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# Proposed Social Care Charges (Wales) Measure 2010

[AS PASSED]

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# Proposed Social Care Charges (Wales) Measure 2010

[AS PASSED]

A MEASURE of the National Assembly for Wales to make provision for and in connection with the imposition and recovery of charges for the provision of non-residential social care services.

## **1 General power to charge for care services**

- (1) A local authority in Wales which provides, or makes arrangements for the provision of, a chargeable service may (but does not have to) impose a reasonable charge for the service.
- (2) A reasonable charge is such amount as the authority concerned determines reasonable.
- (3) But subsections (1) and (2) are subject to—
  - (a) section 2 (maximum charges);
  - (b) section 3 (persons and services in respect of which charges must not be imposed);
  - (c) section 8(1) (effect of determinations as to ability to pay); and
  - (d) any regulations made by the Welsh Ministers under section 16 of the Community Care (Delayed Discharges etc) Act 2003 (c. 5) (free provision of services in Wales).
- (4) A local authority has the power to recover a charge imposed under this section.
- (5) Without prejudice to the generality of subsection (4), a charge imposed under this section may be recovered summarily as a civil debt.

## **2 Maximum charges**

- (1) In determining for the purposes of section 1(2) a reasonable charge for a chargeable service, a local authority must act in accordance with regulations made by the Welsh Ministers under subsection (2).
- (2) The Welsh Ministers may make provision in regulations for and in connection with controlling and limiting the determinations that a local authority may make under section 1(2).
- (3) The provision that may be made in the regulations includes (but is not limited to) provision—

- (a) specifying an amount which must be considered the maximum reasonable charge for a chargeable service, or combination of chargeable services;
- (b) setting out a formula for determining the amount which must be considered the maximum reasonable charge for a chargeable service, or combination of chargeable services;
- (c) requiring, in the case of a specified chargeable service, or combination of chargeable services, a local authority to fix a charge by reference to a specified period of time;
- (d) in relation to a charge referred to in paragraph (c), specifying the amount which must be considered the maximum reasonable charge;
- (e) in relation to a charge referred to in paragraph (c), setting out a formula for determining the amount which must be considered the maximum reasonable charge.

### **3 Persons and services in respect of which charges must not be imposed**

- (1) The Welsh Ministers may by regulations make provision specifying categories of person, chargeable service or combinations of chargeable services (or categories of person in respect of a particular service or combination of chargeable services) in respect of which a charge must not be imposed under section 1.
- (2) The provision that may be made in the regulations includes (but is not limited to) provision—
  - (a) specifying categories of person by reference to that or another person's entitlement to or receipt of specified payments, facilities, services or benefits in kind;
  - (b) specifying categories of person by reference to their age or their needs;
  - (c) specifying categories of service or combinations of services by reference to the period of time for which they are provided.
- (3) Accordingly, sections 4 to 12 do not apply to—
  - (a) services or combinations of services specified in regulations under subsection (1), or
  - (b) services received by persons so specified.

### **4 Invitation to request means assessment**

- (1) A local authority must invite a person to request a means assessment under section 5(1)—
  - (a) if it is reasonably practicable to do so, when the authority offers the person a chargeable service;
  - (b) if it has not been reasonably practicable to give an invitation as mentioned in paragraph (a), as soon as reasonably practicable after the offer was made;

- (c) if an invitation has not been given under paragraph (a) or (b) prior to provision of a service commencing, as soon as reasonably practicable thereafter; or
  - (d) in relation to a person who is being provided with a chargeable service, in such cases as may be specified in regulations made by the Welsh Ministers.
- (2) Where an invitation is required to be given to a person under subsection (1), the local authority must not—
  - (a) impose, or
  - (b) in a case where regulations under subsection (1)(d) impose a duty in a case where a charge has already been imposed, alter,  
a charge for the service in question under section 1(1) unless the requirements set out in subsection (3) have been satisfied.
- (3) The requirements are that—
  - (a) the invitation has been given; and
  - (b) where the person responds to the invitation in accordance with, and by the time specified in, regulations made by the Welsh Ministers, the authority has complied with its obligations under sections 5 and 7.
- (4) The Welsh Ministers may by regulations make provision—
  - (a) as to the form and content of invitations under subsection (1); and
  - (b) as to the manner in which such invitations are to be given.

## **5 Duty to carry out a means assessment**

- (1) Where each of the conditions in section 6 is met, a local authority must carry out an assessment of the financial means of a person who requests such an assessment.
- (2) But a local authority is under no duty to carry out a means assessment under subsection (1)—
  - (a) in such cases as may be specified in regulations made by the Welsh Ministers; or
  - (b) if the authority is relieved of that duty under subsection (5).
- (3) A means assessment under subsection (1) must be carried out in accordance with regulations made by the Welsh Ministers.
- (4) The provision that may be made by regulations under subsection (3) includes (but is not limited to) provision applying any other statutory means testing regime as it has effect from time to time, subject to any modifications specified in the regulations.
- (5) Unless regulations made by the Welsh Ministers make provision to the contrary, a local authority has no duty to carry out a means assessment under subsection (1) if—
  - (a) a determination made by the authority under section 7(1) or 9(1) has effect;

- (b) the person who is the subject of the determination requests that the authority carry out a means assessment under subsection (1);
- (c) the request relates to a service to which the determination relates; and
- (d) the authority reasonably considers that there has been no relevant change of circumstance since the determination was made.

## **6 Conditions giving rise to the duty to carry out a means assessment**

- (1) This section contains the conditions referred to in section 5(1) (duty to carry out a means assessment).
- (2) Condition 1 is that—
  - (a) a person is offered a chargeable service; or
  - (b) a person is being provided with a chargeable service.
- (3) Condition 2 is that the person requests that the authority which made the offer, or is responsible for the provision of the service, carry out a means assessment under section 5.
- (4) Condition 3 is that the person provides the authority with any information or documents in the person's possession, or under the person's control, which the authority reasonably requires in order to carry out a means assessment under that section.
- (5) The Welsh Ministers may by regulations make provision as to who may make the request mentioned in subsection (3), or provide the information or documents mentioned in subsection (4), on behalf of a person who is offered or is being provided with a service.

## **7 Determinations as to ability to pay**

- (1) Where a local authority has carried out a means assessment of a person under section 5(1), the authority must, in the light of that assessment—
  - (a) determine whether it is reasonably practicable for the person to pay the standard charge for the service that the person has been offered or is being provided with; and
  - (b) if the authority determines that it is not reasonably practicable for the person to pay the standard charge, determine the amount (if any) which it is reasonably practicable for the person to pay for that service.
- (2) A local authority must discharge its duty under subsection (1) in accordance with provision in regulations made by the Welsh Ministers.
- (3) The provision that may be made by regulations under subsection (2) includes (but is not limited to) provision—
  - (a) specifying cases in which it is not reasonably practicable for persons of specified means, or of means falling within a specified range, to pay for a particular service, or combination of services;
  - (b) specifying the maximum amount that it is reasonably practicable for persons of specified means, or of means falling within a specified range, to pay for a particular service, or combination of services;

- (c) specifying amounts which the local authority must disregard when assessing a person's means;
  - (d) specifying amounts below which a person's income or assets must not be reduced (after payment of the charge to be imposed).
- (4) In subsection (1) and section 10 "standard charge" means the amount which a person would be required to pay for a service if no determination under this Measure as to the person's ability to pay had effect.

## **8 Effect of determinations as to ability to pay**

- (1) In imposing charges under section 1(1), a local authority must give effect to any determination made under section 7(1) or 9(1).
- (2) Subject to any regulations made under subsection (3), a determination is to have effect from such date as the local authority concerned considers reasonable (which may be a date before that on which the determination was made).
- (3) The Welsh Ministers may by regulations make provision as to the date from which a determination is to have effect (including provision for a determination to have effect from a date before that on which it was made).
- (4) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.
- (5) For the purposes of subsection (4), a determination replaces an existing determination if it relates to the same person and the same chargeable service as that determination.

## **9 Replacement by authority of determinations as to ability to pay**

- (1) If a local authority reasonably considers that any one or more of the conditions in subsection (4) is met, the authority may in accordance with this section replace a determination given under section 7(1), or under this subsection, with a new determination.
- (2) In a case where regulations under section 4(1)(d) impose a duty in respect of the service to which the determination relates, the authority's power under subsection (1) is subject to section 4(2).
- (3) A determination under subsection (1) may differ from the determination which it replaces only to the extent considered appropriate by the authority in the light of the condition or conditions in subsection (4) which the authority considers to be met.
- (4) The conditions referred to in subsection (1) are that –
  - (a) there has been a change in the income or capital of the person who is the subject of the determination;
  - (b) there has been a change in the cost of providing the service to which the determination relates (including a change resulting from a change in the level at which or degree to which the service is provided);
  - (c) the authority has changed its policy about the exercise of its power to charge under section 1;

- (d) there has been some other change of circumstance which falls within a description specified in regulations made by the Welsh Ministers;
- (e) a mistake was made when the determination was made.

## 10 Provision of information about charges

- (1) A local authority must make arrangements to bring information about the matters referred to in subsection (2) to the attention of persons –
  - (a) who receive a chargeable service; or
  - (b) who may receive such a service.
- (2) The matters are –
  - (a) the services in respect of which charges are and are not imposed;
  - (b) the standard charges imposed for different types of service (for the meaning of “standard charge”, see section 7(4)); and
  - (c) the operation of sections 4 to 9.
- (3) The arrangements must –
  - (a) provide for the provision of information in a range of accessible formats (including in writing) about the matters referred to in subsection (2) in response to a request made by a person referred to in subsection (1); and
  - (b) be framed so that any information is provided free of charge.
- (4) Where a local authority has imposed (or altered) a charge under section 1(1), it must provide the person upon whom the charge is imposed with a statement in writing, and in any other accessible format that the person reasonably requests, which –
  - (a) describes the service, or combination of services, to which the charge relates;
  - (b) sets out the standard charge for the service, or combination of services, in question (for the meaning of “standard charge”, see section 7(4));
  - (c) if the charge imposed in the case of that person is not the standard charge, sets out the charge imposed;
  - (d) explains how the charge was calculated (including details of any means assessment under section 5(1) and how this affected the calculation);
  - (e) describes the person’s rights to challenge or complain about the charge or the clarity with which the statement is expressed;
  - (f) contains any other matter which regulations made by the Welsh Ministers require to be included in the statement.
- (5) A statement under this section must be provided –
  - (a) free of charge; and
  - (b) within twenty one days of the date on which the decision to impose (or alter) the charge was made.

## **11 Reviews of charging decisions**

- (1) The Welsh Ministers may by regulations make provision for and in connection with the review of decisions taken by local authorities under this Measure.
- (2) The provision that may be made by regulations under subsection (1) includes (but is not limited to) provision –
  - (a) conferring a right upon an individual to whom a statement must be provided under section 10(4) to request a review and an obligation upon the local authority that provided, or should have provided, the statement to carry out a review and implement its findings;
  - (b) as to the decisions in respect of which the individual has the right to request a review;
  - (c) as to the steps that must be taken in order for a person to exercise the right to request a review and the time by which such steps are to be taken;
  - (d) as to who may request a review on behalf of another person;
  - (e) as to the procedure to be followed and steps to be taken in connection with, and following, the review;
  - (f) as to the type of officer or group of officers of the local authority who are to take the decision on the review;
  - (g) requiring a local authority to provide specified information and assistance to a person who has exercised the right to request a review.

## **12 Direct payments**

- (1) This section applies where regulations under section 57 of the Health and Social Care Act 2001 make provision for the making of direct payments by a local authority in Wales in respect of the securing of chargeable services.
- (2) The Welsh Ministers may by regulations make provision, in relation to those payments, which corresponds to the provision which is made by, or may be made under, sections 1 to 11 of this Measure.
- (3) For the purposes of subsection (2), provision corresponds to that which is made by or under sections 1 to 11 if it makes, in relation to reimbursements or contributions, provision which is in the opinion of the Welsh Ministers equivalent in effect to the provision made by or under those sections in relation to charges for services imposed under section 1(1).
- (4) The provision that may be made under this section includes (but is not limited to) –
  - (a) provision permitting a local authority to determine such amount as it considers reasonable by way of reimbursement or contribution;

- (b) provision controlling or limiting the determinations that a local authority may make of those amounts;
- (c) provision specifying categories of person, chargeable services or combinations of chargeable services (or categories of person in respect of a particular service or combination of services) in respect of which the reimbursement or contribution must be nil;
- (d) provision that a local authority which is making or proposes to make direct payments to a person must, in such circumstances as may be specified in the regulations, invite the person to request an assessment of the person's financial means;
- (e) provision that, where such an invitation is required to be given to a person, the local authority must not determine or (in a case where regulations under this section impose a duty in a case where direct payments are already being made) alter the reimbursement or contribution unless requirements specified in the regulations have been satisfied;
- (f) provision requiring a local authority, in such circumstances as may be specified in the regulations, to carry out an assessment of the financial means of a person who requests such an assessment (including provision as to who may make such a request on behalf of another person);
- (g) provision requiring a local authority which has carried out such a means assessment –
  - (i) to determine whether it is reasonably practicable, in the case of that person, for the reimbursement or contribution to be the amount which it would be in the absence of a determination as to the person's ability to pay, and
  - (ii) if the authority determines that it is not reasonably practicable for the reimbursement or contribution to be that amount, to determine what amount (if any) it is reasonably practicable for the reimbursement or contribution to be;
- (h) provision as to the manner in which a local authority must discharge a duty imposed under paragraph (g), including provision controlling or limiting the determinations to be made by the authority;
- (i) provision requiring a local authority, in making a determination as to reimbursement or contribution, to give effect to any determination as to ability to pay made as mentioned in paragraph (g) or (k);
- (j) provision as to the date from which a determination as to reimbursement or contribution is to have effect (including provision for a determination to have effect from a date before that on which it was made);
- (k) provision permitting a local authority, in such circumstances as may be specified in the regulations, to replace a determination as to ability to pay with a new determination;
- (l) provision requiring local authorities to make arrangements to bring to the attention of persons who receive or may receive direct payments information about –

- (i) the services in respect of which direct payments may be made subject to reimbursement or contribution,
  - (ii) the amount which the reimbursement or contribution in respect of different types of service would be in the absence of a determination as to a person's ability to pay, and
  - (iii) the operation of regulations under this section;
- (m) provision requiring a local authority which has made a determination as to a person's reimbursement or contribution to provide that person with a statement in such form and containing such matters as are specified in the regulations;
- (n) provision for and in connection with the review of decisions taken by local authorities under regulations under this section.
- (5) In this section –
- “contribution” means an amount determined by way of contribution as mentioned in section 57(5)(a) of the Health and Social Care Act 2001;
- “reimbursement” means an amount determined by way of reimbursement as mentioned in section 57(4)(b) of that Act.

### 13 Chargeable services

- (1) For the purposes of this Measure, a chargeable service is a service falling within subsection (2).
- (2) The services are –
- (a) a service provided under section 29 of the National Assistance Act 1948 (c. 29) (welfare arrangements for blind, deaf, dumb and crippled persons etc) unless the service is one for which payment may be required under section 22 or 26 of that Act;
  - (b) a service provided under section 45(1) of the Health Services and Public Health Act 1968 (c. 46) (welfare of old people);
  - (c) a service provided under Schedule 15 to the National Health Service (Wales) Act 2006 (c. 42) (care of mothers and young children, prevention of illness and care and after-care and home help and laundry facilities);
  - (d) a service provided under paragraph 1 of Part II of Schedule 9 to the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) (meals and recreation for old people) unless the service is one for which payment may be required under section 22 or 26 of the National Assistance Act 1948;
  - (e) a service provided under section 2 of the Carers and Disabled Children Act 2000 (c. 16) (services for carers) unless the service is provided in the form of residential care.
- (3) The Welsh Ministers may by order amend subsection (2) so as to add a service of any description or to amend or remove the description of a service which is for the time being included there.

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

- (1) Section 17 of the Health and Social Services and Social Security Adjudications Act 1983 (c. 41) is amended as follows.
- (2) In subsection (1) after “authority” insert “in England”.
- (3) In subsection (2)(c) omit “or Schedule 15 to the National Health Service (Wales) Act 2006”.
- (4) After subsection (2) insert—
 

“(2A) Subject to subsection (3) below, an authority in Wales providing a service under section 2 of the Carers and Disabled Children Act 2000 in the form of residential care may recover such charge (if any) for it as they consider reasonable.”.

**15 Amendment to the Local Authority Social Services Act 1970**

- (1) The Local Authority Social Services Act 1970 (c. 42) is amended as follows.
- (2) At the end of the table in Schedule 1 to the Act insert—

“Social Care Charges (Wales) Measure 2010 Sections 1, 2 and 4 to 12	Charges for local authority welfare services”.
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**16 Amendment to the Health and Social Care Act 2001**

- (1) Section 57 of the Health and Social Care Act 2001 (c. 15) (direct payments) is amended as follows.
- (2) After subsection (7A) insert—
 

“(7B) Section 12 of the Social Care Charges (Wales) Measure 2010 makes further provision for and in connection with the determination of amounts by way of reimbursement as mentioned in subsection (4)(b) or contribution as mentioned in subsection (5)(a) in respect of chargeable services within the meaning of that Measure.”.

**17 Orders and regulations**

- (1) Any power of the Welsh Ministers to make an order or regulations under this Measure is exercisable by statutory instrument.
- (2) Any order or regulations under this Measure—
  - (a) may make different provision for different cases and purposes; and

- (b) may make such incidental, supplementary, consequential, transitory, transitional or saving provision as the Welsh Ministers consider appropriate.
- (3) The Welsh Ministers may by order make such provision as the Welsh Ministers consider necessary or expedient for the general purposes, or any particular purposes, of this Measure, or in consequence of, or for giving full effect to, any provision made by this Measure.
- (4) An order under subsection (3) may amend, repeal or revoke any provision of—
- (a) any Act of Parliament or Act or Measure of the National Assembly for Wales (including this Measure); and
  - (b) subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30)).
- (5) Any statutory instrument containing regulations made under this Measure is subject to annulment in pursuance of a resolution of the National Assembly for Wales.
- (6) A statutory instrument containing an order which includes provision (alone or with other provision) mentioned in subsection (4)(b) is subject to annulment in pursuance of a resolution of the National Assembly for Wales. But this does not apply if the order also includes provision mentioned in subsection (4)(a).
- (7) A statutory instrument containing (alone or with other provision) —
- (a) an order under section 13(3), or
  - (b) an order under subsection (3) including provision mentioned in subsection (4)(a),

must not be made unless a draft of the instrument has been laid before, and approved by resolution of, the National Assembly for Wales.

## **18 Commencement and interpretation**

- (1) In this Measure “local authority” means a county council or county borough council.
- (2) The provisions of this section and sections 17 and 19 come into force at the end of a period of two months beginning on the day on which this Measure is approved by Her Majesty in Council.
- (3) The remaining provisions of this Measure are to come into force in accordance with provision made by the Welsh Ministers by order.
- (4) An order under subsection (3) may provide for provisions of the Measure to come into force on different days for different purposes.

## **19 Short title**

This Measure may be cited as the Social Care Charges (Wales) Measure 2010.