

Regulations and code of practice in relation to **Part 4 of the Act (direct payments and choice of accommodation)** and **Part 5 of the Act (charging and financial assessment)**

**Consultation
Response Form**

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Charging for care and support - general

1. Do you agree that the regulations and code of practice provide a clear framework for financial assessment and charging of recipients of care and support?

Agree	<input type="checkbox"/>	Tend to agree	<input checked="" type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Please provide details of anything that you consider has not been included or has been included incorrectly.

We recognise and welcome that the draft regulations and code of practice aim to put in place a charging framework that strikes a balance between minimising the impact of charging upon care and support recipients with low financial means, while allowing local authorities to obtain a reasonable contribution towards the costs of care and support to ensure its continued provision. Raising income from charging remains an important part of the range of options that help local authorities manage with reducing resources.

The principles, including introducing one set of financial assessment and charging arrangements and introducing greater transparency are welcomed, though as set out below, we want to ensure that the changes being made to existing arrangements do not impact negatively on local authorities or lead to a lack of clarity – particularly as the documentation that supports the code of practice and regulations states that *‘this framework will be largely based on existing arrangements and initially contain no material change over current Welsh Government policy in relation to charging for social care and support.’*

We support the principles that financial assessment and charging frameworks must be sustainable for councils in the long-term and that charging should be applied equally so similar needs for care and support are treated the same and anomalies between charging for different care and support are minimised.

We support the intention to make substantive reform to arrangements for paying for social care and support in Wales and recognise that these proposals build on existing arrangements, rather than making extensive changes which could be changed again in the future. We note the recent announcement from the UK Government to delay the introduction of the care cap in recognition of it being *“not the right moment to be implementing expensive new commitments such as this”*. With the additional time being used to *“take stock on some of the other elements of the care and support reforms that are intended to support the cap system”*. It will be helpful to examine the priorities in Wales, to ensure that we are able to support a long term, sustainable social care service and increasingly a better connected health and social care service.

The proposals edge towards a free (universal) offer within Children’s Services by proposing that local authorities would be precluded from charging a parent or guardian for the care and support a child receives. We recognise the difficulties in levying any charge for services that people have not chosen or are imposed on them, because the council is using its powers to intervene in their lives to protect them or others. However, it is important

that models of service empower people to have more control, supporting people to have greater independence.

Financial assessment and determination of charges

2. Do you agree that the financial assessment arrangements identify the relevant forms of income and capital care and support recipients will have that should be taken into account?

Agree	<input type="checkbox"/>	Tend to agree	<input checked="" type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Are there any forms of income or capital not identified? If so, how should these be treated for the purposes of determining a charge?

We note that the present weekly maximum charge and buffer for non-residential care and support remains in place and in these circumstances the person can choose not to reveal their financial circumstances and hence simply pay the maximum charge. Given the work that has been undertaken around the future of paying for social care in Wales and the recent decision made in England to delay implementation of the care cap we would welcome working with Welsh Government to examine further the future options for Wales.

We note the capital limit of £24,000, determining who pays full cost of residential care and whilst we welcome the retention of free home care and support for people for 6 weeks following a period in hospital, there are concerns that the regulations broaden the range of services that can be provided, which previously related to the provision of reablement type services **up to** six weeks and seek further clarification over the intentions of this part of the regulations.

The issue that is being addressed specifically in this question about the financial assessment arrangements is whether the arrangements take into account the appropriate sources of income and capital. The regulations use the same rules as previously and the disregards remain the same for both income and capital. Whilst we believe that it is sensible to give people a 15 day period to provide documentary evidence of their income and capital, with the opportunity to extend that time in special and agreed circumstances, we do have concerns over the requirement to issue a statement before any charge can be applied. Whilst we recognise that it is of the utmost importance that local authorities complete financial assessments on individuals seeking placements at care homes, it is known that currently, the majority of people commence their placement before this can be done. There are a variety of circumstances beyond the control of local authorities which can contribute to significant delays including the willingness and timeliness of an individual and/or their family to participate in the

assessment and provide relevant information. In reality therefore, if this regulation is enforced, we know that local authorities will experience a significant reduction in income from individuals being placed in care homes. Furthermore, clarification on how the approach taken around people who lack mental capacity is needed. Sections 5.4 and 8.5 of the guidance indicate that where someone who lacks mental capacity does not have someone legally appointed to manage their property and affairs then there may be a need to apply to the court of protection. If we then cannot charge until such time as that person is appointed and we can get financial information, and calculate the charge, there could again be significant loss of Income to local authorities - there are examples where this has taken over 12 months to resolve. We would therefore propose that this regulation is removed or reworded to allow local authorities to be able to backdate charges.

In view of the changes to the Independent Living Fund and its administration by local authorities, there needs to be clarity about whether the payments to be made replacing ILF will be treated as capital in the same way that current ILF payments are treated

We cannot identify any income or capital that has not been identified.

It is also helpful that local authorities have to provide a statement of how the charges have been assessed in order that people are informed and that the process is transparent.

Financial assessment and determination of charges

3. Do you agree that the arrangements for determining a charge strike an appropriate balance between minimising the impact upon care and support recipients with low financial means, while allowing local authorities to obtain a contribution towards the cost of provision?

Agree	<input type="checkbox"/>	Tend to agree	<input type="checkbox"/>	Tend to disagree	<input checked="" type="checkbox"/>	Disagree	<input type="checkbox"/>
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What will further support this?

As identified above the ability for local authorities to raise income from charging is an important part of the range of options that help local authorities manage, particularly given the current economic climate and the cuts that local authorities are being asked to make. The Code states that *'local authorities have discretion to apply disregards which are more generous'* and *'the Act, regulations and this code of practice do not make presumption that local authorities will charge for care and support but local authorities have a discretion to charge'*. There is also a change in the duty to

charge for residential care, to a discretion to charge. These statements may put local authorities in an unhelpful position whereby they are seen negatively by the public in charging people for certain services – it would be helpful to highlight the reasons that local authorities charge and how this supports local authorities to continue to provide services needed by people. We need to ensure that citizens have realistic expectations of the services and support that they can expect from the local authority.

The proposed financial arrangements aim to streamline and build on existing arrangements, as a result there are a number of areas of concern that require further clarification – we would welcome further discussions with Welsh Government on these issues:

- Concern has been expressed over the time allowed for a person going into residential care to provide information to enable a financial assessment to be undertaken - as raised above, will charges be back-dated to the point they entered care or are they only from the date that the statement of charges is provided, as any delay to that point could cost an authority significant amounts of money.
- There is some concern that the extension of the review process to residential care could potentially mean that residential care charges may be suspended while a review is dealt with. This could, depending upon circumstances, lead to a significant loss of income to an authority until the review is resolved.
- Clarification is needed on whether the present ability to place a land charge on a property under the Health and Social Services and Social Security Adjudications Act to secure payment of a debt / charge is retained under the Act? If not, or there is a relaxation of this ability, there could be financial risk for local authorities.
- The Code of Practice states that a 'local authority must not assess couples or civil partners according to their joint resources'. Assessing the resources of couples individually in reality is not an easy exercise. In particular, where couples receive income or benefits jointly it is possible that there would be an inaccurate assessment of the financial resources of the individual with care and support needs. Furthermore, if a jointly earned income is divided, partners who remain at home may be left with an income which is lower than that necessary to meet their basic needs. It would be welcomed if authorities retained the right to undertake both joint and individual assessments and to apply the most advantageous.
- Some concern has also been raised with the removal of the Charging for Residential Accommodation Guide (CRAG), where detailed guidance that provides examples will be replaced with a less detailed Code and some potential risks around consistency of application as a result, we would not want to see some of this guidance lost.

In addition it would be helpful and more consistent if local authorities are allowed to seek full cost contribution of step-parent adoptions and similar engagements where there is no public law duty.

Choice of accommodation

- 4. Do you agree that the choice of accommodation arrangements for those entering residential care provide them with additional choice over their accommodation?**

Agree	<input type="checkbox"/>	Tend to agree	<input checked="" type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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Please provide details of anything that you consider would provide prospective residents with more choice.

Local authorities would already look to provide those entering residential care with choice over their accommodation, although this is often affected by shortage of supply, or at the very least the right facility in the right place for the person and their family. The principle of choice is supported but the harsh reality of choice often leads to frustration on the part of users and carers. Expectations always have to be managed.

Deferred payments

- 5. Do you agree that the revised deferred payment arrangements for those entering residential care with property will enable them to have an improved choice over the timing of any sale of this to pay for such care?**

Agree	<input type="checkbox"/>	Tend to agree	<input checked="" type="checkbox"/>	Tend to disagree	<input type="checkbox"/>	Disagree	<input type="checkbox"/>
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What will further support this?

Under present legislation those entering residential accommodation, and who have a property that is unoccupied and hence taken into account in their financial assessment, can defer or delay the need to sell their property to meet their costs. As such the arrangements set out will continue to support people to have some choice over the timing of any sale of their property and in general the arrangements are supported.

Prevention and assistance

6. Do you agree that the different arrangements to charge for prevention and assistance strike an appropriate balance between promoting take up of these such services enabling local authorities to recover some of the costs of providing or arranging them?

Agree

☐

Tend to agree

☒

Tend to disagree

☐

Disagree

☐

What will further support this?

There is a real challenge for local authorities in considering charging for assistance and preventative services. On one hand it supports local authorities to recover some of the costs of providing or arranging them, but it also challenges the ethos of the Act of supporting people to access preventative, community based services that can prevent needs from escalating. It could have the effect of preventing people from accessing these types of service.

There are understandable differences of opinion around this and it may be that this is best left to local determination, which the Act allows, in order that each local authority / region can decide what services result in a charge and which do not. For example AWHOCs have suggested a presumption for children's services that a *can contribute/should contribute* approach should underpin all but fast-track, child protection situations, with this principle being an important adjunct to the "Can and Can Only Test". This is built on an assumption that parents would contribute in the same way any parent would in other circumstances. There is some evidence that offering general services for free can signal entitlement and encourage dependence on targeted services. This has to be balanced against the possibility that some parents may not seek out help simply because of the likelihood of charges being levied.

Whilst local authorities will be allowed to make a charge for preventative services, it should not be assumed that this will actually support local authorities to recover the costs associated with their provision – there will be considerable challenges in how charges will actually be collected. Many people will access preventative services on an ad hoc basis, with services also being provided by partner organisations, independent of the LA.

In addition there are a number of issues that have been raised which require some consideration and clarification:

- The challenge for local authorities to know what the accumulative effect of a number of flat rate charges would be for an individual if no financial assessment is undertaken. This could include not only LA provided or arranged preventative services, but those which a person may be purchasing privately.
- What constitutes a "low" flat rate charge?

Other

The Welsh Government is interested in understanding whether the proposals in this consultation document regarding parts 4 and 5 will have an impact on groups with protected characteristics. Protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation.

7. Do you think that the proposals in this consultation will have any positive impacts on groups with protected characteristics? If so, which and why/why not?

8. Do you think that the proposals in this consultation will have any negative impacts on groups with protected characteristics? If so, which and why/why not?

9. Re-balancing the care and support system to deliver the new legal framework will require reprioritisation of resources. What are the key actions that need to be taken to achieve this?

10. We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to tell us about them.

There are a number of specific areas that require further clarification, including:

- When a third party agrees to cover the additional cost for a preferred residential accommodation, who is liable for the payment if this is later defaulted upon?
- Accountabilities for self-funders, who use the local authority to arrange their residential care accommodation, including:

- who is liable for payment if they fail to pay?
- What can / will the local authority be held accountable for?
- Under what circumstances (if any) must a local authority contract on behalf of a self-funder?
- Is this responsibility to include only those “self-funders” who have been assessed as requiring that their care and support needs should be met in a Care Home, or will it also include those who have chosen (with or without a formal assessment) to seek a place in a Care Home?

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please enter YES in the box.

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