

Social Care Charges (Wales) Measure 2010

This measure was passed by the National Assembly for Wales on 19th January 2010. However, the measure did not come into force until 17th March 2011, by virtue of The Social Care Charges (Wales) Measure 2010 (commencement) Order 2011. SI 2011 no. 849 (W.126) (C.34).

The measure is to make provision for and in connection with the imposition and recovery of charges for the provision of non residential Social Care Services. The enactment of this measure demonstrates yet further the Social Care charging divide that is opening up between England, Wales and Scotland. The latter two countries now have much more generous charging provisions for the delivery of non residential Social Care.

The measure gave Welsh Ministers the power to introduce regulations in relation to Social Care Charges and we now have four sets of regulations in force:-

- The Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2011 SI 2011 no. 831 (W.125);
- Social Care Charges (Means Assessment and Determination of Charges) (Wales) Regulations 2011 SI 2011 no. 962 (W.136);
- The Social Care Charges (Direct Payments) (Means Assessment and Determination of Reimbursement or Contribution) (Wales) Regulations 2011 SI 2011 no. 963 (W.137);
- The Social Care Charges (Review of Charging Decisions) (Wales) Regulations 2011 SI 2011 no. 964 (W.138).

For the Personal Injury Practitioner, the principal impact of these new regulations is that Welsh Ministers have determined that Local Authorities may only charge a maximum of £50.00 per week to a Service User for any non residential social services a Local Authority provides. This is irrespective of the amount of capital or income that a Service User has. It is important to note that this measure applies only to non residential social services. The maximum charge of £50.00 per week can be varied by Welsh Ministers from time to time. The only extra that a client could be charged is for any service that a Local Authority provides on a flat rate basis the service user wishes to avail themselves of, subject, of course, to a means test.

The maximum charge of £50.00 per week also applies to Direct Payments. It is important to note that Personal Budgets for Social Care are not currently available to Welsh residents.

Statutory Instrument 2011 no. 708 (W.110) – National Assistance Services Wales

The National Assistance (Assessment of Resources and Sums for Personal Requirements) (Amendment) (Wales) Regulations 2011 was made on 9th March 2011 and came into force on 11th April 2011. This Statutory Instrument now aligns Wales with England in terms of the measures brought in by SI.2008/593 The National Assistance (Sums for Personal Requirements and Assessment of Resources) Amendment (England) Regulations. These regulations brought in new provisions to the National Assistance (Assessment of Resources) Regulations 1992 to align the way in which the Department for Work and Pensions assesses financial resources in calculating entitlement to certain 'means-tested' benefits.

The relevant part of the Statutory Instrument states:

Amendment of Schedule 3 to the Principal Regulations

“5.–(1) In Part 1 of Schedule 3 to the Assessment Regulations (sums to be disregarded in the calculation of income other than earnings)–

(a) in paragraph 10(1), for “paragraphs 29 and 31, the amount specified in paragraph 15(1) of Schedule 9 to the Income Support Regulations (relevant payments) of”, substitute “paragraph 29,”;

(2) In Part 2 of Schedule 3 to the Assessment Regulations (special provisions relating to charitable or voluntary payments and certain pensions)–

(a) omit paragraph 30; and

(b) in paragraph 31, “for paragraphs 10(1) and 11” substitute “paragraph 11”.

Amendment of Schedule 4 to the Principal Regulations

“6. In Schedule 4 to the Principal Regulations (capital to be disregarded)–

(a) after paragraph 10 insert–

(b) “(10A) Any amount which would be disregarded under paragraph 12A of Schedule 10 to the Income Support Regulations (personal injury payments) with the exception of any payment or any part of any payment that has been specifically identified by a court to deal with the cost of providing care.”; and (b) for paragraph 19(1), substitute–

“Any amount which–

(a) falls within paragraph 44(2)(a), and would be disregarded under paragraph 44(1)(a) or (b), of Schedule 10 to the Income Support Regulations; or

(b) would be disregarded under paragraph 45(a) of that Schedule.”.”

With regard to Regulation 5, the explanatory note to the Statutory Instrument states:

Regulation 5 amends paragraphs 10, 30 and 31 of Schedule 3 to the principle regulations to provide that certain charitable and voluntary payments of income are to be disregarded, in full, in the calculation of income other than earnings. These amendments reflect amendments made to the Income Support (General) Regulations 1987 (S.I. 1987/1967) (“the Income Support Regulations”).

With regard to Regulation 6, the explanatory note to the Statutory Instrument states:

Regulation 6 amends Schedule 4 to the principal regulations to reflect amendments made to the Income Support Regulations dealing with funds to be disregarded when calculating a resident’s capital. Regulation 6 (A) creates a disregard for any payment made in consequence of any personal injury to a resident for a period of up to 52 weeks from the day of receipt of the first payment, except where that payment is specifically intended to cover the cost of care. Regulation 6(B) enables certain awards of damages to be disregarded where those awards are held subject to the Order or Direction of the Court.

So what does this mean?

Please find below our summary:-

- Certain charitable and voluntary payments of income should be disregarded as they are for means-tested benefits;
- A disregard for capital held 'in Court' has now been widened in Wales to include capital 'under the Order of the Court';
- This means, that a claimant no longer needs a Deputy's Personal Injury Trust wrapped around accounts, investments and property to ensure that the capital is disregarded for both residential and home care;
- There is now a 52 week disregard for any sums received as a consequence of a personal injury to the claimant **except when such sums have been specifically identified by a Court to deal with the cost of providing care;**
- However, if the sums are held in Trust, or held to the Order of the Court, then the capital remains disregarded for both residential and home care;
- There is no impact on the treatment or otherwise of income derived from disregarded capital or periodical payments for home care services.

At the time of writing, no amendments have yet been made to the Welsh Charging Regulation and Guidance (CRAG) for Residential Care to reflect the above changes, however, such amendments were made in England by way of LAC (DoH) (2009) 3, although it is reasonable to expect such amendments may be forthcoming when the 2011 version of the Welsh CRAG is released.

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