WELSH STATUTORY INSTRUMENTS

2011 No. 964 (W.138)

SOCIAL CARE, WALES

The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011

Made - - - -	*24 March 2011*
Laid before the National Assembly for Wales - -	*29 March 2011*
Coming into force - -	*11 April 2011*

The Welsh Ministers, in exercise of the powers conferred on them by sections 11, 12 and 17(2) of the Social Care Charges (Wales) Measure 2010(**1**), make the following Regulations:

Title, commencement and application

1.—(1) The title of these Regulations is the Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the Measure" ("*y Mesur*") means the Social Care Charges (Wales) Measure 2010;

"the Regulations" ("*y Rheoliadau*") means the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011;

"charge" ("*ffi*") means a charge imposed under section 1 of the Measure;

"gross payments" ("*taliadau gros*") means payments which are made at such a rate as the authority estimate to be equivalent to the reasonable cost of securing the provision of the service concerned;

"home visit" ("*ymweliad â'r cartref*") means a visit which is undertaken by an appropriate officer of a local authority to a requester's current place of residence or such other venue as the requester reasonably requests;

(**1**) 2010 nawm 2 ("the Measure"). *See* section 17 of the Measure for a definition of "regulations".

"in writing" ("*yn ysgrifenedig*") means any expression consisting of words or figures that can be read, reproduced and subsequently communicated and may include information transmitted and stored by electronic means;

"requester" ("*ceisydd*") means any person—

(a) to whom a statement must be provided under section 10(4) of the Measure and who requests a local authority to review its decision to impose a charge on them; or

(b) to whom a statement must be provided under regulation 19 of the Regulations and who requests a local authority to review its decision to determine a reimbursement or contribution;

"review period" ("*cyfnod adolygu*") means a period commencing on the date the local authority receives a request for a review and ending on the earlier of the date the local authority sends its decision on the review to the requester or the date the local authority receives a withdrawal of the request;

"service" ("*gwasanaeth*") means a chargeable service as defined by section 13 of the Measure;

"statement" ("*datganiad*") means a statement that is in a format that is appropriate to the communication needs of the requester and, if a requester has appointed a representative, their representative;

"working day" ("*diwrnod gwaith*") means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a Bank Holiday within the meaning of the Banking and Financial Dealings Act 1971(**2**).

Right to request a review

3.—(1) A requester may request a review of a decision to impose upon them or determine, in relation to a service received by the requester, a—

(a) charge;

(b) reimbursement; or

(c) contribution(**3**).

(2) A request may relate to (but is not limited to) the following circumstances—

(a) a local authority having not complied with any of the duties imposed upon it by the Measure or by regulations made under it;

(b) a local authority having not correctly applied its own charging policy in imposing a charge, or determining a reimbursement or contribution;

(c) an error having been made in the calculation of the charge, reimbursement or contribution;

(d) a charge having been imposed for a service that has not at any time been provided to the requester;

(e) the requester's financial circumstances having changed since the charge, reimbursement or contribution was calculated;

(f) a requester considering that they do not have the financial means to pay the charge, reimbursement or contribution as to do so would cause them financial hardship.

(3) A request for a review must state which one or more of the circumstances listed in paragraph (2) or any other circumstances are the reason for the review being requested.

(4) A request may be made at any time after a local authority has issued a statement under—

(a) section 10(4) of the Measure; or

(**2**) 1971 c. 80.
(**3**) "Reimbursement" and "contribution" are defined in section 12(5) of the Measure.

(b) regulation 19 of the Regulations.

(5) A request may be made to a local authority either orally or in writing.

(6) A local authority must appoint a person (an "appointed person") who is a member of the staff of the local authority to deal with the review and reference to "appointed person" in these Regulations is to be construed accordingly.

(7) Regulations 4 to 11 will not apply where a local authority reasonably believes that there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person and the requester has not stated any other additional circumstances.

(8) Where paragraph (7) applies, the local authority must send a statement to the requester stating that the request for a review will not be considered by the authority because the authority reasonably believes that—

(a) there has been no relevant change in any of the circumstances listed in paragraph (2) that gave rise to a previous request for a review by or on behalf of the same person; and

(b) the requester has not stated any other additional circumstances.

Representatives

4.—(1) Subject to paragraph (2), a review may be requested by a person (a "representative") acting on behalf of a requester and reference to a "representative" in these Regulations is to be construed accordingly.

(2) If the requester wishes to appoint a representative to request a review on the requester's behalf, the requester must provide the local authority with their authorisation, either orally or in writing, of the appointment.

(3) If the local authority receives the requester's oral authorisation, the local authority must provide the requester and their representative with a statement confirming that the requester has given their oral authorisation of the appointment.

(4) Where a representative has been appointed in accordance with this regulation, the representative may act on the requester's behalf for the whole of the review period unless the requester's authorisation states otherwise or the requester has withdrawn their authorisation under paragraph (5).

(5) A requester may withdraw their authorisation by giving notice, either orally or in writing, to the appointed person.

(6) Where a representative has been appointed in accordance with this regulation, any reference in regulations 5(1), 6(1)(l) and (m), 7(1), 8(1), (2) and (5) and 9(2) to a requester means that person's representative to the extent that it is consistent with the requester's authorisation.

Withdrawal of request

5.—(1) A request may be withdrawn orally or in writing by the requester at any time during the review period.

(2) A withdrawal can only be made to the appointed person.

(3) Where a request is withdrawn, the local authority must provide the requester and any representative with a statement to confirm that the request has been withdrawn and that no further action upon it will be taken as a result.

Acknowledgement of the request

6.—(1) Subject to paragraph (2), a local authority must within five working days of the receipt of any request that complies with regulation 3 send the requester and any representative a statement stating–

(a) the date on which the request was received;

(b) the nature of the request;

(c) if the requester has not already appointed a representative, that the requester may appoint a representative to assist them and act on their behalf during the whole or part of the review period;

(d) how the local authority will carry out the review;

(e) that the requester need not pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period;

(f) if the requester decides not to pay the charge, reimbursement or contribution, or the part which is the subject of the review, during the review period, that the requester or any representative must notify the local authority, either orally or in writing, of that decision;

(g) whether, in the event that the requester does not pay the charge, reimbursement or contribution during the review period, the local authority will seek to recover, after the review period, any amount that has accrued and not been paid during the review period;

(h) that if the requester has requested a review of a contribution and has notified the local authority that they will not pay the contribution during the review period, the local authority will make gross payments to the requester during the review period;

(i) what, if any, further information or documentation the local authority reasonably requires from the requester in order to carry out a review and the time limit for the provision of such information or documentation which is specified in regulation 8;

(j) that an appropriate officer of the local authority would be available to carry out a home visit for the purposes of collecting the further information or documentation;

(k) the procedure for requesting a home visit;

(l) the contact details of the appointed person who will be responsible for providing a response to any enquiries the requester may have about the review;

(m) the contact details of any organisation that might be able to assist the requester during the review period.

(2) Paragraph (1) does not apply where a local authority sends its decision on the review to the requester and any representative within five working days of the receipt of the request.

Home visit

7.—(1) The requester may elect to provide any information or documentation reasonably required by the local authority during a home visit by notifying the appointed person either orally or in writing.

(2) If an election is made under paragraph (1), the local authority must carry out a home visit.

Time limit for the provision of further information or documentation

8.—(1) Subject to paragraph (2), if further information or documentation is reasonably required by the local authority, the requester must provide the local authority with that information or documentation within 15 working days of the date of the request for further information or documentation being made.