

Explanatory Memorandum to the Health and Social Care Act 2008 (Commencement No. 1) (Wales) Order 2009 – Social Care, Wales 2009 No. 631(W. 57)(C.43) and the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2009 - National Assistance, Wales 2009 No.632 (W. 58)

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

Description:

2. The Health and Social Care Act 2008 (Commencement No. 1) (Wales) Order 2009 will:

- remove the “liable relatives” provisions from residential care charging by commencing in relation to Wales section 147 of the Health and Social Care Act 2008.

3. The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2009 will:

- increase the lower capital limit (the amount of personal money that is exempt from the financial assessment process undertaken on an individual entering residential care) from the current amount of £19,000 to £20,750;
- increase the weekly sum of money that local authorities must enable an individual in residential care to retain to spend on personal items from £21.38 to £22.00 per week;
- maximise the weekly values of the Savings Disregards in line with the Department for Work and Pensions (DWP) planned increases to its Savings Credits from £5.45 to £5.65 (maximum) for individuals and for £8.15 to £8.45 (maximum) for couples;
- make consequential amendments to residential charging as a result of the commencement of section 147 of the Health and Social Care Act 2008

Matters of special interest to the Subordinate Legislation Committee:

4. None.

Legislative Background:

5. The powers exercisable by Welsh Ministers under section 170(3) of the Health and Social Care Act 2008 enable them to commence section 147 of that Act in so far as it relates to Wales.

6. The powers exercisable by 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. 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.

7. The Statutory Instruments to commence section 147 of the Health and Social Care Act 2008 and to amend the regulations should be processed through the Negative Resolution Procedure.

Purpose and intended effect of the legislation:

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 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. Limits are now reviewed annually. In addition, the Assembly keeps under review the disregards used in such assessments, which take account of income-related benefits and payments.

9. In addition, sections 42 and 43 of the National Assistance Act 1948 are the sections that contain the "liable relatives" rules whereby where a person goes into residential care, and receives assistance from their local authority in meeting the cost of their care, the authority has discretionary powers to ask the person's "liable relatives" to make payments towards the costs incurred, essentially their spouse. This provision is now seen as unfair as it only applies to married couples and its application appears to have been patchy and inconsistent between authorities in the UK.

10. The commencement order thereby commences section 147 of the Health and Social Care Act 2008 which repeals these "liable relatives" rules, ie repeals section 42 and 43 of the National Assistance Act 1948. In addition 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 allowances 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 the amount of the PEA slightly ahead of elsewhere in the UK.

Increase in capital limits

11. 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 £19,000 and £22,000, an income for charging purposes of £1 per week is assumed for each complete £250, or part of £250

held (this is known as the tariff system). For charging purposes no account is taken of capital below £19,000 and people who have assets and savings at or below £19,000 receive maximum state financial support and simply contribute whatever income is deemed appropriate by the residential accommodation charging assessment. The Assembly, 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.

12. These regulations, seek from 6th April 2009 to maintain the upper capital limit at its present level of £22,000 but increase the lower capital limit from its present level of £19,000 to £20,750. England plan an increase in its lower limit from £13,500 to £14,000 and the upper limit from £22,250 to £23,000. The plans increases for Scotland and Northern Ireland are not known at present.

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 are laid down in the National Assistance (Sums for Personal Requirements) Regulations made annually. It is custom and practice to uprate the PEA each year. The current amount of PEA in Wales is £21.38 per week. These regulations seek to increase the amount to £22.00 per week. This increase maintains a slight increase over that planned in the rest of the UK from £21.15 to £21.90.

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 DH and the Assembly Government introduced a weekly Savings Disregard in the local authority's 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 6th April 2009 DWP plan to increase its Savings Credit rates by 3.5%, in line with the increase in average earnings in the UK. This increase applied to the weekly Savings Disregard results in an increase from £5.45 to £5.65 (maximum) for individuals and from £8.15 to £8.45 (maximum) for couples. The other three administrations in the UK are planning the same changes, effective from 6th April 2009.

Repeal of the Liable Relatives Rules following the commencement of section 147 of the Health and Social Care Act 2008

16. These regulations make consequential amendments to the National Assistance (Assessment of Resources) Regulations 1992 to take account of

this commencement, the result being to remove the “liable relatives” rules from residential care charging.

Implementation

16. It is intended that both the commencement order and these regulations are laid by 16th March 2009 so as they will come into force on 6th April 2009 in line with the date planned to implement corresponding regulations by the other three administrations in the UK and the planned DWP changes. 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

17. The proposed amendments to the capital limits and personal expenses allowance for residential charging assessments is 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. The changes in relation to the liable relatives rules are consequential amendments resulting from commencement of section 147 of the Health and Social Care Act 2008. The commencement of the repeal of the liable relative provisions has been known about for some time and over recent years local authorities have been advised by the Department of Health and by the Assembly Government to exercise discretion and not apply the liable relatives rule pending its formal repeal.

18. As such it is not considered necessary to consult on these changes (a similar stance is taken by the other three 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

19. 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 lower limit then they will receive maximum state financial support, and simply contribute whatever income is deemed appropriate by the residential accommodation charging assessment. There is a tariff system in operation for those with savings between these amounts.

Options

Option 1: Do Nothing

20. This would mean the lower and upper capital limits applied through the charging assessment would be maintained at £19,000 and £22,000. These limits were set by amending Regulations, the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2008, and came into force on 7th April 2008. 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. The other consideration is that local authority supported residents in care homes in England, Scotland and Northern Ireland will benefit from planned increases by the other three UK administrations.

Cost

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

Benefits

22. 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

23. Applying a 2.8% increase to both capital limits in line with the increase in the 2009-10 local government budget settlement would result in an increase in the upper limit from £22,000 to £22,500 and the lower limit from £19,000 to £19,500 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 2009-10 settlement. This option would also maintain the limits in Wales as being overall the highest in the UK albeit that it would not follow the previous policy of implementing a more generous increase in the lower limit.

24. By applying previous policy and utilising the overall 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 and increasing the

lower capital limit to £20,750 (an increase of 9.2%) and has been selected at the most appropriate and beneficial option.

Cost

25. Implementing this Option would equate to an increase spend for local authorities of £0.350m per annum and is in line with the 2.8% overall increase in the 2009-10 budget settlement and therefore considered affordable. Ploughing all of the available resources into the lower limit results in the same overall expenditure for local authorities.

Benefits

26. Increasing the lower capital limit only will result in more individuals in residential care receiving financial support from their local authority. It will continue to shorten the gap between the upper and lower limits, thereby shortening the tariff system that is in operation for those with savings between the two amounts. Consequently the tariff system will be applied to fewer residents resulting in a simpler calculation and administration process for authorities. The Option also works towards creating a one capital limit system which authorities have previously called for as a move towards introducing in the longer term.

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

27. 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 amount is laid down in the National Assistance Act (Sums for Personal Requirements) Regulations.

Option 1: Do Nothing

28. This would mean that the allowance is maintained at the level of £21.38 per week. This level was set by the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2008, which came into force on 7th April 2008. It has become practice to update 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 £21.15 to £21.90 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.

Option 2: Make the Legislation

29. Implementing the Legislation will mean that individuals in residential care homes keep an increased amount each week for their personal expenses. These amendments to the regulations provide for a weekly personal expense allowance of £22.00, which is an increase of 62 pence per week on the current level and results in a slightly higher allowance than the rest of the UK.

Costs

30. This option can be implemented at a cost to local government of approximately £0.479m per annum and can be accommodated within the local government budget settlement increase of 2.8% for 2009-10.

Benefits

31. 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

32. 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 applied not only to people in receipt of Savings Credit but also to those with incomes above the Savings Credit threshold.

33. From 6th April 2009 DWP plan to increase its Savings Credit rates by 3.5%, in line with the increase in average earnings in the UK. This increase applied to the weekly savings disregard results in an increase from £5.45 to £5.65 (maximum) for individuals and from £8.15 to £8.45 (maximum) for couples. The other three administrations in the UK are proposing the same changes, effective from 6th April 2009.

34. These regulations will maximise the weekly values of the Savings Disregards in line with the DWP' planned increases to its Savings Credits from £5.45 to £5.65 (maximum) for individuals and for £8.15 to £8.45 (maximum) for couples.

Cost

35. 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

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

Impact of proposed Repeal of the Liable Relatives Rules

37. From 6th April 2009 Welsh Ministers are to commence section 147 of the Health and Social Care Act 2008 as it applies to Wales which will repeal the liable relatives rules contained within sections 42 and 43 of the National Assistance Act 1948. As a consequence the “liable relative” of an individual who is in residential care, and in receipt of financial assistance from their local authority, cannot be asked to make any form of payment from their own resources towards the cost incurred by the state.

Option 1: Do Nothing

38. If the liable relatives rule is not repealed local authorities will retain discretionary powers to ask a person’s liable relative to pay towards their care costs in Wales, essentially spouses but not other forms of partners. Wales will therefore become out of line with the legal position in the rest of the UK and local authorities would still legally be able to request payment towards care costs from such individuals.

Option 2: Make Legislation

39. Commencement of the repeal of these provisions will remove the liability currently placed on a “liable relative” to pay towards the care costs their relative incurs. Local authorities will have no powers to place this liability on a “liable relative” and hence will treat partners of a resident, spouses, civil partners and other forms of partners, equally. This will ensure consistency in the way in which local authorities approach such situations across Wales and will be in line with the legal positions across the UK. Commencing section 147 of the Health and Social Act 2008 to do this also results in consequential amendments to the National Assistance (Assessment of Resources) Regulations 1992 to remove this current requirement from those regulations.

Cost

40. There are no additional financial consequences for local authorities arising from the commencement of this repeal and the accompanying changes to the regulations. Most authorities in Wales have not previously used their powers and where they might have consider doing so, they have been discourages over the past few years. As such in practice its usage has curtailed in Wales.

Benefits

41. To legally remove any financial obligations on a person’s liable relative and to ensure consistency across Wales and remain in line with the rest of the UK.

Competition Assessment

42. Not applicable.

Post Implementation Review

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

Summary

44. The range of proposals in these amendments will substantially benefit those in residential care in Wales. They will allow for more residents than present to be financially supported by their local authority, or for that level of support to rise. They will also allow residents in Wales to benefit fully in disregards in their charging assessments from an increase in the DWP benefits, which are occurring from 6th April 2009. In addition, those residents 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.