WELSH STATUTORY INSTRUMENTS

2011 No. 962 (W.136)

SOCIAL CARE, WALES

The Social Care Charges (Means Assessment and Determination of Charges) (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 by sections 2(2), 3(1), 4(1)(d), 4(3)(b), 4(4), 5(2)(a), 5(4), 6(5), 7(2), 8(3), 9(4)(d), 10(4)(f) 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 (Means Assessment and Determination of Charges) (Wales) Regulations 2011 and they come into force on 11 April 2011.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

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

"assessable income" ("*incwm asesadwy*") means that part of a service user's income in respect of which a local authority may make a determination in accordance with section 7 of the Measure; it does not include the income which a local authority must disregard in accordance with regulation 14;

"assessment of needs" ("*asesiad anghenion*") means an assessment by a local authority of a service user's need for community care services undertaken in accordance with section 47 of the National Health Service and Community Care Act 1990(**2**) or section 1 of the Carers and Disabled Children Act 2000(**3**) and "assessed as needing" ("aseswyd bod arno angen") is to be read accordingly;

"basic entitlement" ("*hawlogaeth sylfaenol*") means, in relation to—

(**1**) 2010 nawm 2 ("the Measure"). *See* section 17 of the Measure for the definition of "regulations".
(**2**) 1990 c. 19.
(**3**) 2000 c. 16.

(a) income support—

the personal allowance and any premiums to which a service user is entitled, but need not include the severe disability premium ("SDP") where is it paid, and where a service user is a carer, includes any carer premium that person receives,

(b) employment and support allowance—

the personal allowance and any premiums and components to which a service user is entitled, but need not include the SDP where is it paid, and where a service user is a carer includes any carer premium that person receives,

(c) guarantee credit —

the personal allowance and any additional amount to which a service user is entitled, but need not include the additional amount added for severe disability where it is paid, and where a service user is a carer, includes any additional amount applicable for carers that person receives;

"day service" ("*gwasanaeth dydd*") means a service provided by a local authority which meets a part of a service user's assessed needs, which takes place away from that person's home and which is intended to assist the person in meeting others, or taking up new or practising existing interests and includes work opportunities;

"direct payment" ("*taliad uniongyrchol*") has the meaning given in regulations 8 and 9 of the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011;

"dual provision" ("*darpariaeth ddeuol*") means that the assessed needs of a service user are being met—

(a) in part by a local authority providing or securing a service or services for that person, and

(b) in part by the person receiving a direct payment in order to secure the provision of another or other services;

"employment and support allowance" ("*lwfans cyflogaeth a chymorth*") means either contributory employment and support allowance or income-related employment and support allowance in accordance with Part 1 of the Welfare Reform Act 2007(**4**);

"flat-rate charge" ("*ffi unffurf*") means a fixed rate charge for a chargeable service received by a service user which is imposed by a local authority regardless of the means of that service user;

"guarantee credit" ("*credyd gwarant*") is to be construed in accordance with sections 1 and 2 of the State Pension Credit Act 2002(**5**);

"home visiting facility" ("*cyfleuster ymweliadau cartref*") means a visit (or visits) which are undertaken by an appropriate officer of a local authority to a service user's current place of residence, or at such other venue as the service user reasonably requests, for the purposes of gathering information to inform a means assessment for that person and for providing information and offering assistance in relation to that process;

"in writing" ("*mewn ysgrifen*") 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;

"income support" ("*cymorth incwm*") means income support paid in accordance with section 124 of the Social Security Contributions and Benefits Act 1992;

"means assessment" ("*asesiad modd*") means an assessment of the financial means of a service user undertaken in accordance with section 5(1) of the Measure and regulation 14 and

(**4**) 2007 c. 5.
(**5**) 2002 c. 16.

"assessment of a service user's means" ("asesiad o fodd defnyddiwr gwasanaeth") is to be read accordingly;

"net income" ("*incwm net*") means, the income that a service user has, or would have left after the deduction from that person's assessable income of the standard charge (or any other charge) imposed under these Regulations, for a service that has been offered to, or provided, for that person;

"provided" ("*darparwyd*") in these Regulations includes making arrangements for the provision;

"relevant benefit" ("*budd-dal perthnasol*") means—

(a) income support, or

(b) employment and support allowance, or

(c) guarantee credit;

"savings credit" ("*credyd cynilion*") has the meaning given in sections 1 and 3 of the State Pension Credit Act 2002;

"service" ("*gwasanaeth*") means a chargeable service(**6**), and where the context requires, chargeable services or a combination of chargeable services and "services" ("*gwasanaethau*") and "combination of services" ("*cyfuniad o wasanaethau*") are to be interpreted accordingly;

"service user" ("*defnyddiwr gwasanaeth*") means an adult who has been offered, or who is receiving, a service provided by a local authority;

"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(**7**).

Local authority – power to charge for services

3. If a local authority exercises its power to charge for a service in accordance with section 1 of the Measure (general power to charge for care services) it must give effect to the provisions of these Regulations.

Service users upon whom and services in respect of which a charge must not be imposed

4.—(1) A local authority must not impose a charge under section 1 of the Measure upon a service user who—

(a) has been offered or is receiving a service and who is suffering from any form of Creuzfeldt Jacob disease where that disease has been clinically diagnosed by a registered medical practitioner;

(b) has been offered or is receiving a service provided as part of a package of after care services in accordance with section 117 of the Mental Health Act 1983 (after care)(**8**); or,

(c) has had a means assessment undertaken by a local authority and has been assessed as having an income of less than the total amount referred to regulation 15(2).

(2) A local authority must not impose a charge under section 1 of the Measure for any of the services specified in this paragraph—

(a) the provision of transport to attend a day service where the transport is provided by a local authority and where attendance at the day service and the provision of transport to enable such attendance are included as part of the service user's assessment of needs;

(**6**) "Chargeable service" is defined in section 13 of the Measure.
(**7**) 1971 c. 80.
(**8**) 1983 c. 20.

(b) the provision of a statement of information in accordance with section 10(4) of the Measure (provision of information about charges).

(3) Nothing in this regulation affects the discretion of a local authority to specify additional categories of service user or services upon whom or in respect of which a charge may not be imposed.

(4) Regulations 5 to 16 do not apply to a service user referred to in sub-paragraphs (a) or (b) of paragraph (1).

Maximum reasonable charge for a service

5.—(1) A local authority must exercise the power in section 1(2) of the Measure (to determine a reasonable charge for the provision of a service) in accordance with the provisions of this regulation.

(2) Subject to paragraphs (3) and (4), the maximum amount that a local authority may determine to be a reasonable charge for the provision of a service or combination of services to a service user ("maximum reasonable charge") ("*uchafswm ffi rhesymol*") is £50 per week.

(3) Subject to paragraph (4), where a service user has assessed needs which are met by way of dual provision £50 per week is the maximum of the aggregate of the amounts that a local authority may require the service user to pay in respect of that provision by way of–

(a) a charge, and

(b) a payment towards the cost of securing the provision of the service calculated in accordance with the Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011.

(4) When calculating the maximum reasonable charge that a service user may be liable to pay, a local authority—

(a) must disregard the charge for any service for which it imposes a flat-rate charge, and

(b) may impose the charges in respect of such a service in addition to the maximum reasonable charge.

Procedure for determining a charge

6.—(1) When calculating the amount that a service user pays or may be required to pay for the service received by or offered to that service user, a local authority must adopt the following procedure—

(a) calculate the amount of its reasonable costs for the service received by or offered to the service user;

(b) disregard from that total the amount of any charges for a service referred to in regulation 5(4);

(c) apply the maximum reasonable charge to this resulting amount where the resulting amount would otherwise exceed it and this, subject to sub-paragraph (d), is the amount of the charge that the service user may be required to pay;

(d) subject the amount calculated in accordance with sub-paragraph (c) to a determination of the service user's ability to pay a charge in accordance with section 7 of the Measure and regulation 15.

(2) The step referred to in paragraph (1)(d) will only be applied where—

(a) the service user has requested, and

(b) the local authority has undertaken,

an assessment of the service user's means in accordance with section 5(1) of the Measure and regulation 14.

Invitation to request a means assessment

7.—(1) Where a local authority is required by section 4 of the Measure (invitation to request a means assessment) or determines in accordance with paragraph (2) to issue an invitation to a service user to request an assessment of his or her means under section 5(1) of the Measure (duty to carry out a means assessment), the local authority must ensure that the invitation contains full details of–

(a) the services that are being offered to, or provided for, the service user for which a charge is being considered;

(b) its charging policy, which must include the following—

(i) its policy in relation to which, if any, of the services it provides are subject to a charge,

(ii) details of the standard charge(**9**) which may be imposed in relation to any such service,

(iii) details of any service for which a flat-rate charge is imposed, and

(iv) details of the maximum reasonable charge for services that may be imposed in accordance with regulation 5, or the maximum reasonable charge that the local authority applies, where that charge is lower;

(c) its means assessment process;

(d) its procedure for dealing with a means assessment for a service user who receives only services for which a flat-rate charge is imposed;

(e) the information and documentation that a service user is required to provide in order that an assessment of the service user's means can be undertaken;

(f) the time, as specified in regulation 8, within which a service user is required to supply the information and documentation referred to in sub-paragraph (e);

(g) the format in which it will accept the information and documentation referred to in sub-paragraph (e);

(h) any home visiting facility that it provides within its area;

(i) the consequences of failing to respond to the invitation in accordance with sub-paragraph (f);

(j) the named individuals within the authority whom a service user should contact should that person require additional information or assistance in respect of any of the processes attendant upon the issue of the invitation;

(k) a service user's right to appoint a third party to assist, or to act on his or her behalf, in respect of all or part of the means assessment process; and

(l) the contact details of any organisation in its area which provides support or assistance of the type referred to in sub-paragraph (k).

(2) Where a local authority reasonably considers that one or more of the circumstances prescribed by section 9(4) of the Measure (replacement by authority of determinations as to ability to pay) applies, it must invite a service user to request a new assessment of his or her means under section 5(1) of the Measure with a view to its making a further determination of that person's ability to pay a charge in accordance with section 9 of the Measure and regulation 15.

(3) A local authority must provide a service user with the information referred to in paragraph (1) in writing, or in any other format that is appropriate to the communication needs of the service user(**10**).

(**9**) "*Standard charge*" is defined in section 7(4) of the Measure.

(**10**) For an explanation of the meaning of "*any format appropriate to the communication needs of the service user*", please refer to the guidance published by the Welsh Ministers, entitled Introducing More Consistency in Local Authority Charging for Non-Residential Social Services.