (4) and (5) are concerned with the date from which replacement determinations shall have effect.

Section 9 – Replacement by authority of determinations as to ability to pay

20. Subsection (1) provides that a local authority may replace a determination with a new determination if any of the conditions set out in subsection (4) has been met. Subsection (4)(d) gives the Welsh Ministers power to make regulations prescribing other conditions.
21. Subsection (2) provides that where a local authority is obliged to issue an invitation to request a means assessment it may not replace an existing determination until the requirements set out in section 4(3) have been met.
22. Subsection (3) ensures that the new determination may differ from the determination it replaces only to the extent considered appropriate having regard to the matters in subsection (4) (the conditions for making the new determination).

Section 10 – Provision of information about charges

23. This section requires local authorities to provide information to those who receive, or may receive, a chargeable service and to those whom they decide to charge.
24. Subsections (1) and (2) require local authorities to make arrangements to bring the following information to the attention of persons who receive, or may receive, a chargeable service:
 - information about which services are charged for and which are not;
 - information about the “standard charge” (as defined in section 7(4)) for different services; and
 - information about means testing.
25. Subsection (3) provides that this general information must be provided in a range of accessible formats and free of charge.
26. Subsections (4) and (5) deal with the information that local authorities must provide to persons on whom they decide to impose a charge. This information must be provided in writing and in any other accessible format the person reasonably requests. It must be provided free of charge and within 21 days of the date on which the decision to impose or alter a charge was made.

Section 11 – Reviews of charging decisions

27. This section gives the Welsh Ministers the power to make regulations concerning the arrangements that local authorities must make for reviewing charging decisions. Subsection (2) gives examples of the type of provision that may be included in regulations made under this section. This includes provision concerning an individual’s right to request a review, the process an individual must follow to exercise that right and the procedures an authority must follow in conducting the review.

Provision may also be made as to who may request a review on behalf of another person.

Section 12 – Direct payments

28. This section applies where a local authority makes direct payments to an individual under section 57 of the Health and Social Care Act 2001. The section must be read in conjunction with section 57 of the 2001 Act and the regulation making powers contained in that section.
29. Subsections (2) and (3) give Welsh Ministers the power to make regulations about direct payments which make provision corresponding to the provision which is made, or may be made, under sections 1 to 11 of this Measure. Subsection (4) gives examples of the type of provision which may be made under such regulations (these examples

correspond to the provision made by the preceding sections). Subsection (5) defines certain terms used in the section.

Section 13 – Chargeable services

30. This section sets out the services to which this Measure applies and these services are defined as the “chargeable services”. These chargeable services are those services provided under the enactments specified in subsection (2). These include welfare services to elderly and vulnerable persons such as home care, day care centres, laundry, transport and meals. Residential care services were excluded from the scope of the enabling Legislative Competence Order and hence have been excluded from this Measure.
31. Subject to the restraints of matter 15.1 in Field 15 of Schedule 5 to GOWA 2006, section 13(3) enables the Welsh Ministers by order to add a service to, or to amend or remove the description of a service which is for the time being included in, section 13(2). Section 17(7) provides that such an order will be subject to the affirmative procedure.

Section 14 – Amendments to the Health and Social Services and Social Security Adjudications Act 1983

32. This section amends the legislation under which local authorities in England and Wales currently charge for non-residential care services. It provides that, except in relation to services provided under section 2 of the Carers and Disabled Children Act 2000 in the form of residential care, section 17 of the Health and Social Services and Social Security Adjudications Act 1983 shall apply only to an authority in England. For local authorities in Wales, section 17 will continue to apply only in relation to services provided under section 2 of the Carers and Disabled Children Act 2000 in the form of residential care. In the case of non-residential services the charging regime will be governed by this Measure and regulations to be made under the Measure.

Section 15 – Amendment to the Local Authority Social Services Act 1970

33. This section amends the Local Authority Social Services Act 1970. The 1970 Act makes provision concerning the exercise of social services functions, including a requirement that Welsh local authorities in exercising their social services functions comply with guidance and directions issued by the Welsh Ministers. For the purposes of the 1970 Act social services functions are those functions under enactments specified in Schedule 1 to the Act. Section 15 adds specified sections of this Measure to that list of enactments in Schedule 1, and in so doing makes charging for local authority welfare services a social services function for the purposes of the 1970 Act.

Section 16 – Amendment to the Health and Social Care Act 2001

34. This section amends the Health and Social Care Act 2001 by the insertion of a new section 57(7B) to alert readers to the existence of the Social Care Charges (Wales) Measure and the additional provision contained within it in respect of direct payments in Wales.

Section 17 – Orders and regulations

35. This section contains general provision about subordinate legislation (orders and regulations) made under the Measure.
36. Subsection (1) provides that where the Welsh Ministers are empowered by the Measure to make orders or regulations, these are to be made by statutory instrument. This means that the provisions of the Statutory Instruments Act 1946 are applied to such orders and regulations, including requirements about publication. Subsection (2) provides that orders or regulations made under the Measure may make different provision

for different purposes and may include incidental, supplementary, consequential, transitory, transitional or saving provisions.

37. Subsection (3) confers on the Welsh Ministers the power by order to make provisions that are necessary or expedient for the purposes of the Measure, or in consequence of, or to give effect to, any provision of the Measure. Subsection (4) provides that such an order may amend, repeal or revoke any provision of an Act of Parliament, an Assembly Measure or subordinate legislation. Subsections (5) to (7) set out the Assembly procedure to which a statutory instrument made under the Measure will be subject. Orders that amend Acts or Measures will need to be approved by resolution of the National Assembly for Wales, as will any order made under section 13(3).

Section 18 – Commencement and interpretation

38. Subsection (1) defines the term “local authority” for the purposes of the Measure.
39. Subsections (2) and (3) provide that sections 17 to 19 will come into force two months following approval of the Measure by Her Majesty in Council and that the remaining provisions will be brought into force in accordance with provision to be made by the Welsh Ministers by order. Subsection (4) provides that an order under subsection (3) may provide for provisions of the Measure to come into force on different days for different purposes.