

Explanatory Memorandum to the National Assistance (Sums for Personal Requirements) (Assessment of Resources and Miscellaneous Amendments) (Wales) Regulations 2012

This Explanatory Memorandum has been prepared by the Adult Social Services Policy Division of the Department for Health, Social Services and Children and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

Minister's Declaration

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the National Assistance (Sums for Personal Requirements) (Assessment of Resources and Miscellaneous Amendments) (Wales) Regulations 2012. I am satisfied that the benefits outweigh any costs.

Gwenda Thomas AM,
Deputy Minister for Children and Social Services
Date: 14 March 2012

Description

1. The National Assistance (Sums for Personal Requirements) (Assessment of Resources and Miscellaneous Amendments) (Wales) Regulations 2012 (“the 2012 Regulations”) will come into force from 9th April 2012. They relate to the financial assessment of individuals for charging for residential care and will:

- increase the personal expenses allowance (PEA) (the weekly sum of money that local authorities must enable a resident in care to retain to spend on personal items) from £23.00 to £24.00 per week;
- increase the single capital limit (the value of property, savings and investments held to determine whether the resident or their local authority funds their residential care) from £22,500 to £23,250;
- apply a technical amendment to the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003 to remove references to the former lower capital limit which was replaced in April 2010 with a single capital limit. This change whilst not essential provides clarity on the operation of the single capital limit.

Matters of special interest to the Constitutional and Legislative Affairs Committee

2. None.

Legislative Background

3. The amount of the PEA is set out in Regulation 2 of the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011. In order to amend the amount, this Regulation will need to be revoked and the new amount prescribed in Regulations. This can be achieved under section 22(4) of the National Assistance Act 1948 (“the Act”). This grants power to the Minister of Health and Social Services to prescribe such sums that a local authority must assume that a person provided with accommodation under the Act will need per week for their personal requirements. This power was transferred to the Secretary of State for Health by virtue of the Secretary of State for Social Services Order 1968 and the Transfer of Functions (Health and Social Security) Order 1988. Article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 transferred this power to the National Assembly for Wales and was subsequently transferred to the Welsh Ministers by virtue of paragraphs 30(1) and (2)(d) of Schedule 11 to the Government of Wales Act 2006.

4. The single capital limit is prescribed in Regulation 20A of the National Assistance (Assessment of Resources) Regulations 1992 (“the 1992 Regulations”). This limit can be amended by Regulations made under section 22(5) of the Act which also grants power to the Secretary of State to make Regulations to which local authorities must give effect in assessing a person’s ability to pay for accommodation under the Act. This was transferred from the Secretary of State to the National Assembly for Wales by virtue of Article 2 and Schedule 1 to the National Assembly for Wales (Transfer of Functions)

Order 1999 and subsequently transferred to the Welsh Ministers by virtue of paragraphs 30(1) and (2)(d) of Schedule 11 to the Government of Wales Act 2006.

5. The technical amendments required to the National Assistance (Residential Accommodation) (Additional Payments, Relevant Contributions and Assessment of Resources) (Wales) Regulations 2003 (“the 2003 Regulations”) can also be made by regulations made under section 22(5) of the Act.

6. Section 63(3) of the Act sets out that regulations made under the Act shall be subject to the negative resolution procedure.

Purpose and Intended Effect of the Legislation

Policy Objective

8. It is the Welsh Government’s policy to undertake an annual review of the sum to be assumed by local authorities that persons, who are provided with accommodation under Part 3 of the Act, need for their personal requirements under section 22(4) of the Act, and the 1992 Regulations, in the light of current welfare benefits, financial, legal and operational circumstances. This is to ensure that the requirements in place under regulations relating to a local authority’s financial assessment of those in residential care are appropriate and properly take into account these factors.

Effects

9. Under the Act local authorities are required to charge residents for residential accommodation, whether directly provided or arranged with the independent care sector, with the aim of recovering as much as possible of the costs. The way a local authority is to assess a person’s ability to pay is laid down in 1992 Regulations. The Welsh Government has a longstanding commitment to keep under review the capital limit 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 PEA 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 Welsh 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.

10. The 2012 Regulations introduce a number of changes, which are described below. While these changes are generally in line with those being undertaken by the other three UK administrations there is distinct Welsh provision in relation to the capital limit and PEA amendments. This is in relation to the policy of the Welsh Government not to have two capital limits, the effect of which assists proportionally more residents in Wales with their care costs than residents in the rest of the UK and to set the amount of the PEA slightly higher than elsewhere in the UK.

Increase in Personal Expenses Allowance

11. Under section 22(4) of the Act, local authorities are to assume that those

individuals in residential care who they support financially require a weekly sum for their personal requirements, this is known as the PEA. Such weekly sums can be prescribed by the Welsh Ministers under section 22(4) of the Act. It is custom and practice to uprate the PEA each year. The current amount of the PEA in Wales is £23.00 per week, as prescribed in the National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011.

12. The 2012 Regulations seek to increase this amount to £24.00 per week from 9th April 2012. This maintains a slight increase over that increase planned in the rest of the UK which will increase PEA from £22.60 to £23.50 per week from the same date.

Increase in Capital Limit

13. Where an individual is assessed as in need of long term residential care they will be subject to a financial assessment. The assessment is undertaken with regard to the provisions set out in the 1992 Regulations and under the charging rules set out within the Welsh Government's statutory guidance "*Charging For Residential Accommodation Guide*".

14. Prior to 2010 a two capital limit provision operated in Wales providing for an upper and a lower limit. As such individuals with capital above the upper limit funded their residential care costs in full while individuals with capital at or below the lower limit received financial support from their local authority. Individuals with capital between the two limits were required to make a contribution towards their costs calculated on a tariff basis.

15. From April 2010 a single capital limit was introduced to simplify the financial assessment and charging process. Individuals with capital above the capital limit are required to meet the cost of their accommodation and care in full while those with capital at or below the limit receive financial support from their local authority. The level of the capital limit is reviewed annually and from April 2011 it was set at £22,500. The 2012 Regulations now seek to increase the level of the capital limit applicable in Wales from £22,500 to £23,250 from 9th April 2012.

16. Elsewhere in the UK a two capital limit provision remains in operation. England and Northern Ireland plan to retain the current levels of their capital limits at £23,250 and £14,250. Scotland plans to increase its capital limits from 9th April to £24,750 and £15,250.

Capital Limit - Minor Technical Amendment

17. The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2010 introduced the provision of a single capital limit in Wales. The 2003 Regulations set out when and from which sources a person in residential care may make a top-up payment to pay for accommodation which is more expensive than their local authority's standard rate. A top up payment can also be made for an additional service or facility a resident wishes to receive, but which does not form part of their assessed care needs. The 2003 Regulations contain a

number of references to “the lower capital limit” which were not amended at that time and remain outstanding.

18. Legal Services has advised that the 2003 Regulations should be amended to remove all references to “the lower capital limit” to avoid any confusion and provide clarity to the assessment and charging process.

Implementation and Risk if Legislation is not made

19. The Regulations will come into force on 9th April 2012. If this date is not achieved then individuals 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 the residential charging process, will not be updated to take account of the changes outlined in the sections above.

Consultation

20. The proposed amendment to the single capital limit and the PEA for residential charging assessments are part of a regular annual exercise, which stakeholders (i.e. local authorities) are aware of to simply review and increase existing levels.

21. The technical amendment merely removes any cause for confusion and provides clarity in applying the 2003 Regulations.

22. 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 changes to the Personal Expenses Allowance (PEA)

23. 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. This requirement is laid down in section 22(4) of the Act.

Option 1: Do Nothing

24. This would mean that the PEA is maintained at the level of £23.00 per week. It has become practice to uprate the PEA annually and therefore, there is an expectation by local authorities and care home residents that the amount of the PEA will be increased. To freeze the level of the PEA would also result in care home residents retaining a lower level of PEA than care home residents in the rest of the UK. As a result individuals would not benefit from any amount of the increases applied to UK state pensions and benefits from 9th April 2012 as all of this increase would be retained by local authorities to contribute towards the costs of their accommodation and care. No change in the PEA would result in Wales having the lowest level of PEA in the UK.

Cost

25. There would be no new cost implication to local government from this option.

Benefits

26. This option would provide no new benefits to care home residents in Wales.

Option 2: Make the Legislation

27. Implementing the Regulations will provide for an increase in the level of PEA from £23.00 to £24.00 per week. This will enable individuals in residential care who are supported financially by their local authority to retain an increased amount of their income each week for personal expenses. Implementing the Regulations will also result in a slightly higher level of PEA for residents in Wales than that applicable in the rest of the UK.

Costs

28. From 9th April 2012 the amount of the state pension and DWP benefits will increase by 5.2% and 3.9% respectively. The weekly income care home residents receive, against which local authorities charge for accommodation and care costs, will therefore increase by these levels in the form of state pensions together with DWP benefits.

29. Consequently this increase to the PEA is considered affordable given that the increase in state pensions is above the percentage increase in the PEA while the increase in the PEA is in line with DWP benefits. Hence local authorities will benefit from an element of this increase to help meet the costs of those residents in residential care that they support financially.

Benefits

30. The increase will enable individuals in care to receive an increase in the amount of money they retain for personal expenditure whilst generating an increase in revenue for local authorities through an increase in the level of contributions received from residents they support.

Impact of the Proposed Capital Limit Increase

31. Under the 1992 Regulations local authorities may not contribute financially to the care costs of residents who have capital, including property, savings and investments above the level of the single capital limit. Such residents are, therefore, expected to meet the full costs of their residential accommodation and care from their own resources. If individuals have capital at or below the capital limit then they will receive maximum state financial support and contribute whatever income they receive deemed eligible by the 1992 Regulations.

Option 1: Do Nothing

32. This would mean that the capital limit applied within the financial assessment would be maintained at £22,500. The Welsh Government has made a previous commitment to keep the capital limit under review. Therefore, there is an expectation that this will be considered and increased annually.

Cost

33. There would be no new cost implication to local government from this option.

Benefits

34. This option provides no new benefits to individuals in residential care. Individuals would be unable to retain any additional amount of their personal capital than at present as they would need to continue to fully self fund for longer than residents elsewhere in the UK.

Option 2: Make the Legislation

35. Making the 2012 Regulations will apply a modest uplift of £750 to the current limit bringing the capital limit in Wales in line with the upper limit in place in England and Northern Ireland.

Cost

36. Implementing the 2012 Regulations will result in an increase in the capital limit by 3.3%, an estimated increase in spend by local government on residential care by around £0.300m pa – ie approximately £0.014m per local authority. This is considered broadly affordable for local authorities in the light of the recent local government settlement which included an element of protection for social services over a three year period, in increase in funding for these services of £35m per annum in total by 2013-14.

Benefits

37. It will provide a reasonable benefit for residents who will not have to fully self fund their costs any longer than those elsewhere in the UK. This, coupled with the benefit of Wales having a simplified single capital limit, ensures proportionally more residents in Wales are assisted with their residential care costs than residents in the rest of the UK.

Impact of the proposed technical amendments

38. The 2003 Regulations set out when and from which sources a person in residential care may make a top-up payment to pay for accommodation which is more expensive than their local authority's standard rate. The 2003 Regulations contain references to "the lower capital limit". The lower capital limit ceased to operate in Wales from April 2010 and so for clarity there is a need to remove such references.

Option 1 Do nothing

39. References to "the lower capital limit" would remain in the 2003 Regulations which could be considered confusing and misleading in assessing and charging individuals for residential accommodation.

Benefits/Costs

40. There would no new cost implications for local government from this option. This option provides no new benefits to individuals in residential care.

It retains the potential for confusion in the operation of the 2003 Regulations, given that references to the former lower capital limit would be retained.

Option 2: Make Legislation.

41. This option would remove any confusion in the operation of the 2003 Regulations by removing references to the former lower capital limit.

Benefits/Costs

42. It would remove any potential for misinterpretation in the operation of the 2003 Regulations, ensuring uniformity in the application of the financial assessment and charging process. There are no associated costs.

Competition Assessment

43. Not applicable.

Post Implementation Review

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

Summary

45. The 2012 Regulations will benefit those in residential care in Wales. They will ensure that all residents with capital at or under £23,250 no longer pay in full the cost of their residential care from these funds. They will also enable residents to retain an additional amount of their income for their personal expenses in the form in an increase level of PEA. In addition, they will ensure that there is clarity in the operation of the 2003 Regulations in relation to top-up payments for accommodation which is more expensive than their local authority's standard rate.