



Social Services and Well-being (Wales) Act 2014

2014 anaw 4

PART 5

CHARGING AND FINANCIAL ASSESSMENT

Charging for meeting needs

59 Power to impose charges

- (1) A local authority may require a person to pay a charge to the authority for providing or arranging the provision of care and support or (in the case of a carer) support under sections 35 to 45 to meet a person's needs.
- (2) A charge imposed under subsection (1) may cover only the cost that the local authority incurs in meeting the needs to which the charge applies.
- (3) But where a local authority is meeting needs because section 35(4)(b)(ii), 36, 38, 41(2), (4) or (6)(a)(i), 43(2) or (4)(a)(i) or 45 applies, it may require a person to pay a charge to the authority (in addition to any charge imposed under subsection (1)) for putting in place the arrangements for meeting those needs.
- (4) A local authority's power to impose a charge under this section is subject to—
 - (a) the provision made in regulations under section 61 or 62 (if any), and
 - (b) its duties under sections 63, 66 and 67 (if applicable).

60 Persons upon whom charges may be imposed

- (1) This section describes the persons upon whom charges may be imposed under section 59.

Status: This is the original version (as it was originally enacted).

- (2) A charge for providing or arranging the provision of care and support to meet an adult's needs, or for putting in place the arrangements for that care and support, may be imposed on that adult.
- (3) A charge for providing or arranging the provision of care and support to meet a child's needs, or for putting in place the arrangements for that care and support, may be imposed—
 - (a) where the care and support is provided to a child, on an adult with parental responsibility for that child;
 - (b) where the child's needs for care and support are being met by the provision of something to an adult, on that adult.
- (4) A charge for providing or arranging the provision of support to meet a carer's needs, or for putting in place the arrangements for that support, may be imposed—
 - (a) where the support is provided to a carer who is an adult, on that carer;
 - (b) where the support is provided to a carer who is a child, on an adult with parental responsibility for that carer;
 but this is subject to subsection (5).
- (5) Where a carer's needs for support are met by the provision of care and support to a person for whom the carer provides or intends to provide care, subsection (4) does not apply; a charge for providing or arranging the provision of that support, or for putting in place the arrangements for that support, may instead be imposed—
 - (a) where the carer's needs for support are met by the provision of care and support to an adult, on that adult;
 - (b) where the carer's needs for support are met by the provision of care and support to a child, on an adult with parental responsibility for that child.

61 Regulations about the exercise of a power to impose a charge

- (1) Regulations may make provision for and in connection with the exercise of a power to impose a charge under section 59.
- (2) The regulations may (among other things) make provision about the amount of the charge which may be imposed under section 59(1); and the regulations may (in reliance on section 196(2)) do so, for example, by—
 - (a) specifying a maximum amount which may be imposed for care and support or (in the case of carers) support of a specified type or for a specified combination of such things, or a formula or method for determining that maximum amount;
 - (b) requiring a local authority to fix a charge for care and support or (in the case of carers) support of a specified type or for a specified combination of such things by reference to a specified period of time;
 - (c) specifying, in the case of a charge referred to in paragraph (b), a maximum amount which may be imposed, or a formula or method for determining that maximum amount.
- (3) The regulations may also (among other things) make provision about the amount of the charge which may be imposed under section 59(3); and the regulations may (in reliance on section 196(2)) do so, for example, by specifying a maximum amount which may be imposed for putting arrangements in place—
 - (a) in specified circumstances, or
 - (b) for persons of a specified description.

62 Regulations disapplying a power to impose a charge

Regulations may disapply a local authority's power to impose a charge under section 59(1) or (3) (and so may require a local authority to meet needs under sections 35 to 45 free of charge); the regulations may (in reliance on section 196(2) require a local authority to do so where, for example, the care and support, or (in the case of carers) the support—

- (a) is of a specified type;
- (b) is provided or arranged in specified circumstances;
- (c) is provided to, or arranged for, persons of a specified description;
- (d) is provided or arranged for a specified period only.

63 Duty to carry out a financial assessment

- (1) This section applies in relation to a person on whom a local authority thinks it would impose a charge under section 59, were it to meet a person's needs for care and support or a carer's needs for support.
- (2) The local authority must assess the level of the person's financial resources in order to determine whether it would be reasonably practicable for the person to pay the standard charge (but this is subject to section 65).
- (3) In this Part "standard charge" means the amount that a local authority would charge under section 59 if no determination were made under section 66 as to a person's ability to pay that amount.
- (4) An assessment under this section is referred to in this Act as a "financial assessment".

64 Regulations about financial assessments

- (1) Regulations must make provision for and in connection with carrying out financial assessments.
- (2) The regulations must make provision for—
 - (a) calculating income;
 - (b) calculating capital.
- (3) The regulations may also make provision for the following matters (among other matters)—
 - (a) the treatment, or non-treatment, of amounts of a specified type as income or as capital;
 - (b) cases or circumstances in which a person is to be treated as having financial resources which exceed a specified level (which may include, for example, cases in which the person being assessed has failed to provide to a local authority, upon request, information or documents in the person's possession or under the person's control);
 - (c) cases or circumstances in which a new financial assessment must or may be carried out.

65 Regulations disapplying the duty to carry out a financial assessment

Regulations may make provision about circumstances in which a local authority is not required (despite section 63) to carry out a financial assessment.

66 Determination as to a person’s ability to pay a charge

- (1) Where a local authority has carried out a financial assessment—
 - (a) the authority must determine, in light of the assessment, whether it would be reasonably practicable for the assessed person to pay the standard charge for the care and support or (in the case of carers) the support in respect of which a charge would be imposed on that person, and
 - (b) if the authority determines that it would not be reasonably practicable for the assessed person to pay the standard charge, the authority must determine the amount (if any) that it would be reasonably practicable for that person to pay for that care and support or that support.
- (2) In this section “the assessed person” means the person whose financial resources have been assessed under section 63.
- (3) Regulations must make provision about the making of determinations under subsection (1).
- (4) The regulations must require a local authority to determine, in a case where the assessed person’s financial resources (whether income, capital, or a combination of both) exceed a specified level, that it would be reasonably practicable for that person to pay the standard charge.
- (5) The level specified for the purposes of subsection (4) is referred to in this Act as “the financial limit”.
- (6) The regulations may require a local authority to determine that it would not be reasonably practicable for the assessed person to pay any amount for the care and support or (in the case of carers) the support that would reduce the person’s income or capital below specified levels; and the regulations may, (in reliance on section 196(2)) specify different levels—
 - (a) for income and for capital,
 - (b) for different circumstances, and
 - (c) for different descriptions of persons.
- (7) The regulations may also (among other things) make provision about cases or circumstances in which a local authority must or may replace a determination with a new determination.
- (8) A determination under subsection (1) has effect from a date that the local authority considers reasonable (which may be a date before that on which the determination was made); but this is subject to any provision made in regulations under subsection (9).
- (9) Regulations may make provision as to the date from which a determination under subsection (1) is to have effect (and may include provision for a determination to have effect from a date before that on which it was made).
- (10) Where a determination replaces an existing determination, the existing determination continues to have effect until the new determination has effect.
- (11) For the purposes of subsection (10), a determination replaces an existing determination if it relates to the same person and the same care and support or (in the case of carers) support.

67 Duty to give effect of determination as to ability to pay a charge

- (1) A local authority must give effect to a determination under section 66 in imposing charges under section 59.
- (2) But regulations may make provision about circumstances in which the duty under subsection (1) does not apply.

68 Deferred payment agreements

- (1) Regulations may specify cases or circumstances in which, or conditions subject to which, a local authority may or must enter into a deferred payment agreement with a person who is required (or is going to be required) to pay a charge under section 59.
- (2) A deferred payment agreement is an agreement under which—
 - (a) the local authority agrees not to require payment of the person's required amount until the time specified in or determined in accordance with the regulations, and
 - (b) the person agrees to give the local authority a charge over the person's interest in his or her home to secure payment of the person's required amount.
- (3) The person's required amount is so much of the charge that the person is required (or is going to be required) to pay under section 59 as is specified in or determined in accordance with the regulations.
- (4) The regulations may require or permit the local authority to charge—
 - (a) interest on the person's required amount;
 - (b) such amount relating to the local authority's administrative costs as is specified in or determined in accordance with the regulations;
 - (c) interest on an amount charged under paragraph (b).
- (5) The regulations may provide for interest referred to in subsection (4)(a) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (6) The regulations may—
 - (a) specify costs which are, or which are not, to be regarded as administrative costs for the purposes of subsection (4)(b);
 - (b) provide for an amount referred to in subsection (4)(b) or for interest referred to in subsection (4)(c) to be charged by means of an obligation in the deferred payment agreement and to be treated in the same way as the person's required amount.
- (7) The local authority may not charge interest under regulations made under subsection (4) at a rate that exceeds the rate specified in or determined in accordance with the regulations.
- (8) The regulations must make provision about the duration of the agreement and for its termination by either party; the regulations must, among other things, enable the person to terminate it and the charge to which it gives effect by—
 - (a) giving the local authority notice, and
 - (b) paying the authority the full amount for which the person is liable with respect to the person's required amount and any amount charged under regulations made by virtue of subsection (4).

Status: This is the original version (as it was originally enacted).

- (9) The regulations may make provision as to the rights and obligations of the local authority and the person where the person disposes of the interest to which the agreement relates and acquires an interest in another property in Wales or England; the regulations may, for example, make provision—
- (a) for the local authority not to require payment of the amounts referred to in subsection (8)(b) until a time specified in or determined in accordance with the regulations, and
 - (b) for the person to give the local authority a charge over his or her interest in the other property.
- (10) A reference to a person’s home is a reference to the property which the person occupies as his or her only or main residence; and a reference to a person’s interest in a property is a reference to the person’s legal or beneficial interest in that property.
- (11) Regulations may apply this section, with or without modifications, for the purpose of enabling a person to agree to give a charge over the person’s interest in a property in Wales or England which he or she used to occupy as his or her only or main residence.