



# Social Services and Well-being (Wales) Act 2014

2014 anaw 4

## PART 5

### CHARGING AND FINANCIAL ASSESSMENT

#### *Charging for meeting needs*

#### **59 Power to impose charges**

- (1) A local authority may require a person to pay a charge to the authority for providing or arranging the provision of care and support or (in the case of a carer) support under sections 35 to 45 to meet a person's needs.
- (2) A charge imposed under subsection (1) may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.
- (3) But where a local authority is meeting needs because section 35(4)(b)(ii), 36, 38, 41(2), (4) or (6)(a)(i), 43(2) or (4)(a)(i) or 45 applies, it may require a person to pay a charge to the authority (in addition to any charge imposed under subsection (1)) for putting in place the arrangements for meeting those needs.
- (4) A local authority's power to impose a charge under this section is subject to—
  - (a) the provision made in regulations under section 61 or 62 (if any), and
  - (b) its duties under sections 63, 66 and 67 (if applicable).

#### **60 Persons upon whom charges may be imposed**

- (1) This section describes the persons upon whom charges may be imposed under section 59.

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- (2) A charge for providing or arranging the provision of care and support to meet an adult's needs, or for putting in place the arrangements for that care and support, may be imposed on that adult.
- (3) A charge for providing or arranging the provision of care and support to meet a child's needs, or for putting in place the arrangements for that care and support, may be imposed—
  - (a) where the care and support is provided to a child, on an adult with parental responsibility for that child;
  - (b) where the child's needs for care and support are being met by the provision of something to an adult, on that adult.
- (4) A charge for providing or arranging the provision of support to meet a carer's needs, or for putting in place the arrangements for that support, may be imposed—
  - (a) where the support is provided to a carer who is an adult, on that carer;
  - (b) where the support is provided to a carer who is a child, on an adult with parental responsibility for that carer;
 but this is subject to subsection (5).
- (5) Where a carer's needs for support are met by the provision of care and support to a person for whom the carer provides or intends to provide care, subsection (4) does not apply; a charge for providing or arranging the provision of that support, or for putting in place the arrangements for that support, may instead be imposed—
  - (a) where the carer's needs for support are met by the provision of care and support to an adult, on that adult;
  - (b) where the carer's needs for support are met by the provision of care and support to a child, on an adult with parental responsibility for that child.

## **61 Regulations about the exercise of a power to impose a charge**

- (1) Regulations may make provision for and in connection with the exercise of a power to impose a charge under section 59.
- (2) The regulations may (among other things) make provision about the amount of the charge which may be imposed under section 59(1); and the regulations may (in reliance on section 196(2)) do so, for example, by—
  - (a) specifying a maximum amount which may be imposed for care and support or (in the case of carers) support of a specified type or for a specified combination of such things, or a formula or method for determining that maximum amount;
  - (b) requiring a local authority to fix a charge for care and support or (in the case of carers) support of a specified type or for a specified combination of such things by reference to a specified period of time;
  - (c) specifying, in the case of a charge referred to in paragraph (b), a maximum amount which may be imposed, or a formula or method for determining that maximum amount.
- (3) The regulations may also (among other things) make provision about the amount of the charge which may be imposed under section 59(3); and the regulations may (in reliance on section 196(2)) do so, for example, by specifying a maximum amount which may be imposed for putting arrangements in place—
  - (a) in specified circumstances, or
  - (b) for persons of a specified description.

## **62 Regulations disapplying a power to impose a charge**

Regulations may disapply a local authority's power to impose a charge under section 59(1) or (3) (and so may require a local authority to meet needs under sections 35 to 45 free of charge); the regulations may (in reliance on section 196(2) require a local authority to do so where, for example, the care and support, or (in the case of carers) the support—

- (a) is of a specified type;
- (b) is provided or arranged in specified circumstances;
- (c) is provided to, or arranged for, persons of a specified description;
- (d) is provided or arranged for a specified period only.

## **63 Duty to carry out a financial assessment**

- (1) This section applies in relation to a person on whom a local authority thinks it would impose a charge under section 59, were it to meet a person's needs for care and support or a carer's needs for support.
- (2) The local authority must assess the level of the person's financial resources in order to determine whether it would be reasonably practicable for the person to pay the standard charge (but this is subject to section 65).
- (3) In this Part "standard charge" means the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person's ability to pay that amount.
- (4) An assessment under this section is referred to in this Act as a "financial assessment".

## **64 Regulations about financial assessments**

- (1) Regulations must make provision for and in connection with carrying out financial assessments.
- (2) The regulations must make provision for—
  - (a) calculating income;
  - (b) calculating capital.
- (3) The regulations may also make provision for the following matters (among other matters)—
  - (a) the treatment, or non-treatment, of amounts of a specified type as income or as capital;
  - (b) cases or circumstances in which a person is to be treated as having financial resources which exceed a specified level (which may include, for example, cases in which the person being assessed has failed to provide to a local authority, upon request, information or documents in the person's possession or under the person's control);
  - (c) cases or circumstances in which a new financial assessment must or may be carried out.

## **65 Regulations disapplying the duty to carry out a financial assessment**

Regulations may make provision about circumstances in which a local authority is not required (despite section 63) to carry out a financial assessment.

## **66 Determination as to a person's ability to pay a charge**

- (1) Where a local authority has carried out a financial assessment—
  - (a) the authority must determine, in light of the assessment, whether it would be reasonably practicable for the assessed person to pay the standard charge for the care and support or (in the case of carers) the support in respect of which a charge would be imposed on that person, and
  - (b) if the authority determines that it would not be reasonably practicable for the assessed person to pay the standard charge, the authority must determine the amount (if any) that it would be reasonably practicable for that person to pay for that care and support or that support.
- (2) In this section “the assessed person” means the person whose financial resources have been assessed under section 63.
- (3) Regulations must make provision about the making of determinations under subsection (1).
- (4) The regulations must require a local authority to determine, in a case where the assessed person's financial resources (whether income, capital, or a combination of both) exceed a specified level, that it would be reasonably practicable for that person to pay the standard charge.
- (5) The level specified for the purposes of subsection (4) is referred to in this Act as “the financial limit”.
- (6) The regulations may require a local authority to determine that it would not be reasonably practicable for the assessed person to pay any amount for the care and support or (in the case of carers) the support that would reduce the person's income or capital below specified levels; and the regulations may, (in reliance on section 196(2)) specify different levels—
  - (a) for income and for capital,
  - (b) for different circumstances, and
  - (c) for different descriptions of persons.
- (7) The regulations may also (among other things) make provision about cases or circumstances in which a local authority must or may replace a determination with a new determination.
- (8) A determination under subsection (1) has effect from a date that the local authority considers reasonable (which may be a date before that on which the determination was made); but this is subject to any provision made in regulations under subsection (9).
- (9) Regulations may make provision as to the date from which a determination under subsection (1) is to have effect (and may include provision for a determination to have effect from a date before that on which it was made).
- (10) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.
- (11) For the purposes of subsection (10), a determination replaces an existing determination if it relates to the same person and the same care and support or (in the case of carers) support.

## **67 Duty to give effect of determination as to ability to pay a charge**

- (1) A local authority must give effect to a determination under section 66 in imposing charges under section 59.
- (2) But regulations may make provision about circumstances in which the duty under subsection (1) does not apply.

## **68 Deferred payment agreements**

- (1) Regulations may specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with a person who is required (or is going to be required) to pay a charge under section 59.
- (2) A deferred payment agreement is an agreement under which—
  - (a) the local authority agrees not to require payment of the person's required amount until the time specified in or determined in accordance with the regulations, and
  - (b) the person agrees to give the local authority a charge over the person's interest in his or her home to secure payment of the person's required amount.
- (3) The person's required amount is so much of the charge that the person is required (or is going to be required) to pay under section 59 as is specified in or determined in accordance with the regulations.
- (4) The regulations may require or permit the local authority to charge—
  - (a) interest on the person's required amount;
  - (b) such amount relating to the local authority's administrative costs as is specified in or determined in accordance with the regulations;
  - (c) interest on an amount charged under paragraph (b).
- (5) The regulations may provide for interest referred to in subsection (4)(a) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (6) The regulations may—
  - (a) specify costs which are, or which are not, to be regarded as administrative costs for the purposes of subsection (4)(b);
  - (b) provide for an amount referred to in subsection (4)(b) or for interest referred to in subsection (4)(c) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (7) The local authority may not charge interest under regulations made under subsection (4) at a rate that exceeds the rate specified in or determined in accordance with the regulations.
- (8) The regulations must make provision about the duration of the agreement and for its termination by either party; the regulations must, among other things, enable the person to terminate it and the charge to which it gives effect by—
  - (a) giving the local authority notice, and
  - (b) paying the authority the full amount for which the person is liable with respect to the person's required amount and any amount charged under regulations made by virtue of subsection (4).

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- (9) The regulations may make provision as to the rights and obligations of the local authority and the person where the person disposes of the interest to which the agreement relates and acquires an interest in another property in Wales or England; the regulations may, for example, make provision—
- (a) for the local authority not to require payment of the amounts referred to in subsection (8)(b) until a time specified in or determined in accordance with the regulations, and
  - (b) for the person to give the local authority a charge over his or her interest in the other property.
- (10) A reference to a person’s home is a reference to the property which the person occupies as his or her only or main residence; and a reference to a person’s interest in a property is a reference to the person’s legal or beneficial interest in that property.
- (11) Regulations may apply this section, with or without modifications, for the purpose of enabling a person to agree to give a charge over the person’s interest in a property in Wales or England which he or she used to occupy as his or her only or main residence.

*Charging for preventative services and assistance*

**69 Charging for preventative services and assistance**

- (1) Regulations may make provision about charges for—
- (a) services provided under section 15;
  - (b) assistance provided under section 17.
- (2) But the regulations may not make provision—
- (a) which enables a charge to be imposed for services or assistance in respect of which a charge has been imposed under section 59,
  - (b) which enables a charge to cover anything other than the cost incurred in providing the services or assistance to which the charge relates, or
  - (c) which enables a charge to be imposed on a child.

*Enforcement of debts*

**70 Recovery of charges, interest etc**

- (1) Any amount due to a local authority under this Part is recoverable by the authority as a debt due to it.
- (2) But subsection (1) does not apply in a case where a deferred payment agreement could be entered into, in accordance with regulations under section 68, unless—
- (a) the local authority has sought to enter into such an agreement with the person from whom the amount is due, and
  - (b) that person has refused.
- (3) An amount recoverable by a local authority under subsection (1) is recoverable summarily as a civil debt (but this does not affect any other method of recovery).
- (4) An amount is recoverable under this section within six years of the date on which the amount becomes due to the local authority.

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- (5) Where a person mentioned in subsection (6) misrepresents or fails to disclose (whether fraudulently or otherwise) to a local authority any material fact in connection with the provisions of this Part, the following amounts are due to the authority from that person—
- (a) any expenditure incurred by the authority as a result of the misrepresentation or failure, and
  - (b) any amount recoverable under this section which the authority has not recovered as a result of the misrepresentation or failure.
- (6) The persons are—
- (a) an adult—
    - (i) who appears to the local authority to have needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (b) an adult—
    - (i) to whom something is provided in order to meet another person's needs for care and support or (in the case of a carer) support under Part 3, and
    - (ii) who has capacity to understand whether a fact may be material in connection with the provisions of this Part;
  - (c) an adult of a description specified in regulations in relation to care and support or (in the case of a carer) support which appears to the local authority to be needed by—
    - (i) a child, or
    - (ii) an adult who does not have capacity to understand whether a fact may be material in connection with the provisions of this Part.
- (7) The reasonable costs incurred by a local authority in recovering or seeking to recover an amount due to it under this Part are recoverable by the authority as a debt due to it; and subsection (3) applies to the recovery of those costs as if they were amounts to which subsection (1) applies.
- (8) Regulations may—
- (a) make provision for determining the date on which an amount becomes due to a local authority for the purposes of this section;
  - (b) specify cases or circumstances in which an amount due to a local authority under this Part is not recoverable by it under this section;
  - (c) specify cases or circumstances in which a local authority may charge interest on an amount (including any costs recoverable by the authority under subsection (7)) due to it under this Part;
  - (d) where interest is chargeable, provide that it—
    - (i) must be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations;
    - (ii) may not be charged at a rate that exceeds the rate specified in or determined in accordance with the regulations.

## **71 Creation of a charge over an interest in land**

- (1) Where a person—

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- (a) fails to pay to a local authority an amount that is recoverable by the authority under this Part, and
  - (b) has a legal or beneficial interest in land in Wales or England,
- the local authority may create a charge in its favour over the person's interest in the land to secure payment of that amount.
- (2) Where the person has interests in more than one parcel of land, the local authority may create the charge over whichever one of those interests it chooses.
  - (3) The charge may be in respect of any amount that is recoverable by the local authority under this Part; but this is subject to subsection (4).
  - (4) Where the charge is created over the interest of an equitable joint tenant in land, the amount of the charge must not exceed the value of the interest that the person would have in the land if the joint tenancy were severed (but the creation of the charge does not sever the joint tenancy).
  - (5) On the death of an equitable joint tenant in land whose interest in the land is subject to a charge under this section, the following persons' interests in land become subject to a charge—
    - (a) if there are surviving joint tenants, their interests in the land;
    - (b) if the land vests in one person, or one person is entitled to have it vested in himself or herself, that person's interest in the land.
  - (6) The amount of the charge created under subsection (5) must not exceed the amount of the charge to which the interest of the deceased joint tenant was subject.
  - (7) A charge under this section must be created by a declaration in writing made by the local authority.
  - (8) A charge under this section, other than a charge over the interest of an equitable joint tenant in land—
    - (a) in the case of unregistered land, is a Class B land charge within the meaning of section 2 of the Land Charges Act 1972;
    - (b) in the case of registered land, is a registrable charge taking effect as a charge by way of legal mortgage.
  - (9) Where an amount is charged over a person's interest in land under this section, interest is chargeable upon that amount from the day on which the person mentioned in subsection (1) dies.
  - (10) The rate of interest chargeable under subsection (9) is—
    - (a) a rate specified in or determined in accordance with regulations, or
    - (b) if no regulations are made, a rate determined by the local authority.

## **72 Transfer of assets to avoid charges**

- (1) This section applies in a case where the needs of a person ("P") have been or are being met by a local authority under sections 35 to 42 or section 45 and where—
  - (a) a person ("the transferor") (who may be P but need not be so) has transferred an asset to another person (a "transferee"),
  - (b) the transfer was undertaken with the intention of avoiding charges for having P's needs met, and



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- (c) either the consideration for the transfer was less than the value of the asset or there was no consideration for the transfer.
- (2) The transferee is liable to pay to the local authority an amount equal to the difference between—
  - (a) the amount the authority would have charged the transferor were it not for the transfer of the asset, and
  - (b) the amount it did in fact charge the transferor.
- (3) But the transferee is not liable to pay to the authority an amount which exceeds the benefit accruing to the transferee from the transfer.
- (4) Where an asset has been transferred to more than one transferee, the liability of each transferee is in proportion to the benefit accruing to that transferee from the transfer.
- (5) In this section “asset” means anything which may be taken into account for the purposes of a financial assessment.
- (6) The value of an asset (other than cash) is the amount which would have been realised if it had been sold on the open market by a willing seller at the time of the transfer, with a deduction for—
  - (a) the amount of any encumbrance on the asset, and
  - (b) a reasonable amount in respect of the expenses of the sale.
- (7) Regulations may specify cases or circumstances in which liability under subsection (2) does not arise.

### *Reviews*

## **73      Reviews relating to charging**

- (1) Regulations must make provision for and in connection with the review of—
  - (a) charges imposed under section 59,
  - (b) determinations made under section 66, and
  - (c) decisions relating to the liability of a transferee to pay an amount to a local authority under section 72.
- (2) The regulations may (among other things) make provision about—
  - (a) the persons who may request a review (on their own behalf or on behalf of another person);
  - (b) the circumstances and the manner in which a review may be requested;
  - (c) the period within which a request must be made;
  - (d) the procedure to be followed, and the steps to be taken, in connection with a review;
  - (e) the description of persons who may make a decision following the review;
  - (f) the effect of a decision of that kind.