

Explanatory Memorandum to the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2010 - National Assistance, Wales 2010 No. (W.)

1. This Explanatory Memorandum has been prepared by the Older People and Long Term Care Policy Directorate of the Health and Social Services Directorate General and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 24.1

Minister's Declaration

2. In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2010. I am satisfied that the benefits outweigh the costs associated with it.

Gwenda Thomas

Deputy Minister for Social Services

15 March 2010

Description

3. The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2010 will in relation to financial assessments for residential care:

- produce one capital limit (the value of property or savings held to determine whether you or your local authority funds your residential care) of £22,000;
- increase the weekly sum of money that local authorities must enable an individual in residential care to retain to spend on personal items from £22.00 to £22.50 per week;
- maximise the weekly values of the Savings Disregards in financial assessments in line with the Department for Work and Pensions planned increases to its Savings Credits from £5.65 to £5.75 (maximum) for individuals and for £8.45 to £8.60 (maximum) for couples;
- amend the existing regulations to remove the age limit that currently applies to the property disregard as regards partners in financial assessments;
- introduce consequential amendments arising from amendments to the Income Support (General) Regulations 2007 that are being introduced by the Department for Work and Pensions (DWP).

Matters of special interest to the Subordinate Legislation Committee

4. None.

Legislative Background

5. The powers exercisable by the Secretary of State under the National Assistance Act 1948 have been transferred to the Welsh Ministers. The changes now put forward can be effected by regulations made by the Welsh Ministers. The Welsh Ministers make the regulations in exercise of the powers conferred upon the Secretary of State by sections 22(4) and (5) of the National Assistance Act 1948 now vested in them by paragraph 30 of Schedule 11 of the Government of Wales Act 2006.

6. The Statutory Instrument to amend the regulations should be processed through the Negative Resolution Procedure.

Purpose and Intended effect of the legislation

Policy Objective

7. It is the Welsh Assembly Government's policy to undertake an annual review of the National Assistance (Sums for Personal Requirements) Regulations 2001, and the National Assistance (Assessment of Resources) Regulations 1992, in the light of current benefits, financial, legal and operational circumstances. This is to ensure that the requirements in place under these Regulations, made under the National Assistance Act 1948, in relation to local authority financial assessment of those in residential care are appropriate and properly take into account these factors.

Effects

8. Under the National Assistance Act 1948 local authorities are required to charge residents for residential accommodation, whether directly provided or arranged with an independent home, with the aim of recovering as much as possible of the costs. The assessment of a person's ability to pay for accommodation is laid down in the National Assistance (Assessment of Resources) Regulations 1992. The Assembly Government has made a commitment previously to keep under review the capital limits local authorities use in the assessment of a person's ability to pay for accommodation. There is also a commitment to review the amount of the personal expenses allowance that individuals in receipt of financial support from their local authority towards their residential care are able to retain for personal use. In addition, the Assembly Government keeps under review the disregards used in such financial assessments, which take account of income-related benefits and payments. All these reviews are undertaken annually.

9. The amendments to the regulations introduce a number of changes, which are described below. While these generally match those being undertaken by the other three UK administrations there is distinct Welsh provision in relation to the capital limits and personal expenses allowance amendments. This is in relation to the consistent policy of the Assembly Government to set the lower capital limit at a more generous level than set in the rest of the UK and to set an amount of the personal expenses allowance slightly higher than elsewhere in the UK.

Increase in capital limits

10. Under current rules a person with capital over £22,000 is expected to meet the full costs of their residential accommodation from their own resources. For capital between £20,750 and £22,000, an income for charging purposes of £1 per week is assumed for each complete £250, or part of £250 they hold (this is known as the tariff system). For charging purposes no account is taken of capital below £20,750 and people who have assets and savings at or below £20,750 receive maximum local authority financial support and contribute whatever income is deemed appropriate by their residential accommodation financial assessment as set out within the Assembly Government's statutory guidance "*Charging For Residential Accommodation Guide*". The Assembly Government, as part of its response in 2000 to the Royal Commission on Long Term Care, made a commitment to keep the capital limits used in residential charging assessments under review. Limits are reviewed annually.

11. These regulations, seek from 12th April 2010, to maintain the upper capital limit at its present level of £22,000 but to increase the amount of the lower limit by £1,250 to bring in line with the upper limit. The affect of this is to produce a single capital limit of £22,000 and thus remove the tariff system referred to above. This is to introduce a new simple and easy to understand arrangement for residents and local authorities in Wales alike in relation to determining who pays for the accommodation a resident receives, and seeks to remove the time consuming calculation of a resident's charge under the tariff system that authorities currently have to undertake.

12. England plans an increase its lower limit to £14,250 and its upper limit to £23,250. Scotland plans to increase its lower limit to £14,000 and its upper to £22,750. It is not known what plans Northern Ireland has although their usual approach is to follow England.

Increase in Personal Expenses Allowance

13. Local authorities are to assume that individuals in residential care need a weekly sum for their personal requirements, known as their personal expenses allowance (PEA). Such weekly sums can be prescribed by the Welsh Ministers under section 22(4) of the National assistance Act 1948. It is custom and practice to uprate the PEA each year. The current amount of PEA in Wales is £22.00 per week. These regulations seek to increase the amount to £22.50 per week from 12th April 2010. This increase maintains a slight increase over that planned in the rest of the UK where it is planned to increase PEA from £21.90 to £22.30.

Increase the Savings Disregard

14. From October 2003, as part of Pension Credit, DWP introduced a weekly Savings Credit to reward people aged 65 and over with modest savings. Following Ministerial approval both the Department of Health and the Assembly Government introduced a weekly Savings Disregard in a local authority's financial assessment of an individual's ability to pay for their residential care. This Savings Disregard applied not only to people in receipt of Savings Credit but also to those with incomes above the Savings Credit threshold.

15. From 12th April 2010 DWP plan to increase its Savings Credit rates by 1.8%, in line with the increase in average earnings in the UK. This increase applied to the weekly Savings Disregard results in an increase from £5.65 to £5.75 (maximum) for individuals and from £8.45 to £8.60 (maximum) for couples. It is planned to introduce these changes in the National Assistance (Assessment of Resources) Regulations 1992 from that date. The other UK administrations are planning the same changes, effective from the same date.

Property Disregarded for Partners under 60 years of age

16. At present under the National Assistance (Assessment of Resources) Regulations 1992 the value of property owned by a person in residential care is only disregarded in the financial assessment process if it remains the home of the person's partner if they are 60 or over, or if they are incapacitated. However, the current policy over several years has been to disregard a property if it remains the home of a person's partner regardless of their age. This is so that they can continue to live there without any risk of the property having to be sold to pay for their partner's residential care. In practice this policy line is what has been adopted by local authorities in undertaking financial assessments. This ensures that property is disregarded in all instances where it is to remain the home of a person's partner, regardless of that partner's age. It is planned that the Regulations are amended from 6th April 2010 to remove the reference to age in this to bring them into line with current practice. This will ensure fairness and equality of approach as regards

the disregard of a property of a partner in a financial assessment for residential care. The other UK administrations are also to introduce this amendment.

Consequential amendment – Disability Premium

17. The National Assistance (Assessment of Resources) Regulations 1992 closely follow the Income Support Regulations 1987 and often import their changes directly by simply referring to the relevant Income Support. With the rise in the pension age for women from 60 to 65 in those regulations, there is a consequential amendment to the Assessment of Resources Regulations.

18. The Income Support Regulations make changes to the qualifying age for people who receive a disability premium. This is one of the Income Support Regulations changes that imports directly into the National Assistance (Assessment of Resources) Regulations 1992, so no amendment is needed to reflect in financial assessments for residential care the change for people who receive this premium. However, the premium also applies to people who are otherwise ineligible but who satisfy a number of conditions. It is therefore necessary to amend the Assessment of Resources Regulations from 6th April 2010 so that both groups continue to be treated in the same way in financial assessments for residential care. This is a change that all 4 UK administrations are introducing.

Implementation and Risk if Legislation is not made

19. It is intended that regulations are laid so as they will come into force on 6th and 12th April 2010 respectively as set out above. If these dates are not achieved then people in residential care in Wales will be disadvantaged in relation to those in residential care in the rest of the UK. The assessment of resources undertaken by local authorities, as part of residential charging, will not be updated to take account of the changes outlined in the sections above.

Consultation

20. The proposed amendments to the capital limits and personal expenses allowance for residential charging assessments are part of a regular annual exercise, which stakeholders (i.e. local authorities) are aware of, to simply increase existing levels. The proposed amendments to the disregards in calculating residential charges are part of an annual exercise, which stakeholders are again aware of, to simply reflect changes to the income-related benefit regulations and the introduction of ad hoc payments. As such it is not considered necessary to consult on these changes (a similar stance is taken by the other UK administrations). Local authorities in Wales have already been given written advance notice by officials of the proposed changes to enable them to plan ahead.

Regulatory Impact Assessment – Options, Cost and Benefits

Impact of the Proposed Capital Limits Changes

21. Under the National Assistance (Assessment of Resources) Regulations 1992, local authorities may not financially contribute to the care costs of residents who have assets, including the value of their home, above the upper capital limit. Such residents are, therefore, expected to meet the full costs of

their residential accommodation from their own resources. If individuals have assets at or below the capital limit then they will receive maximum state financial support, and contribute whatever income is deemed appropriate by the residential accommodation charging assessment. There is currently a tariff system in operation for those with assets between these amounts.

Option 1: Do Nothing

22. This would mean the lower and upper capital limits applied through the charging assessment would be maintained at £ 20,750 and £22,000 respectively. These limits were set by amending Regulations, the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2009 and came into force on 6th April 2009. The Welsh Assembly Government has made a previous commitment to keep the capital limits under review. There is, therefore, an expectation that they will be considered and increased annually, at least broadly in line with current inflation.

Cost

23. There would be no new cost implications to local government from this option.

Benefits

24. This option would provide no new benefits to individuals in residential care. Individuals would not be able to protect any additional amount of their personal assets or savings than at present.

Option 2: Make the Legislation

25. Applying a 2.1% increase to both capital limits in line with the increase in the 2010-11 local government budget settlement would result in an increase in the upper limit from £22,000 to £22,500 and the lower limit from £20,750 to £21,250 - both rounded to the nearest £250. This option would cost local government approximately an additional £0.350m per annum and would be affordable within their 2010-11 budget settlement. This option would produce a lower capital limit in Wales substantially higher than elsewhere in the UK although the upper limit would be slightly lower. However, the option would not follow the previous policy of implementing a more generous increase in the lower limit to support those residents with low levels of capital, both property and savings.

26. By applying previous policy and utilising the available funding to local government (i.e. £0.350m per annum) to have a far more generous impact on the lower capital limit, an option was developed that maintained the upper capital limit at its current level so as all of the available resources are used to increase the lower limit. The rationale for this is that rather than providing for a very small increase in the upper limit (at a greater cost to local authorities but of limited benefit to fewer individuals) is to provide a significant increase to the lower limit thus ensuring a greater number of individuals receive the maximum financial support from their local authority. This option results in maintaining the upper capital limit at £22,000 but increasing the lower limit so as to bring it in line with the upper which in turn produces one capital limit.

This option was selected as the most beneficial to residents and local authorities alike as it benefits more service users, introduces a new, simple to understand one capital limit approach and reduces the administration cost for authorities in calculating charges under the present tariff system which this removes.

Cost

27. Implementing this option would equate to an increased spend for local authorities of £0.250m per annum which is affordable within the 2.1% overall increase in the 2010-11 local government budget settlement.

Benefits

28. Implementing one capital limit is seen as a positive and most welcomed move and one which Ministers have worked towards for a number of years. One capital limit will be simpler for residents and their families to understand and ensure individuals will not need to contribute towards their care costs from any capital savings they have at or under £22,000. One capital limit will also provide for a simpler and more cost effective system for local authorities to administer.

Impact of the proposed changes to the Personal Expenses Allowance (PEA)

29. In calculating a resident's charges, local authorities are required to allow residents to keep an amount of their weekly income for their personal expenses (PEA). This requirement is laid down in the National Assistance Act (Sums for Personal Requirements) Regulations 2001.

Option 1: Do Nothing

30. This would mean that the allowance is maintained at the level of £22.00 per week. This level was set by the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2009, which came into force on 6th April 2009. It has become practice to uprate annually the PEA and, therefore, there is an expectation by local authorities and care home residents that the sum will be increased. In addition, the other three administrations in the UK plan to increase PEA from the current level of £21.90 to £22.30 per week. This would mean that care home residents in Wales would be disadvantaged by being treated less favourably than the rest of the UK and no longer retain Wales' slight lead in its amount of PEA.

Option 2: Make the Legislation

31. Implementing the legislation will mean that individuals in residential care homes keep an increased amount of their income each week for their personal expenses. These amendments to the regulations provide for a weekly personal expense allowance of £22.50, which is an increase of 50 pence per week on the current level and results in a slightly higher allowance than the rest of the UK.

Costs

32. This option can be implemented at a cost to local government of approximately £0.367m per annum and although this equates to an additional

0.2% cost over and above the local government budget settlement for 2010-11 of 2.1%, this is considered negligible in additional costs terms across the 22 authorities and in any event, is negated by the reduced cost as against the local government settlement for 2010-11 arising from the capital limits changes outlined above.

Benefits

33. The increase will enable individuals to receive an increase in the amount of money they can retain for personal expenditure and the increase in Wales will keep PEA as a slightly high level than the rest of the UK.

Impact of the Proposed Savings Disregard Increase

34. From October 2003, as part of Pension Credit, DWP introduced a weekly savings credit to reward people aged 65 and over with modest savings. Following Ministerial approval both DH and the Assembly Government introduced a weekly savings disregard in a local authority's assessment of an individual's ability to pay for their residential care. This savings disregard applies not only to people in receipt of Savings Credit but also to those with incomes above the Savings Credit threshold.

35. From 12th April 2010 DWP plan to increase its Savings Credit rates by 1.8%, in line with the increase in average earnings in the UK. This increase applied to the weekly savings disregard results in an increase from £5.65 to £5.75 (maximum) for individuals and from £8.45 to £8.60 (maximum) for couples. The other three administrations in the UK are proposing the same changes. These regulations will maximise the weekly values of the Savings Disregards in line with the DWP planned increases to its Savings Credits.

Cost

36. There are no additional financial consequences for local authorities arising from the changes to the regulations arising from the Savings Disregard increase. The cost of such changes is covered by the additional income authorities will receive from charges to residents as a result of the increase in Savings Credit.

Benefits

37. An increased in the disregards will ensure that residents will receive the full allowance for the DWP's Savings Credit in their charging assessment.

Property Disregard for Partners Under 60 Years of Age

38. At present under the regulations the value of property owned by a person in residential care is disregarded in the financial assessment process only if it remains the home of the person's partner if they are 60 or over, or if they are incapacitated. The current policy, however, has been to disregard a property if it remains the home of a person's partner, regardless of their age, so that they can continue to live there without any risk of the property being sold to pay for their partner's residential care. In practice this policy has been adopted by local authorities in undertaking financial assessments. To ensure that property is disregarded in all instances where it is to remain the home of a person's partner, regardless of their age, the regulations need to be amended

to remove the reference to age in respect of partners. This will ensure fairness and equality of approach in property disregards as regards partners. The other UK administrations are also as to introduce this amendment.

Option 1 – Do nothing

39. Local authorities could currently, legally, take property that is to remain the home of the partner of an individual in care into account when undertaking a financial assessment if their partner is under 60 and not incapacitated. This could result in a property having to be sold in order to pay care costs and partners falling into this category losing their homes.

Option 2 – Make Legislation

40. This will ensure individuals in care who have partners who remain living in the family home are treated on a fair and equitable basis with regards to the disregard of property and be consistent with the Assembly Government's policy intentions and local authority practice in such circumstances. It will also introduce this change in line with the intention to do so by the other UK administrations.

Cost

41. Local authorities contacted to establish current practice maintain that authorities do not presently take the value of property into account in the financial assessment where it is to remain the home of a person's partner regardless of their age. This suggests that local authorities are applying the policy intention in such circumstances. Making the requirement to disregard such property in relation to partners of whatever age would therefore not result in any additional costs to local government, given this is current practice.

Benefits

42. Introducing legislation would safeguard property in all instances where a partner is to remain living in the family home and ensure fairness and equality of approach.

Consequential amendment – Income Support Regulations Disability Premium

43. The National Assistance (Assessment of Resources) Regulations 1992 closely follow the Income Support Regulations 1987 and often import their changes directly by simply referring to the relevant Income Support. With the rise in the pension age for women from 60 to 65 in those regulations, there is a consequential amendment to the Assessment of Resources Regulations.

44. The Income Support Regulations make changes to the qualifying age for people who receive a disability premium. This is one of the Income Support Regulations changes that imports directly into the Assessment of Resources Regulations, so no amendment is needed to reflect in financial assessments for residential care the change for people who receive this premium. However, the premium also applies to people who are otherwise ineligible but who satisfy a number of conditions. It is therefore necessary to amend the Assessment of Resources Regulations from 6th April 2010 so that both groups

continue to be treated in the same way in financial assessments for residential care. This is a change that all 4 UK administrations are introducing.

Option 1 – Do nothing

45. This would leave the National Assistance (Assessment of Resources) Regulations 1992 untouched so that they would be out of touch with the Income Support Regulations. This would disadvantage those residents who fell into the categories who benefited from the changes to the Income Support Regulations in that for residential charges purposes they would continue to be treated as now.

Option 2 – Make Legislation

46. Introducing this amendment will ensure the National Assistance (Assessment of Resources) Regulations 1992 recognise the amendment being made to the Income Support Regulations in so far as they relate to treatment of disability premiums so that residents benefit accordingly.

Costs

47. There are no additional financial consequences for local authorities arising from the changes to the regulations. The cost of such changes is covered by the additional income authorities will receive from charges to residents as a result of the increase in Disability Premium..

Benefits

48. Will ensure compatibility with the Income Support Regulations and put residents in Wales on a par with those elsewhere in the UK, where this change is also being introduced.

Competition Assessment

49. Not applicable.

Post Implementation Review

50. The effect of the changes will be monitored by officials via their regular written contact with local authority financial assessment officers.

Summary

51. The range of proposals in these Regulations will benefit those in residential care in Wales. They will ensure that all residents with £22,000 or less in capital savings no longer need to contribute towards their care costs from this money. They will remove the tariff system within the capital limits provisions and so provide for a simpler system to understand and administer. They will also allow residents in Wales to benefit fully from the disregards in their financial assessments from increases in the DWP benefits, which are occurring from April 2010. In addition, those individuals who are supported by their local authority will benefit from a greater increase in their personal allowance than is being proposed for the rest of the UK. They will also ensure fairness and equality as regards to treatment of property.